



# FEDERAL REGISTER

---

Vol. 88                      Tuesday,  
No. 146                     August 1, 2023

Pages 49993–50532

OFFICE OF THE FEDERAL REGISTER



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see [www.federalregister.gov](http://www.federalregister.gov).

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at [www.govinfo.gov](http://www.govinfo.gov), a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, [gpocusthelp.com](mailto:gpocusthelp.com).

The annual subscription price for the **Federal Register** paper edition is \$860 plus postage, or \$929, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see [bookstore.gpo.gov](http://bookstore.gpo.gov).

There are no restrictions on the republication of material appearing in the **Federal Register**.

**How To Cite This Publication:** Use the volume number and the page number. Example: 88 FR 12345.

**Postmaster:** Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

## SUBSCRIPTIONS AND COPIES

### PUBLIC

#### Subscriptions:

Paper or fiche 202-09512-1800  
Assistance with public subscriptions 202-512-1806

**General online information** 202-512-1530; 1-888-293-6498

#### Single copies/back copies:

Paper or fiche 202-512-1800  
Assistance with public single copies 1-866-512-1800  
(Toll-Free)

### FEDERAL AGENCIES

#### Subscriptions:

Assistance with Federal agency subscriptions:

Email [FRSubscriptions@nara.gov](mailto:FRSubscriptions@nara.gov)  
Phone 202-741-6000

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: <https://www.gpo.gov/frsubs>.



# Contents

Federal Register

Vol. 88, No. 146

Tuesday, August 1, 2023

## Agency for International Development

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals: Legislative and Public Affairs Bureau, 50099

## Agricultural Marketing Service

### RULES

Redefining Bona Fide Cotton Spot Markets, 49993–49994

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50099–50100

## Agriculture Department

*See* Agricultural Marketing Service

*See* Animal and Plant Health Inspection Service

## Air Force Department

### NOTICES

Intent to Grant a Partially Exclusive Patent License, 50130–50131

## Animal and Plant Health Inspection Service

### RULES

Process for Establishing Rates for Veterinary Services User Fees, 49994–50002

## Architectural and Transportation Barriers Compliance Board

### PROPOSED RULES

Standards for Accessible Medical Diagnostic Equipment, 50096–50097

## Centers for Disease Control and Prevention

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50153–50157

## Centers for Medicare & Medicaid Services

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50157–50158  
Statement of Organization, Functions, and Delegations of Authority, 50158

## Coast Guard

### RULES

Safety Zone:

Military Ocean Terminal Concord Safety Zone, Suisun Bay, Military Ocean Terminal Concord, CA, 50042

## Commerce Department

*See* Foreign-Trade Zones Board

*See* International Trade Administration

*See* National Oceanic and Atmospheric Administration

*See* National Telecommunications and Information Administration

## Defense Department

*See* Air Force Department

*See* Engineers Corps

## Drug Enforcement Administration

### RULES

Implementation of the Designer Anabolic Steroid Control Act, 50036–50041

## Election Assistance Commission

### NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50133–50134

## Energy Department

*See* Federal Energy Regulatory Commission

### NOTICES

Change in Control:

Cove Point LNG, LP, 50134–50135

Charter Amendments, Establishments, Renewals and Terminations:

Basic Energy Sciences Advisory Committee, 50135

## Engineers Corps

### NOTICES

Environmental Assessments; Availability, etc.:

Water Resources Development Act, Harmful Algal Bloom Demonstration Program, 50131–50133

## Environmental Protection Agency

### PROPOSED RULES

Greenhouse Gas Reporting Rule:

Revisions and Confidentiality Determinations for

Petroleum and Natural Gas Systems, 50281–50441

Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels, 50444–50483

### NOTICES

Administrative Settlement Agreement:

Response Action by Bona Fide Prospective Purchaser,

Central City/Clear Creek Superfund Site, Four Points

Funding, LLC, Clear Creek County, CO, 50149

Agency Information Collection Activities; Proposals,

Submissions, and Approvals:

Ambient Air Quality Surveillance, 50148–50149

Clean Water Act Water Quality Certification, 50147–50148

New Source Performance Standards for the Graphic Arts Industry, 50150–50151

Spill Prevention, Control, and Countermeasure Plans, 50149–50150

## Federal Aviation Administration

### RULES

Airspace Designations and Reporting Points:

Emmonak, AK, 50018–50020

Airworthiness Directives:

Airbus SAS Airplanes, 50005–50011

AVOX Systems Inc. (formerly Scott Aviation) Oxygen Cylinder and Valve Assemblies; and Oxygen Valve Assemblies, 50011–50014

The Boeing Company Airplanes, 50014–50018

### PROPOSED RULES

Airworthiness Directives:

Airbus SAS Airplanes, 50067–50076

**NOTICES**

Change in Use of Aeronautical Property:

Henry E. Rohlsen Airport in St. Croix, United States  
Virgin Islands, 50275

Request for Comments:

Release of Federally Obligated Land at the Brunswick  
Golden Isles Airport, Brunswick, GA, 50275

**Federal Communications Commission****RULES**

Access to Video Conferencing, 50053–50056

**PROPOSED RULES**

Review of International Authorizations to Assess Evolving  
National Security, Law Enforcement, Foreign Policy,  
and Trade Policy Risks; Schedule of Application Fees,  
50486–50532

**NOTICES**

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals, 50151–50152

**Federal Energy Regulatory Commission****NOTICES**

Application:

Andro Hydro, LLC, 50136–50137  
Central Rivers Power NH, LLC, Great Lakes Hydro  
America, LLC, 50142–50145

Golden Triangle Storage, LLC, 50140–50142

Combined Filings, 50138–50140, 50145–50146

Initial Market-Based Rate Filings Including Requests for  
Blanket Section 204 Authorizations:

Bronco Plains Wind II, LLC; Supplemental, 50140  
Crystal Hill Solar, LLC, 50146–50147

Request for Extension of Time:

Delfin LNG, LLC, 50135–50136

Request Under Blanket Authorization and Establishing  
Intervention and Protest Deadline:

Southern Star Central Gas Pipeline, Inc., 50137–50138

**Federal Reserve System****NOTICES**

Proposals to Engage in or to Acquire Companies Engaged in  
Permissible Nonbanking Activities, 50153

**Fish and Wildlife Service****NOTICES**

Environmental Impact Statements; Availability, etc.:

Bison and Elk Management Plan for the National Elk  
Refuge in Wyoming, 50168–50170

**Food and Drug Administration****NOTICES**

Determination That Drugs Were Not Withdrawn From Sale  
for Reasons of Safety or Effectiveness:

Progesterone Injection, USP, 50 Milligrams/Milliliter,  
50158–50159

**Foreign Assets Control Office****NOTICES**

Sanctions Action, 50277

**Foreign-Trade Zones Board****NOTICES**

Authorization of Production Activity:

Jos. H Lowenstein and Sons, Inc., Foreign-Trade Zone 1,  
Brooklyn, NY, 50100

**Health and Human Services Department**

See Centers for Disease Control and Prevention

See Centers for Medicare & Medicaid Services

See Food and Drug Administration

See Indian Health Service

See National Institutes of Health

See Substance Abuse and Mental Health Services  
Administration

**RULES**

Medicare Program:

Contract Year 2024 Policy and Technical Changes to the  
Medicare Advantage Program, Medicare Prescription  
Drug Benefit Program, Medicare Cost Plan Program,  
and Programs of All-Inclusive Care for the Elderly;  
Correcting Amendment, 50043–50044

**NOTICES**

Charter Amendments, Establishments, Renewals and  
Terminations:

Office of Long COVID Research and Practice, 50159–  
50160

**Homeland Security Department**

See Coast Guard

**NOTICES**

Meetings:

President's National Security Telecommunications  
Advisory Committee, 50165–50166

**Housing and Urban Development Department****NOTICES**

Agency Information Collection Activities; Proposals,  
Submissions, and Approvals:

Green and Resilient Retrofit Program Application Forms,  
50166–50167

PRO Housing Competition Application Collection,  
50167–50168

**Indian Health Service****NOTICES**

Proposed Purchased/Referred Care Delivery Area  
Redesignation for the Mid-Atlantic Tribes, 50160–  
50162

**Interior Department**

See Fish and Wildlife Service

See Ocean Energy Management Bureau

**Internal Revenue Service****RULES**

Guidance:

Amendment of Matching Rule for Certain Gains on  
Member Stock; Correction, 50041–50042

**NOTICES**

Senior Executive Service Performance Review Board,  
50277–50278

**International Trade Administration****NOTICES**

Antidumping or Countervailing Duty Investigations, Orders,  
or Reviews:

Advance Notification of Sunset Review, 50102–50103  
Certain Softwood Lumber Products from Canada, 50103–  
50110

Initiation of Five-Year (Sunset) Reviews, 50110–50111  
Steel Concrete Reinforcing Bar from the Republic of  
Turkey, 50100–50102

**International Trade Commission****NOTICES**

Antidumping or Countervailing Duty Investigations, Orders, or Reviews:  
Forged Steel Fittings from China, Italy, and Taiwan, 50172–50174

**Justice Department**

See Drug Enforcement Administration

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Procurement Collusion Strike Force Complaint Form, 50177–50178  
Statement of Claim for Filing of Claims in the Guam Claims Program Pursuant to the Guam World War II Loyalty Recognition Act, 50174–50175  
Supervised Visitation and Safe Exchange Guiding Principles Reflection Survey for Past and Current Grantees, 50175–50177  
Proposed Stipulated Order:  
Clean Water Act, 50177

**Labor Department**

See Mine Safety and Health Administration

See Occupational Safety and Health Administration

**Mine Safety and Health Administration****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Escape and Evacuation Plans, 50179–50180  
Hoist Operators' Physical Fitness, 50180–50181  
Records of Tests and of Examinations of Personnel Hoisting Equipment, 50178–50179

**National Highway Traffic Safety Administration****NOTICES**

Petition for Decision of Inconsequential Noncompliance:  
Winnebago Industries, Inc., 50276–50277

**National Institutes of Health****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Customer Participation and Performance Management with NIH Programs, Processes, Products, and Services, 50162–50163

Meetings:

National Cancer Institute, 50163–50164

**National Oceanic and Atmospheric Administration****RULES**

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic:  
Reef Fish Resources of the Gulf of Mexico; Commercial Trip Limit for Gray Triggerfish, 50063–50065  
Fisheries of the Northeastern United States:  
Northeast Multispecies Fishery; Gulf of Maine Cod Trimester Total Allowable Catch Area Closure for the Common Pool Fishery, 50065–50066

**PROPOSED RULES**

Control Date:

Pacific Cod by Catcher Vessels Greater Than or Equal to 60 Feet Length Overall and Catcher/Processors Using Pot Gear in the Bering Sea and Aleutian Islands Management Area, 50097–50098

**NOTICES**

Meetings:

Pacific Fishery Management Council, 50113  
Permanent Advisory Committee to Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission, 50111–50112

Permits; Applications, Issuances, etc.:

Marine Mammals; File No. 27128, 50112

Taking or Importing of Marine Mammals:

Elkhorn Slough Tidal Marsh Restoration Project, Phase III in Monterey County, CA, 50113–50117

Site Characterization Surveys Offshore from Massachusetts to New Jersey for Vineyard Northeast, LLC, 50117–50130

**National Science Foundation****RULES**

Federal Cyber Scholarship-for-Service Program, 50044–50053

**National Telecommunications and Information Administration****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Public Wireless Supply Chain Innovation Fund Grant Program, 50130

**Nuclear Regulatory Commission****NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals:  
Medical Use of Byproduct Material, 50182–50183  
Requests to Federally Recognized Indian Tribes for Information; Correction, 50188  
Facility Operating and Combined Licenses:  
Applications and Amendments Involving Proposed No Significant Hazards Considerations, etc., 50183–50188  
Licenses; Exemptions, Applications, Amendments etc.:  
Sensor Concepts and Applications, Inc., 50188–50189

**Occupational Safety and Health Administration****NOTICES**

Voluntary Termination of Recognition as a Nationally Recognized Testing Laboratory:  
Applied Research Laboratories of South Florida, LLC, 50182

**Ocean Energy Management Bureau****NOTICES**

Environmental Assessments; Availability, etc.:  
Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore Delaware, Maryland, and Virginia, 50170–50171

**Pipeline and Hazardous Materials Safety Administration****RULES**

Pipeline Safety:  
Requirement of Valve Installation and Minimum Rupture Detection Standards; Technical Corrections, 50056–50063

**Postal Regulatory Commission****NOTICES**

New Postal Products, 50189–50190

**Securities and Exchange Commission****PROPOSED RULES**

Exemption for Certain Investment Advisers Operating Through the Internet, 50076–50096

**NOTICES**

Agency Information Collection Activities; Proposals, Submissions, and Approvals, 50202–50205, 50231–50232

Self-Regulatory Organizations; Proposed Rule Changes:

Cboe BZX Exchange, Inc., 50258–50266

Cboe C2 Exchange, Inc., 50266–50274

Cboe Exchange, Inc., 50249–50258

Financial Industry Regulatory Authority, Inc., 50205–50231

New York Stock Exchange, LLC, 50238–50244

NYSE American, LLC, 50190–50196

NYSE Arca, Inc., 50244–50249

NYSE Chicago, Inc., 50196–50202

NYSE National, Inc., 50232–50238

**Small Business Administration****RULES**

Civil Monetary Penalties Inflation Adjustments, 50003–50005

**State Department****NOTICES**

Charter Amendments, Establishments, Renewals and Terminations:

Board of Visitors of the Foreign Service Institute, 50274–50275

**Substance Abuse and Mental Health Services Administration****NOTICES**

List of Certified Laboratories and Instrumented Initial Testing Facilities that Meet Minimum Standards to Engage in Urine Drug Testing, 50164–50165

**Transportation Department**

See Federal Aviation Administration

See National Highway Traffic Safety Administration

See Pipeline and Hazardous Materials Safety Administration

**RULES**

Accessible Lavatories on Single-Aisle Aircraft, 50020–50036

**Treasury Department**

See Foreign Assets Control Office

See Internal Revenue Service

**Veterans Affairs Department****NOTICES**

Requests for Nominations:

Veterans' Advisory Committee on Education, 50278–50279

**Separate Parts In This Issue****Part II**

Environmental Protection Agency, 50281–50441

**Part III**

Environmental Protection Agency, 50444–50483

**Part IV**

Federal Communications Commission, 50486–50532

**Reader Aids**

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

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

**CFR PARTS AFFECTED IN THIS ISSUE**

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

**7 CFR**

27.....49993

**9 CFR**

93.....49994

130.....49994

**13 CFR**

107.....50003

120.....50003

142.....50003

146.....50003

**14 CFR**39 (4 documents) .....50005,  
50008, 50011, 50014

71.....50018

382.....50020

**Proposed Rules:**

39.....50067

**17 CFR****Proposed Rules:**

275.....50076

279.....50076

**21 CFR**

1300.....50036

1302.....50036

1308.....50036

**26 CFR**

1.....50041

**33 CFR**

165.....50042

**36 CFR****Proposed Rules:**

1195.....50096

**40 CFR****Proposed Rules:**

98.....50282

745.....50444

**42 CFR**

417.....50043

422.....50043

423.....50043

455.....50043

460.....50043

**45 CFR**

620.....50044

**47 CFR**

14.....50053

**Proposed Rules:**

1.....50486

63.....50486

**49 CFR**

192.....50056

195.....50056

**50 CFR**

622.....50063

648.....50065

**Proposed Rules:**

679.....50097

# Rules and Regulations

Federal Register

Vol. 88, No. 146

Tuesday, August 1, 2023

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

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

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 27

[Doc. No. AMS–CN–22–0061]

#### Redefining Bona Fide Cotton Spot Markets

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the regulation that defines two of the seven designated spot markets and changing the names of the affected markets. Specifically, market price data for cotton grown in Oklahoma and Kansas are reassigned from the East Texas/Oklahoma spot market to the West Texas spot market. This action also changes the names of these two markets to describe the markets more accurately.

**DATES:** Effective August 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Barbara Meredith, Division Director, Cotton Market News, Cotton & Tobacco Program, AMS, USDA, 3275 Appling Road, Room 10, Memphis, TN 38133. Telephone: (901) 384–3300, or Email: [Barbara.Meredith@usda.gov](mailto:Barbara.Meredith@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Secretary of Agriculture is authorized under the United States Cotton Futures Act (7 U.S.C. 15b) to designate at least five bona fide spot markets from which cotton price information can be collected. A spot market—also called the “cash market” or “physical market”—is a market where commodities are sold on the spot for cash at current market prices and delivered immediately. Updated designations for these bona fide spot markets and the determination of which counties and states compose each of these spot markets were most recently published in the **Federal Register** on

April 30, 2013 (78 FR 25181). For each of these bona fide spot markets, the Agricultural Marketing Service’s (AMS) Cotton and Tobacco Program collects market price information under the United States Cotton Futures Act (7 U.S.C. 15b), the Cotton Statistics and Estimates Act (7 U.S.C. 473b) and the Agricultural Marketing Act of 1946 (7 U.S.C. 1622(g)). This price information is then used to calculate price differences for cotton futures contracts.

The Cotton and Tobacco Program (Program) received a request from the American Cotton Shippers Association (ACSA) and the National Cotton Council of America (NCC), to evaluate the structure of the cotton spot markets in East and West Texas, Oklahoma, and Kansas. The Program’s analysis of the East Texas/Oklahoma market determined that cotton grown in Oklahoma and Kansas has similar quality characteristics and was traded under the same terms and conditions as West Texas cotton. Further, the analysis showed that there was not any significant difference in the prices reported to Cotton and Tobacco Market News when comparing Oklahoma and Kansas cotton to West Texas cotton. As a result, ACSA and NCC requested that market price data for cotton grown in Oklahoma and Kansas be reassigned from the East Texas/Oklahoma spot market to the West Texas spot market by amending the definitions of cotton spot markets in 7 CFR part 27. Revisions to the regulations concerning bona fide spot market definitions are necessary to assure consistency with the revised Cotton Research and Promotion Act and to allow for published spot quotes to consider spot prices of cotton marketed in Kansas and Oklahoma. Corresponding changes the names of these two spot markets are made to describe the markets more accurately.

##### Comment Summary and Analysis

A proposed rule concerning this action was published in the **Federal Register** on March 27, 2023 (88 FR 18076). A copy of the proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 60-day comment period ending May 26, 2023, was provided for interested persons to respond to the proposal. AMS received a total of seven comments. Six of the seven comments were explicitly supportive of the

proposed action and one expressed concern about market concentration within the U.S. cotton industry, which is not relevant to the proposed action. Accordingly, no changes were made to the rule as proposed.

##### Executive Order 13175

This action has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation would not have substantial and direct effects on Tribal governments and would not have significant Tribal implications.

##### Executive Order 12866

This proposed rule has been determined to be non-significant for purposes of Executive Order 12866; and, therefore has not been reviewed by the Office of Management and Budget (OMB).

##### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

##### Final Regulatory Flexibility Analysis

Pursuant to 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 and has determined that its implementation will not have a significant economic impact on a substantial number of small businesses.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. There are an estimated 25,000 cotton growers in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these cotton growers are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201).

Changes in cotton spot market definitions as stated will not significantly affect small businesses as defined in the RFA because:

(1) How spot prices are estimated are not expected to be impacted by this action;

(2) Business practices of the U.S. cotton industry are not expected to change as a result of this action;

(3) Costs associated with providing market news services will not be significantly changed by this action;

(4) Market news services are paid for by appropriated funds; therefore, users are not charged fees for the provision of the services.

**Paperwork Reduction Act**

In compliance with OMB regulations (5 CFR part 1320), which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501), the information collection requirements contained in the provisions amended by this rule have been previously approved by OMB and were assigned OMB control number 0581-0009, Cotton Classification and Market News Service. No changes in these requirements will be necessary as a result of this rule. Should any changes become necessary, they will be submitted to OMB for approval.

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.

AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

**List of Subjects in 7 CFR Part 27**

Commodity futures, Cotton.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 27 as follows:

**PART 27—COTTON CLASSIFICATION UNDER COTTON FUTURES LEGISLATION**

■ 1. The authority citation for 7 CFR part 27 continues to read as follows:

**Authority:** 7 U.S.C. 15b, 7 U.S.C. 473b, 7 U.S.C. 1622(g).

■ 2. In § 27.93, the definitions of the “East Texas and Oklahoma,” and “West Texas” markets are revised to read as follows:

**§ 27.93 Bona fide spot markets.**

\* \* \* \* \*

*East Texas and South Texas*

Texas counties east of and including Montague, Wise, Parker, Erath, Comanche, Mills, San Saba, Mason, Sutton, Edwards, Kinney, Maverick, Webb, Zapata, Star and Hidalgo counties.

*West Texas, Kansas, and Oklahoma*

All counties in Kansas and Oklahoma, all Texas counties not included in the East Texas, South Texas, and Desert Southwest Markets and the New Mexico counties of Union, Quay, Curry, Roosevelt, and Lea.

\* \* \* \* \*

■ 3. In § 27.94, paragraph (a) is revised to read as follows:

**§ 27.94 Spot markets for contract settlement purposes.**

\* \* \* \* \*

(a) For cotton delivered in settlement of any No. 2 contract on the Intercontinental Exchange (ICE); Southeastern, North and South Delta, East Texas and South Texas, West Texas, Kansas, Oklahoma, and Desert Southwest.

\* \* \* \* \*

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2023-16295 Filed 7-31-23; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**9 CFR Parts 93 and 130**

[Docket No. APHIS-2021-0052]

RIN 0579-AE67

**Process for Establishing Rates for Veterinary Services User Fees**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are revising the regulations concerning user fees that we charge for veterinary diagnostic services and for certain import-related and export-related services for live animals, animal products and byproducts, birds, germplasm, organisms, and vectors. We are removing the tables providing the individual fees from the regulations and posting them on an Animal and Plant Health Inspection Service website. The regulations instead specify the methodology (formula) used to calculate the fees (including imputed costs), and the fees will be updated using a notice-based process. Replacing the current user fee listings with a standardized methodology will increase transparency in the process of setting fee rates, align the regulations with other Agency practices, and allow us to streamline processes and reduce the number of

rules needed and thus the time necessary in order to update the fees.

**DATES:** This rule is effective August 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lisa Slimmer, User Fee Financial Team Manager, Veterinary Services Money Management, 920 Main Campus Drive, Raleigh, NC 27606; (919) 855-7253.

**SUPPLEMENTARY INFORMATION:**

**Background**

The regulations in 9 CFR part 130 (referred to below as the regulations or the user fee regulations) cover user fees to reimburse the U.S. Department of Agriculture’s (USDA’s) Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import/export related services for live animals, animal products and byproducts, poultry, birds, germplasm, organisms, and vectors. These user fees are authorized by section 2509(c) of the Food, Agriculture, Conservation, and Trade Act (FACT Act) of 1990, as amended (21 U.S.C. 136a(c)), which provides that the Secretary of Agriculture may, among other things, prescribe regulations and collect fees to recover the costs of providing import/export related services for animals, animal products and byproducts, birds, germplasm, organisms, and vectors, and for veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States.

Since fiscal year (FY) 1992, APHIS has received no directly appropriated funds to cover the cost of certain veterinary diagnostics or to provide import/export related services for animals, animal products and byproducts, birds, germplasm, organisms, and vectors. Our ability to provide these services depends on user fees. User fees are associated with providing services for live animal, animal product, bird, and germplasm imports and exports and fund, among other things, quarantine services, the processing of import permit applications, port of entry inspections, inspections and approvals of import/export facilities and establishments, endorsements of export certificates, and services related to emergency situations that arise during the export or import process.

**Discussion of Comments**

On October 3, 2022, we published in the **Federal Register** (87 FR 59731-59740, Docket No. APHIS-2021-0052) a

proposal<sup>1</sup> to amend the regulations concerning user fees that we charge for veterinary diagnostic services and for certain import-related and export-related services for live animals, animal products and byproducts, birds, germplasm, organisms, and vectors. We proposed to remove the tables providing the individual fees from the regulations and post them on an APHIS website.

We proposed that the regulations would instead specify the methodology (formula) used to calculate the fees (including imputed costs), and APHIS would update the fees using a notice-based process. Replacing the current user fee listings with a standardized methodology would increase transparency in the process of setting fee rates, align the regulations with other Departmental practices, and allow us to streamline processes and reduce the number of rules needed to update the fees.

We solicited comments concerning our proposal for 60 days ending December 2, 2022. We received 11 comments on the proposal. They were from stakeholder organizations and the general public.

#### Permits

One commenter, noting that user fees are charged for permit issuance, proposed that we extend the import/export duration for permits to reduce the workload for applicants and the agency. Additionally, the commenter mentioned that there were no details provided regarding the relative cost of a permit versus a renewal or an amendment.

Although permit duration goes beyond the scope of the rule, APHIS may, if warranted, adjust the duration of a permit after analysis of the request; this will depend upon the product and overall risk. Because of the amount of time necessary to complete the work, renewals and amendments of permits currently cost less than new permit issuance, and we anticipate this will continue to be the case under the terms of this rule.

#### Burden of Fees

Two commenters raised concerns regarding the potentially burdensome impact of user fees on stakeholders who move and trade livestock and requested that user fees should be updated through a process that notifies them of potential increases well in advance of the actual fee setting and allows for public comment. The commenters

stressed the need for such advance notification in order for stakeholders to make informed decisions regarding future business planning and decision making.

The notice-based process established by this rule provides such advance notification and opportunity for comment. As we stated in the proposed rule, if this rule is finalized, we will publish an annual notice proposing the fee rates for the coming year and will provide information regarding the basis for any fee change. This includes changes to the values of component costs. The notice will also afford an opportunity for public comment.

#### Component Cost Values

Several commenters stated there was insufficient context to enable users to either understand the values of the component costs or to evaluate the impact of the proposed changes upon users' operations. The commenters suggested the proposed rule should be revised to provide a comparison of historical user fee rates to the new estimated user fees under this methodology for recent years (*e.g.*, 2018 to 2022).

The specific values of components as they pertain to various fee rates were not included in the proposed rule because this rule does not change the fees, but rather establishes a notice-based process to change the fees. As we stated in the proposed rule and mention immediately above, if this rule is finalized, we will publish an annual notice proposing the fee rates for the coming year and will provide information regarding the basis for any fee change. This includes changes to the values of component costs. The notice will also afford an opportunity for public comment.

#### Commuted Travel Time

Several commenters stated the existing process for calculating commuted travel time as it pertains to user fees should be updated to be more reflective of actual travel time. One of the commenters specifically asked that APHIS evaluate such processes as they pertain to equine import facilities. The commenters also suggested this reevaluation should take into consideration the particular employee's tour of duty hours in calculating fees assessed.

APHIS' regulations regarding Commuted Travel Time are in 9 CFR part 97. As we stated in the proposed rule, we proposed no changes to those regulations. Accordingly, the requested evaluations are outside of the scope of this rule.

#### Fee Caps

Several commenters asked that fee increases be capped annually. One commenter suggested the cap be a 10 percent increase annually.

As noted in the proposed rule, we will make efforts to reduce the likelihood of significant year-over-year increases in the fees. For example, within the reserve component of the fee, at the time annually when we calculate the proposed new fee rates, we will conduct forecasts of the upcoming 5 fiscal years to identify when IT infrastructure and facilities capital needs and investments are likely to be actualized, so that the cost of that expenditure can be prorated based on the estimated date of cost actualization. This forecasting will help ensure that no one fiscal year bears the brunt of a reasonably foreseeable capital cost when it comes to fee setting.

However, there are certain cost components and other factors beyond our control that preclude us from capping the fee increases annually as requested by commenters. For example, as noted in the proposed rule, imputed costs must be included in user fee calculations in order to comply with Office of Management and Budget circular A-25, but these imputed costs are outside of APHIS' control. They are the costs of the U.S. Department of Labor, U.S. Office of Personnel Management, and the U.S. Department of State (State Department) in order to provide retirement, health, life insurance, worker's compensation, legal defense, and other related benefits to the Agency and employees who provide the services covered by the fees. Likewise, for capital expenditures such as those for facility maintenance, fluctuations in the raw price of goods and labor are not within the Agency's control, but we must consider them in fee-setting.

#### User Fee Reserves

In the proposed rule, we proposed that the user fees for the APHIS Veterinary Services user fee program would have a reserve component. We proposed to define *reserve* as: "Funds above expected obligations that are required to effectively manage uncertainties in demand and timing to ensure sufficient operating funds in cases of bad debt, customer insolvency, fluctuations in activity volumes, information technology development costs, cash flow, facilities capital needs, or fluctuations in activity volumes caused by unforeseen global and national events."

We indicated that the reserve would be calculated each year based on the

<sup>1</sup> To view the proposed rule and the comments we received, go to [www.regulations.gov](http://www.regulations.gov). Enter APHIS-2021-0052 in the Search field.

forecasted needs identified during the annual fee setting session by estimating 25 percent or 90 days of annual expenditures for that fiscal year, adding a prorated component of forecasted IT and facilities capital needs and investments, and offsetting that sum by the existing amount in the reserve.

One commenter inquired about the baseline economic level for the user fee reserve to support the user fee system, as well as whether there is a maximum economic reserve level.

The commenter misunderstands the nature of the reserve. APHIS will not calculate the reserve component of the fee in order to ensure that a certain fixed dollar amount is maintained in the reserve year after year. Rather, as noted above, the reserve will be calculated each year based on the forecasted needs identified during the annual fee setting session by estimating 25 percent or 90 days of annual expenditures for that fiscal year, adding a prorated component of forecasted IT and facilities capital needs and investments, and offsetting that sum by the existing amount in the reserve. Thus, projected costs and the existing amount in the reserve will determine the reserve component requirements in any particular year.

The same commenter requested assurances that user fees reserve funds are solely used for the APHIS Veterinary Services user fee program.

Cross-subsidization is prohibited by the FACT Act. As a result, APHIS does not use these user fees for any purpose other than the APHIS Veterinary Services user fees program.

#### Notice Publication Timelines

A commenter asked for timelines regarding how long the notice-based process will take in order to adjust fees.

While this will vary depending on the nature and number of comments received, it is the Agency's intent, as stated in the proposed rule, to issue initial and second notices adjusting the fees on an annual basis.

#### Hourly Rate

In the proposed rule, we indicated that removal of the specific tables of user fees from the regulations in favor of listing them online necessitated reorganization of the entirety of part 130. This was because many of the sections in the part were tables that we were proposing to remove. For those provisions that we elected to retain, we indicated that the information presented would remain the same, although the streamlining did reorganize it. In the regulatory text in the proposed rule, for

ease of readability, we laid out the entirety of the revised part 130.

One commenter requested clarity regarding proposed § 130.4, "Hourly rate and minimum fees." Although we did not propose to change any of the information regarding hourly rates and minimum fees previously found in the regulations, the commenter nonetheless pointed to an apparent discrepancy between paragraphs (a)(2), (15), and (17), regarding pet food facilities engaged in testing and export services. Paragraph (a)(2) stated that an hourly rate "does not apply to inspection and approval of import/export facilities and establishments." The commenter read that to suggest that APHIS would not charge an hourly rate for inspection of such facilities. The commenter read paragraphs (a)(15) and (17), which contained provisions relative to the export-related inspection of pet food facilities and export-related inspection of various other facilities, respectively, to indicate we would.

As noted in the introductory text of that section, import- or export-related veterinary services in the paragraphs specified in the section are subject to the hourly rate calculations. Accordingly, the pet food facilities will be charged an hourly rate, as indicated in paragraphs (a)(15) and (17). The statements in paragraph (a)(2) are intended to indicate that paragraph (a)(2) does not pertain to inspection of export facilities. They are not intended to address the section as a whole and the proposed rule did not propose to revise their scope.

Another commenter stated that the rule had economic impacts that were not discussed in the proposed rule, insofar as services charged an hourly rate would be borne by importers.

The comment was outside the scope of this rulemaking because the rule did not revise the list of services subject to an hourly rate, but rather reduplicated the current list for the sake of completeness and readability of the regulatory text.

Two commenters noted that the rule indicated that several services would continue to be charged an hourly rate under the terms of the proposed rule and asked that APHIS develop guidance regarding how long specified services should be expected to take.

The estimated time of service can vary greatly depending on various factors (e.g., nature of the work, travel time to the facility, facility size, number of animals, etc.). Therefore, providing general, overarching guidance regarding expected times of service is not possible. However, we do provide an estimate based on the statement of work

as requested by the facility or by the requester prior to providing services that are charged the hourly rate.

#### Government Funding

One commenter stated that the fees should not be changed and inquired why user fees are not government-funded activities.

As we stated in the proposed rule, we are not changing the fees, but the methodology used to calculate the fees. The fees themselves are not being changed.

The FACT Act's intent was for import and export activities to be funded through user fees, so the individuals or parties receiving the services are the ones paying for the service. As noted previously in this document, since fiscal year (FY) 1992, and consistent with the intent of the FACT Act, APHIS has received no directly appropriated funds to cover the cost of certain veterinary diagnostics or to provide import/export related services for animals, animal products and byproducts, birds, germplasm, organisms, and vectors. In light of this, in order for us to continue to provide these diagnostics and services, they must be funded by user fees.

#### Miscellaneous

Finally, we noted that 9 CFR part 93 currently has two references (in §§ 93.308(c)(1)(i)(A) and 93.412(d)(1)(i)(A)) to § 130.30. However, due to the revision of part 130 in this rule, § 130.30 no longer exists. Therefore, we are revising the references in those two sections of part 93 to simply refer to part 130.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

#### Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is below.

APHIS Veterinary Services (VS) is revising the regulations in 9 CFR part 130 to provide for a set of standardized formulas by which import/export and veterinary diagnostic user fees would be calculated. These regulations will specify the methodology used to calculate and implement the user fees and will remove tables showing specific

fees. VS will also post the fee rates on its website and annually issue a notice providing all fees calculated for the upcoming year using formulas contained in the regulations and request public comment.

VS charges user fees to recover the costs of inspection and certification services for imports and exports of live animals and animal products and byproducts and for providing veterinary diagnostic goods and services. VS does not receive appropriated funding to support these activities.

While we do not expect this rule to result in cost savings for affected entities, the methodology will provide a transparent, streamlined approach to user fee calculations. The change to annual fee revisions using formula-based calculations based on previous year costs will enable APHIS to avert potential funding shortfalls. Increased confidence that rate adjustments will closely match revenue requirements would benefit financial planning by both the private sector and the Agency.

The component costs that VS will use to calculate user fee revisions will be the same as at present, with the exception of imputed labor costs, such as:

- Direct pay (including benefits)
- Cost of living
- Direct operating costs (travel, training, equipment, rent, facility maintenance, supplies and materials, service contracts)
- Consumer price index
- Program, Agency, and Department support costs
- Reserve
- Imputed costs

The user fee rates will also include imputed labor costs to ensure that the full cost of providing user fee services is captured. Imputed labor costs include Department of Labor, Office of Personnel Management, and State Department costs to provide retirement, health, life insurance, and other benefits to employees.

The annual regularity of the proposed VS user fee revisions will be in contrast to current circumstances. At present, VS establishes fees for 5 years at a time through rulemaking, and this process can be lengthy. VS has had to project costs 6 to 7 years into the future, which can result in unforeseen funding needs not being accounted for. For example, VS did not anticipate the high level of technological investment that has been necessary in order to meet the needs of customers.

APHIS' animal health import and export user fees cover significant activities across the country, including

at border locations and quarantine facilities. These fees support personnel, brick and mortar facilities, and information technology systems. The veterinary diagnostic user fees support activity at the National Veterinary Services Laboratories facilities in Ames, IA, and Plum Island, NY.

The last rate increase went into effect October 2012 and import/export user fee revenue has been flat, on average, since 2015, at \$44 million. Veterinary diagnostic user fee revenue has also been flat at an average of \$6 million per year since the last veterinary diagnostic user fee rate increase went into effect October 2011. The cost of providing services has continued to increase.

USDA's Agricultural Marketing Service and Food Safety and Inspection Service have recently implemented noticed-based processes for annual user fee revisions that are very similar to the APHIS process outlined in the proposed rule. The two agencies and their stakeholders have benefited from increased program efficiency and transparency.

A large number of the entities that will benefit from this rule are small. The import/export user fees provide for inspection and other services at the ports or point of entry. Users of these services and products include importers, exporters, non-APHIS veterinarians, commercial laboratories and pharmaceutical manufacturers, State laboratories, universities, and foreign governments.

The Small Business Administration (SBA) has established guidelines for determining which entities are to be considered small. Importers and exporters of live animals are identified within the broader wholesaling trade sector of the U.S. economy. A firm primarily engaged in wholesaling animals or animal products and byproducts is considered small if it employs not more than 100 persons. These entities either sell goods on their own account (import/export merchants) or arrange for the sale of goods owned by others (import/export agents and brokers).

Veterinary testing laboratories are identified within the broader veterinary services trade sector. A firm providing veterinary services is considered small if it generates \$6.5 million or less in annual sales. The criterion for a small pharmaceutical manufacturing firm is one with 750 or fewer employees.

The number of entities that use VS diagnostic services and materials and qualify as small by SBA standards has not yet been determined. However, more than 91 percent of the firms in the NAICS Livestock Wholesale category

and Other Farm Product Raw Material Wholesale category can be considered small. In addition, more than 99 percent of veterinary services firms (including veterinary diagnostic testing laboratories) are small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

#### Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 9 CFR Part 93

Importation of Certain Animals, Birds, Fish, and Poultry, and Certain Animal, Bird, and Poultry Products; Requirements for Means of Conveyance and Shipping Containers.

##### 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are amending 9 CFR parts 93 and 130 as follows:

#### **PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS**

- 1. The authority citation for part 93 continues to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

**§ 93.308 [Amended]**

■ 2. Amend § 93.308, in paragraph (c)(1)(i)(A), by removing the citation “§ 130.30” and adding the citation “part 130” in its place.

**§ 93.412 [Amended]**

■ 3. Amend § 93.412, in paragraph (d)(1)(i)(A), by removing the citation “§ 130.30” and adding the citation “part 130” in its place.

■ 4. Revise part 130 to read as follows:

**PART 130—USER FEES**

Sec.

- 130.1 Definitions.
- 130.2 Basis for fees and rates.
- 130.3 Operating details.
- 130.4 Hourly rate and minimum user fees.
- 130.5 Exemptions.
- 130.6 Payment of user fees.
- 130.7 Penalties for nonpayment or late payment.

**Authority:** 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

**§ 130.1 Definitions.**

As used in this part, the following terms shall have the meaning set forth in this section.

**Administrator.** The Administrator of the Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

**Animal.** All animals except birds, but including poultry.

**Animal and Plant Health Inspection Service (APHIS).** The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

**Animal Import Center.** Quarantine facilities operated by APHIS in Newburgh, New York, and Miami, Florida.

**APHIS representative.** An individual, including, but not limited to, an animal health technician or veterinarian, authorized by the Administrator to perform the services for which the user fees in this part are charged.

**Bird.** Any member of the class aves, other than poultry.

**Consumer price index.** The measure of the average change over time in prices paid by urban consumers for a market basket of consumer goods and services, as determined by the Bureau of Labor Statistics annually.

**Cost of living.** The adjusted annual rate used to determine the cost of maintaining a certain standard of living based on the economic assumptions in the Office of Management and Budget's Presidential Economic Assumptions.

**Diagnostic reagent.** Substances used in diagnostic tests to detect disease

agents or antibodies by causing an identifiable reaction.

**Direct operating costs.** Costs attributed to travel and transportation for personnel; materials, supplies, and other necessary items; training; general office supplies; rent; facility maintenance; equipment purchase and maintenance; utilities; contractual services; and information system operations, maintenance, and development.

**Direct pay (including benefits).** The wage labor costs (on board and in the hiring process), including benefits, for employees who specifically support and provide the required service.

**Equine.** Any horse, ass, mule, or zebra.

**Export health certificate.** An official document that, as required by the importing country, is endorsed by an APHIS representative and states that animals, animal products, organisms, vectors, or birds to be exported from the United States were found to be healthy and free from evidence of communicable diseases and pests.

**Feeder animal.** Any animal imported into the United States under part 93 of this chapter for feeding.

**Germplasm.** Semen, embryos, or ova.

**Import compliance assistance.**

Services provided to an importer whose shipment arrives at a port of entry without the necessary paperwork or with incomplete paperwork and who requires assistance to meet the requirements for entry into the United States. Fees for import compliance assistance are charged in addition to the flat rate user fees.

**Imputed costs.** Office of Workers' Compensation costs from the Department of Labor; costs of employee leave earned in a prior fiscal year and used in the current fiscal year; Office of Personnel Management and Department of State (State Department) costs to provide retirement, health, and life insurance benefits to employees; unemployment compensation costs; and Department of Justice judgment fund costs.

**In-bond animal.** Any animal imported into the United States under a United States Customs Service bond, as described in 19 CFR part 113.

**National Veterinary Services Laboratories (NVSL).** The National Veterinary Services Laboratories of the Animal and Plant Health Inspection Service, located in Ames, Iowa.

**National Veterinary Services Laboratories, Foreign Animal Disease Diagnostic Laboratory (FADDL).** The National Veterinary Services Laboratories, Foreign Animal Disease

Diagnostic Laboratory, located in Greenport, New York.

**Person.** An individual, corporation, partnership, trust, association, or any other public or private entity, or any officer, employee, or agent thereof.

**Pet birds.** Birds, except hatching eggs and ratites, that are imported or exported for the personal pleasure of their individual owners and are not intended for resale.

**Poultry.** Chickens, doves, ducks, geese, grouse, guinea fowl, partridges, pea fowl, pheasants, pigeons, quail, swans, and turkeys.

**Privately operated permanent import-quarantine facility.** Any permanent facility approved under part 93 of this chapter to quarantine animals or birds, except facilities operated by APHIS.

**Program, Agency, and Department support.** Indirect or direct costs of the program, including supporting services provided to the industry.

**Reserve.** Funds above expected obligations that are required to effectively manage uncertainties in demand and timing to ensure sufficient operating funds in cases of bad debt, customer insolvency, fluctuations in activity volumes, information technology development costs, cash flow, facilities capital needs, or fluctuations in activity volumes caused by unforeseen global and national events.

**Standard feed.** Seed, or dry feeds such as dog food or monkey biscuits, whether soaked in water or not.

**Test.** A single analysis performed on a single specimen from an animal, animal product, commercial product, or animal feed.

**United States.** The several States of the United States, the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

**§ 130.2 Basis for fees and rates.**

(a) Except as set forth in paragraphs (b) through (d) of this section, for setting fee rates for each calendar year based upon the previous fiscal year, APHIS will calculate the rates for services as follows:

(1) APHIS will prorate the total Veterinary Services (VS) inspection, certification, or laboratory service program personnel direct pay (on board and in hiring process including benefits) for the previous fiscal year to each fee based upon the direct time factor percentage of employee's average time to perform and complete each fee code process and then multiply by the next

year's percentage of cost of living increase.

(2) APHIS will prorate total direct operating costs for the previous fiscal year based upon the direct time factor percentage of employee's average time to perform and complete each fee code process to each fee and then multiply by the anticipated percentage of inflation for the next year.

(3) APHIS will add estimates for Program, Agency, and Department support costs, imputed costs, and reserves by applying a percentage based on information from Program, Agency, and Department officials and the Department of Treasury to the sum of the direct pay plus direct operating costs.

(4) The amounts derived via the process described in this paragraph (a) and paragraphs (b) and (c) of this section will be added and then APHIS will round up to the next \$0.25 for all fees less than \$10 or round up to the nearest dollar for all fees greater than \$10 to develop the new rate for each code.

(b) If there is no identifiable volume in the previous year for the service provided by the fee, if the fee is rarely charged, or if APHIS cannot readily identify level of effort, APHIS will calculate the fee based on the last available historic data encompassing multiple instances of use and add any intervening inflation, overhead and support costs, imputed costs, and reserve.

(c) Fees for the exclusive use of space in animal import centers will be calculated using the following formula:

(1) APHIS will calculate fees by using direct employee average time (with benefits) and adding a prorated portion of currently identifiable expenses (facilities, rent, support cost, and admin support costs), program and support overhead expenses, imputed costs, and reserve.

(2) APHIS will combine the costs to determine the monthly cost of providing the service at a single location within the animal import center.

(3) APHIS will calculate the costs of the other locations within the animal import center based on the square footage of the location.

(d) Services listed in § 130.4 will be charged an hourly rate-based user fee in accordance with the provisions of that section.

(Approved by the Office of Management and Budget under control number 0579-0055)

### § 130.3 Operating details.

(a) *General standards.* (1) User fee rates may be found online at

[www.aphis.usda.gov/business-services/vs-fees](http://www.aphis.usda.gov/business-services/vs-fees) or by contacting [LAIE@usda.gov](mailto:LAIE@usda.gov). Changes in rates will be proposed annually in the following manner:

(i) APHIS will propose changes to the fee rates found at [www.aphis.usda.gov/business-services/vs-fees](http://www.aphis.usda.gov/business-services/vs-fees) through publication of a notice in the **Federal Register**. The notice will provide information regarding the basis for any fee change and will take public comment.

(ii) Following the comment period, APHIS will issue a subsequent notice in the **Federal Register** providing the final rates. The notice will respond to any comments received on the initial notice.

(iii) When this subsequent notice is issued, APHIS will update the fee rates found at [www.aphis.usda.gov/business-services/vs-fees](http://www.aphis.usda.gov/business-services/vs-fees) accordingly.

(2) The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of user fees in accordance with this section.

(b) *User fees for individual animals and certain birds quarantined in the APHIS-owned or -operated quarantine facilities, including APHIS Animal Import Centers.* (1) Each user fee is assessed per animal or bird quarantined by APHIS. Special requirements may be requested by the importer or required by an APHIS representative. Certain conditions or traits, such as pregnancy or aggression, may necessitate special requirements for certain birds or poultry.

(2) For any animal or bird that requires a diet other than standard feed, including but not limited to diets of fruit, insects, nectar, or fish, the importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the APHIS owned or operated Animal Import Center or quarantine facility.

(c) *User fees for exclusive use of space at APHIS Animal Import Centers.* (1) An importer may request to exclusively occupy a space at an APHIS animal import center. Any importer who occupies space for more than 30 days must pay 1/30th of the 30-day fee for each additional day or part of a day.

(2) Unless the importer cancels the reservation for exclusive use of space in time to receive a refund of the reservation fee in accordance with §§ 93.103, 93.204, 93.304, 93.404, or 93.504 of this chapter, as appropriate, the 30-day user fee will be effective as of the first day for which the importer has reserved the space and for the entirety of the reservation, regardless of whether the user occupies the space on that date or not.

(3) Users must provide APHIS personnel at the Animal Import Center, at the time they make a reservation for quarantine space, with the following information:

(i) Species of animals and birds to be quarantined;

(ii) Ages of animals and birds to be quarantined; and

(iii) Sizes of animals and birds to be quarantined.

(4)(i) APHIS personnel at the Animal Import Center will determine, based on the information provided by the importer under paragraph (b)(3) of this section, and on routine husbandry needs, the maximum number of animals and birds permitted in the requested building.

(ii) If APHIS personnel at the Animal Import Center determine the number of animals and birds requested by the importer can be housed in the space requested, but two animal health technicians cannot fulfill the routine husbandry needs of the number of animals or birds proposed by the importer, then the importer must either:

(A) Pay for additional services on an hourly basis; or

(B) Reduce the number of animals or birds to be quarantined to a number which APHIS personnel at the Animal Import Center determine can be handled by two animal health technicians.

(iii) If the importer requests additional services, then APHIS will calculate the user fees for any service rendered by an APHIS representative at the hourly rate user fee found online at [www.aphis.usda.gov/business-services/vs-fees](http://www.aphis.usda.gov/business-services/vs-fees).

(iv) The importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the APHIS owned or operated Animal Import Center or quarantine facility, for any animal or bird that requires a diet other than standard feed, including but not limited to diets of fruit, insects, nectar, or fish.

(d) *User fees for inspection of live animals at land border ports along the United States-Canada border.* If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee found online at [www.aphis.usda.gov/business-services/vs-fees](http://www.aphis.usda.gov/business-services/vs-fees).

(e) *User fees for pet birds.* (1) Based on the information provided to APHIS personnel, APHIS personnel at the Animal Import Center or other APHIS owned or supervised quarantine facility will determine the appropriate number

of birds that should be housed per isolette.

(2) If the importer requests additional services, then APHIS will calculate the user fees for those services at the hourly rate user fee found online at [www.aphis.usda.gov/business-services/vs-fees](http://www.aphis.usda.gov/business-services/vs-fees) for each employee required to perform the service.

(f) *User fees for endorsing export certificates.* (1) User fees for the endorsement of export health certificates that require the verification of tests or vaccinations are found online at [www.aphis.usda.gov/business-services/vs-fees](http://www.aphis.usda.gov/business-services/vs-fees). APHIS will calculate the user fees to apply to each export health certificate endorsed<sup>1</sup> for animals and birds based on the number of animals or birds covered by the certificate and the number of tests or vaccinations required. However, there will be a maximum user fee of 12 times the hourly rate user fee.

(2) If an export certificate covers more than one animal, but the number of tests required for different animals are not the same, the user fee for the certificate is the fee which would be due if all the animals on the certificate required the same number of tests as the animal which requires the greatest number of tests.

(3) The user fees referenced in this section will not apply to an export health certificate if: (i) An APHIS veterinarian prepares the certificate for endorsement completely at the site of the inspection in the course of performing inspection or supervision services for the animals listed on the certificate; and

(ii) An APHIS user fee is payable under § 130.4 for the inspection or supervision services performed by the veterinarian.

(4) If a service must be conducted on a Sunday or holiday or at any other time outside the normal tour of duty of the employee, then reimbursable overtime, as provided for in part 97 of this chapter, must be paid for each service, in addition to the user fee listed in this section.

(g) *User fees for inspection services outside the United States.* (1) If inspection services (including inspection, testing, and supervision services) are performed outside the United States, in accordance with this title, and the regulations do not contain a provision for payment of the cost of the service, the person requesting the service must pay a user fee.

(2) Any person who wants APHIS to provide inspection services outside the United States must contact the Animal and Plant Health Inspection Service, Veterinary Services, Strategy and Policy, Live Animal Imports at [LAIE@usda.gov](mailto:LAIE@usda.gov), to make an agreement.

(3) All agreements for inspection services outside the United States must include:

(i) Name, mailing address, and telephone number of either the person requesting the inspection services, or his or her agent;

(ii) Explanation of inspection services to be provided, including the regulations in this chapter which provide for the services;

(iii) Date(s) and time(s) the inspection services are to be provided;

(iv) Location (including street address) where inspection services are to be provided;

(v) An estimate of the actual cost, as calculated by APHIS, to provide the described inspection services for 6 months;

(vi) A statement that APHIS agrees to provide the inspection services;

(vii) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to pay, at the time the agreement is entered into, a user fee equal to the estimated cost of providing the described inspection services for 6 months; and

(viii) A statement that the person requesting the inspection services, or, if appropriate, his or her agent, agrees to maintain a user fee payment account equal to the cost of providing the described inspection services for 6 months, as calculated monthly by APHIS.

(4) APHIS will enter into an agreement only if qualified personnel can be made available to provide the inspection services.

(5) An agreement can be terminated by either party on 30 days written notice.

(6) If, at the time an agreement is terminated, any unobligated funds remain in the user fee payment account, APHIS will refund the funds to the person who requested the inspection services, or his or her agent.

(Approved by the Office of Management and Budget under control numbers 0579-0015, 0579-0020, 0579-0040, and 0579-0055)

#### **§ 130.4 Hourly rate and minimum user fees.**

(a) *Services subject to hourly rate user fees.* User fees for import- or export-related veterinary services listed in paragraphs (a)(1) through (18) of this section, except those services covered

by flat rate user fees, will be calculated at the hourly rate found online at [www.aphis.usda.gov/business-services/vs-fees](http://www.aphis.usda.gov/business-services/vs-fees), for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.6 and 130.7.

(1) Providing services to live animals for import or entry at airports, ocean ports, and rail ports.

(2) Conducting inspections, including inspections of laboratories and facilities (such as biosecurity level two facilities), required either to obtain import permits for animal products and byproducts, aquaculture products, or organisms or vectors, or to maintain compliance with import permits. This hourly rate does not apply to inspection and approval of import/export facilities and establishments.

(3) Obtaining samples required to be tested, either to obtain import permits or to ensure compliance with import permits.

(4) Providing services for imported birds or ratites that are not subject to quarantine, such as monitoring birds—including but not limited to pet birds—between flights.

(5) Supervising the opening of in-bond shipments.

(6) Providing services for in-bond or in-transit animals to exit the United States.

(7) Inspecting an export isolation facility and the animals in it.

(8) Supervising animal or bird rest periods prior to export.

(9) Supervising loading and unloading of animals or birds for export shipment.

(10) Inspecting means of conveyance used to export animals or birds.

(11) Conducting inspections under part 156 of this chapter.

(12) Inspecting and approving an artificial insemination center or a semen collection center or the animals in it.

(13) Import or entry services for feeder animals including, but not limited to, feeder goats and feeder bison not covered by a flat rate user fee in connection with activities described in § 130.3(d).

(14) Export-related bird banding for identification.

(15) Export-related inspection and approval of pet food facilities, including laboratories that perform pet food testing.

(16) Export-related services provided at animal auctions.

(17) Various export-related facility inspections, including, but not limited to, fertilizer plants that utilize poultry waste, rendering plants, and potential embarkation facilities.

<sup>1</sup> An export health certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.

(18) Providing other import-or export-related veterinary services for which no flat rate user fee is specified.

(b) *When do I pay an additional amount for employee(s) working overtime?* You must pay an additional amount if you need an APHIS employee to work on a Sunday, on a holiday, or at any time outside the normal tour of duty of that employee. Instead of paying the hourly rate user fee, you pay the rate found online at [www.aphis.usda.gov/business-services/vs-fees](http://www.aphis.usda.gov/business-services/vs-fees) for each employee needed to get the work done.

(Approved by the Office of Management and Budget under control numbers 0579-0015, 0579-0020, 0579-0040, and 0579-0055)

**§ 130.5 Exemptions.**

(a) *Veterinary diagnostics.* APHIS will not charge user fees for veterinary diagnostic services under the following conditions:

(1) When veterinary diagnostic services are provided in connection with Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States (program diseases);

(2) When veterinary diagnostic services are provided in support of zoonotic disease surveillance when the Administrator has determined that there is a significant threat to human health; and

(3) When veterinary diagnostic reagents are distributed within the United States for testing for foreign animal diseases.

(b) [Reserved]

**§ 130.6 Payment of user fees.**

(a) *Who must pay APHIS user fees?*

Any person for whom a service is provided related to the importation, entry, or exportation of an animal, article, or means of conveyance or related to veterinary diagnostics, and any person requesting such service, shall be jointly and severally liable for payment of fees assessed.

(b) *Associated charges—(1) Reservation fee.* Any reservation fee paid by an importer under part 93 of this chapter will be applied to the APHIS user fees described in § 130.3(b) and (c) for animals or birds quarantined in an animal import center.

(2) *Special handling expenses.* The user fees in this part do not include any

costs that may be incurred due to special mail handling, including, but not limited to, express, overnight, or foreign mailing. If any service requires special mail handling, the user must pay all costs incurred, in addition to the user fee for the service.

(3) *When do I pay an additional amount for employee(s) working overtime?* You must pay an additional amount if you need an APHIS employee to work on a Sunday, on a holiday, or at any time outside the normal tour of duty of that employee. You pay the amount specified in this paragraph (b)(3) as relevant, for each employee needed to get the work done.

(i) *What additional amount do I pay if I receive a flat rate user fee service?* In addition to the flat rate user fee(s), you pay the overtime rate listed in Table 1 of this section for each employee needed to get the work done:

(ii) *What amount do I pay if I receive an hourly rate user fee service?* Instead of paying the normal hourly rate user fee described in § 130.4(a), you pay the premium rate described in § 130.4(b) for each employee needed to get the work done:

TABLE 1 TO PARAGRAPH (b)(3)(i)—OVERTIME FOR FLAT RATE USER FEES<sup>1 2</sup>

Service provided	Outside of the employee's normal tour of duty	Overtime rates by hour		
		Nov. 2, 2015–Sept. 30, 2016	Oct. 1, 2016–Sept. 30, 2017	Beginning Oct. 1, 2017
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities <sup>3</sup> .	Monday through Saturday and holidays.	\$75	\$75	\$75
	Sundays .....	99	99	100
Rate for commercial airline inspection services <sup>4</sup> ..	Monday through Saturday and holidays.	64	65	65
	Sundays .....	85	86	86

<sup>1</sup> APHIS will charge a minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

<sup>2</sup> When the 2-hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) of this chapter for specific information about commuted travel time.)

<sup>3</sup> See § 97.1(a) of this chapter or 7 CFR 354.3 for details.

<sup>4</sup> See § 97.1(a)(3) of this chapter for details.

(c) *When are APHIS user fees due?—*

(1) *Animal and bird quarantine and related tests.* User fees for animals and birds in an Animal Import Center or privately operated permanent or temporary import quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid prior to the release of those animals or birds from quarantine.

(2) *Supervision and inspection services for export animals, animal products and byproducts.* User fees for supervision and inspection services described in § 130.4 must be paid when billed, or, if covered by a compliance agreement signed in accordance with

this chapter, must be paid as specified in the agreement.

(3) *Export health certificates.* User fees for export health certificates described in § 130.3(f) must be paid prior to receipt of endorsed certificates. If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(4) *Veterinary diagnostics.* User fees specified for veterinary diagnostic services, such as tests on samples submitted to NVSL or FADDL, diagnostic reagents, slide sets, tissue sets, and other veterinary diagnostic services, must be paid when the veterinary diagnostic service is

requested. If APHIS determines that the user has established an acceptable credit history, the user may request to pay when billed.

(5) *Other user fee services.* User fees for import or entry services for land border ports along the United States-Mexico or United States-Canada border, inspection of germplasm being exported, release from export agricultural hold, and other services described in § 130.4 must be paid when service is provided (for example when live animals are inspected when presented for importation at a port of entry). If APHIS determines that the user has established an acceptable credit

history, the user may request to pay when billed.

(d) *What payment methods are acceptable?* Payment must be for the exact amount due and may be paid by:

(1) *Cash.* Cash will be accepted only during normal business hours if payment is made at an APHIS office or an Animal Import Center;

(2) *Checks.* All types of checks, including traveler's checks, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA;

(3) *Money orders.* Money orders, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA; or

(4) *Credit cards.* Credit cards (VISA™ and MasterCard™) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.

### **§ 130.7 Penalties for nonpayment or late payment.**

(a) *Unpaid debt.* If any person for whom the service is provided fails to pay when due any debt to APHIS, including any user fee due under 7 CFR chapter III or this chapter, then:

(1) *Subsequent user fee payments.* Payment must be made for subsequent user fees before the service is provided if:

(i) For unbilled fees, the user fee is unpaid 60 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 60 days after date of bill;

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(2) *Resolution of difference between estimate and actual.* APHIS will estimate the user fee to be paid; any difference between the estimate and the actual amount owed to APHIS will be resolved as soon as reasonably possible following the delivery of the service, with APHIS returning any excess to the payor or billing the payor for the additional amount due.

(3) *Prepayment form.* The prepayment must be in guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) *Denied service.* Service will be denied until the debt is paid if:

(i) For unbilled fees, the user fee is unpaid 90 days after date the pertinent regulatory provision indicates payment is due; or

(ii) For billed fees, the user fee is unpaid 90 days after date of bill; or

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(b) *Unpaid debt during service.* If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action:

(1) *Animals or birds in quarantine.* If an APHIS user fee is due for animals or birds in quarantine at an animal import center or at a privately operated import quarantine facility, APHIS will not release them.

(2) *Export health certificate.* If an APHIS user fee specified is due for an export health certificate, APHIS will not release the certificate.

(3) *Veterinary diagnostics.* If an APHIS user fee is due for a veterinary diagnostic test or service, APHIS will not release the test result, any endorsed certificate, or any other veterinary diagnostic service.

(c) *Late payment penalty.* In addition to the actions described in paragraph (b) of this section, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717 for:

(1) *Unbilled user fees.* Unbilled user fees, if the user fees are unpaid 30 days after the date the pertinent regulatory provisions indicates payment is due; or

(2) *Billed user fees.* Billed user fees, if the user fees are unpaid 30 days after the date of the bill.

(d) *Dishonored payment penalties.* User fees paid with dishonored forms of payment, such as a check returned for insufficient funds, will be subject to interest and penalty charges in accordance with 31 U.S.C. 3717. Administrative charges will be assessed at \$20.00 per dishonored payment to be paid in addition to the original amount owed. Payment must be in guaranteed form, such as cash, money order, or certified check.

(e) *Debt collection management.* In accordance with the Debt Collection Improvement Act of 1996, the following provisions apply:

(1) *Taxpayer identification number.* APHIS will collect a taxpayer identification number from all persons, other than Federal agencies, who are liable for a user fee.

(2) *Administrative offset.* APHIS will notify the Department of Treasury of debts that are over 180 days delinquent for the purposes of administrative offset.

Under administrative offset, the Department of Treasury will withhold funds payable by the United States to a person (*i.e.*, Federal income tax refunds) to satisfy the debt to APHIS.

(3) *Cross-servicing.* APHIS will transfer debts that are over 180 days delinquent to the Department of Treasury for cross-servicing. Under cross-servicing, the Department of Treasury will collect debts on behalf of APHIS. Exceptions will be made for debts that meet certain requirements, for example, debts that are already at a collection agency or in payment plan.

(4) *Report delinquent debt.* APHIS will report all unpaid debts to credit reporting bureaus.

(f) *Animals or birds abandoned after quarantine at an animal import center.* Animals or birds left in quarantine at an animal import center for more than 30 days after the end of the required quarantine period will be deemed to be abandoned.

(1) *Release of abandoned animals or birds from quarantine.* After APHIS releases the abandoned animals or birds from quarantine, APHIS may seize them and sell or otherwise dispose of them, as determined by the Administrator, provided that their sale is not contrary to any Federal law or regulation. APHIS may recover all expenses of handling the animals or birds from the proceeds of their sale or disposition.

(2) *Seizure and disposal of abandoned animals or bird.* If animals or birds abandoned in quarantine at an animal import center cannot be released from quarantine, APHIS may seize and dispose of them, as determined by the Administrator, and may recover all expenses of handling the animals or birds from the proceeds of their disposition and from persons liable for user fees under § 130.6(a).

(Approved by the Office of Management and Budget under control number 0579–0055)

Done in Washington, DC, this 26th day of July 2023.

**Michael Watson,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2023–16278 Filed 7–31–23; 8:45 am]

**BILLING CODE 3410–34–P**

**SMALL BUSINESS ADMINISTRATION****13 CFR Parts 107, 120, 142, and 146**

RIN 3245-A101

**Civil Monetary Penalties Inflation Adjustments****AGENCY:** U.S. Small Business Administration.**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) is amending its regulations to adjust for inflation the amount of certain civil monetary penalties that are within the jurisdiction of the agency. These adjustments comply with the requirement in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, to make annual adjustments to the penalties.

**DATES:** This rule is effective August 1, 2023.**FOR FURTHER INFORMATION CONTACT:** Arlene Embrey, 202-205-6976 or at [arlene.embrey@sba.gov](mailto:arlene.embrey@sba.gov).**SUPPLEMENTARY INFORMATION:****I. Background**

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Act), Public Law 114-74, 129 Stat. 584, was enacted. This act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890 (the 1990 Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Inflation Adjustment Act required agencies to issue a final rule by August 1, 2016, to adjust the level of civil monetary penalties with an initial “catch-up” adjustment and to annually adjust these monetary penalties for inflation by January 15 of each subsequent year.

Based on the definition of a “civil monetary penalty” in the 1990 Inflation Adjustment Act, agencies are to make adjustments only to the civil penalties that (i) are for a specific monetary amount as provided by Federal law or have a maximum amount provided for by Federal law; (ii) are assessed or enforced by an agency; and (iii) are enforced or assessed in an administrative proceeding or a civil action in the Federal courts. Therefore, penalties that are stated as a percentage of an indeterminate amount or as a function of a violation (penalties that encompass actual damages incurred) are not to be adjusted.

SBA published in the **Federal Register** an interim final rule with its initial adjustments to the civil monetary penalties, including an initial “catch-up” adjustment, on May 19, 2016, (81 FR 31489) with an effective date of August 1, 2016. SBA published its first annual adjustments to the monetary penalties on February 9, 2017 (82 FR 9967), with an immediate effective date. SBA published its subsequent annual adjustments for 2018 on February 21, 2018 (83 FR 7361), for 2019 on April 1, 2019 (84 FR 12059), for 2020 on March 10, 2020 (85 FR 13725), for 2021 on September 24, 2021 (86 FR 52955), and on May 11, 2022 (87 FR 28756), all with immediate effective dates. This rule will establish the adjusted penalty amounts for 2023 with an immediate effective date upon publication.

On December 15, 2022, the Office of Management and Budget (OMB) published its annual guidance memorandum for 2023 civil monetary penalties inflation adjustments (M-23-05, Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). The memorandum provides the formula for calculating the annual adjustments based on the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October preceding the adjustment, and specifically on the change between the October CPI-U preceding the date of adjustment and the prior year’s CPI-U. Based on this methodology, the 2023 civil monetary penalty inflation adjustment factor is 1.07745 (October 2022 CPI-U (298.012)/October 2021 CPI-U (276.589)). The annual adjustment amounts identified in this rule were obtained by applying this multiplier of 1.07745 to those penalty amounts that were published in SBA’s 2022 adjustments to civil monetary penalties at 87 FR 28756 (May 11, 2022).

**II. Civil Monetary Penalties Adjusted by This Rule**

This rule adjusts civil monetary penalties authorized by the Small Business Act, the Small Business Investment Act of 1958 (SBI Act), the Program Fraud Civil Remedies Act, and the Byrd Amendment to the Federal Regulation of Lobbying Act. These penalties and the implementing regulations are discussed below.

**1. 13 CFR 107.665—Civil Penalties**

SBA licenses, regulates, and provides financial assistance to financial entities called small business investment companies (SBICs). Pursuant to section 315 of the SBI Act, 15 U.S.C. 687g, SBA

may impose a penalty on any SBIC for each day that it fails to comply with SBA’s regulations or directives governing the filing of regular or special reports. The penalty for non-compliance is incorporated in § 107.665 of the SBIC program regulations.

This rule amends § 107.665 to adjust the current civil penalty from \$291 to \$314 per day of failure to file. The current civil penalty of \$291 was multiplied by the multiplier of 1.07745 to reach a product of \$314, rounded to the nearest dollar.

**2. 13 CFR 120.465—Civil Penalty for Late Submission of Required Reports**

According to the regulations at § 120.465, any SBA Supervised Lender, as defined in 13 CFR 120.10, that violates a regulation or written directive issued by the SBA Administrator regarding the filing of any regular or special report is subject to the civil penalty amount stated in § 120.465(b) for each day the company fails to file the report, unless the SBA Supervised Lender can show that there is reasonable cause for its failure to file. This penalty is authorized by section 23(j)(1) of the Small Business Act, 15 U.S.C. 650(j)(1).

This rule amends § 120.465(b) to adjust the current civil penalty to \$7,805 per day of failure to file from \$7,244 per day of failure to file. The current civil penalty of \$7,244 was multiplied by the multiplier of 1.07745 to reach a product of \$7,805, rounded to the nearest dollar.

**3. 13 CFR 120.1500—Types of Formal Enforcement Actions—SBA Lenders**

According to the regulations at § 120.1500(b), SBA may assess a civil monetary penalty against a 7(a) Lender. In determining whether to assess a civil monetary penalty and, if so, in what amount, SBA may consider: the gravity (*e.g.*, severity and frequency) of the violation; the history of previous violations; the financial resources and good faith of the 7(a) Lender; and any other matters as justice may require. This penalty is authorized by the Small Business Act, 15 U.S.C. 657i(e)(2)(B).

This rule amends § 120.1500(b)(2) to adjust the current civil penalty from \$268,694 to \$289,504. The current civil penalty of \$268,694 was multiplied by the multiplier of 1.07745 to reach a product of \$289,504, rounded to the nearest dollar.

**4. 13 CFR 142.1—Overview of Regulations**

SBA has promulgated regulations at 13 CFR part 142 to implement the civil penalties authorized by the Program Fraud Civil Remedies Act of 1986

(PFCRA), 31 U.S.C. 3801–3812. Under the current regulation at 13 CFR 142.1(b), a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than \$12,537, for each statement or claim.

This rule amends § 142.1(b) to adjust the current civil penalty from \$12,537 to \$13,508. The adjusted civil penalty amount was calculated by multiplying the current civil penalty of \$12,537 by the multiplier of 1.07745 to reach a product of \$13,508, rounded to the nearest dollar.

#### 5. 13 CFR 146.400—Penalties

SBA's regulations at 13 CFR part 146 govern lobbying activities by recipients of Federal financial assistance. These regulations implement the authority in 31 U.S.C. 1352 and impose penalties on any recipient that fails to comply with certain requirements in the part. Specifically, under § 146.400(a) and (b), penalties may be imposed on those who make prohibited expenditures or fail to file the required disclosure forms or to amend such forms, if necessary.

This rule amends § 146.400(a) and (b) to adjust the current civil penalty amounts to “not less than \$23,727 and not more than \$237,268.” The current civil penalty amounts of \$22,021 and \$220,213 were multiplied by the multiplier of 1.07745 to reach a product of \$23,727 and \$237,268, respectively, rounded to the nearest dollar.

This rule also amends § 146.400(e) to adjust the civil penalty that may be imposed for a first-time violation of § 146.400(a) and (b) to \$23,727 and to adjust the civil penalty that may be imposed for second and subsequent offenses to “not less than \$23,727 and not more than \$237,268.” The current civil penalty amounts of \$22,021 and \$220,213 were multiplied by the multiplier of 1.077455 to reach a product of \$23,727 and \$237,268, respectively, rounded to the nearest dollar.

**Compliance With Executive Orders 12866, 12988, 13132, and the Administrative Procedure Act (5 U.S.C. 553), the Congressional Review Act (5 U.S.C. 801–808), the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612).**

#### *Executive Order 12866*

The Office of Management and Budget has determined that this final rule is not a significant regulatory action under Executive Order 12866.

#### *Executive Order 12988*

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

#### *Executive Order 13132*

For the purpose of Executive Order 13132, SBA determined that the rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this final rule has no federalism implications warranting preparation of a federalism assessment.

#### *The Administrative Procedure Act (APA)*

The APA requires agencies generally to provide notice and an opportunity for public comment before adopting a rule unless the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b). The APA also requires agencies to allow at least 30 days after publication for a final rule to become effective “except as otherwise provided by the agency for good cause found and published with the rule.” 5 U.S.C. 553(d). For the following reasons prior public notice, an opportunity for public comment, and a delayed effective date are not required for this rule. The 2015 Inflation Adjustment Act directs agencies to adjust their civil penalties annually notwithstanding section 553 of the APA. 28 U.S.C. 2461 note, sec. 4(b)(2).

This exemption from the notice and comment, and delayed effective date requirements of the APA, in effect provides SBA with the good cause justification to promulgate this as a final rule that will become effective immediately on the date it is published in the **Federal Register**. Additionally, the 2015 Inflation Adjustment Act provides a non-discretionary cost-of-living formula for making the annual adjustment to the civil monetary penalties; SBA merely performs the ministerial task of calculating the amount of the adjustments. Therefore, even without the statutory exemption from the APA, notice and comment would be unnecessary.

#### *The Congressional Review Act (CRA)*

The Office of Management and Budget determined that this rule is not a major rule under 5 U.S.C. 804(2).

#### *Paperwork Reduction Act*

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) requires agencies to consider the effect of their regulatory actions on small entities, including small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of such small entities. However, the RFA requires such analysis only where notice and comment rulemaking are required. As stated above, SBA has express statutory authority to issue this rule without regard to the notice and comment requirement of the APA. Since notice and comment is not required before this rule is issued, SBA is not required to prepare a regulatory analysis.

#### **List of Subjects**

##### *13 CFR Part 107*

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

##### *13 CFR Part 120*

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

##### *13 CFR Part 142*

Administrative practice and procedure, Claims, Fraud, Penalties.

##### *13 CFR Part 146*

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, SBA amends 13 CFR parts 107, 120, 142, and 146 as follows:

#### **PART 107—SMALL BUSINESS INVESTMENT COMPANIES**

- 1. The authority citation for part 107 continues to read as follows:

**Authority:** 15 U.S.C. 681, 683, 687(c), 687b, 687d, 687g, 687m.

##### **§ 107.665 [Amended]**

- 2. In § 107.665, remove “\$291” and add in its place “\$314”.

#### **PART 120—BUSINESS LOANS**

- 3. The authority citation for part 120 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h), and (m), and note, 636m, 650, 657t, and note, 657u, and note, 687(f), 696(3), and (7), and note, 697, 697a and e, and note; Public Law 116–260, 134 Stat. 1182.

**§ 120.465 [Amended]**

■ 4. In § 120.465, amend paragraph (b) by removing “\$7,244” and adding in its place “\$7,805”.

**§ 120.1500 [Amended]**

■ 5. In § 120.1500, amend paragraph (b)(2) by removing “\$268,694” and adding in its place “289,504”.

**PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS**

■ 6. The authority citation for part 142 continues to read as follows:

**Authority:** 15 U.S.C. 634(b); 31 U.S.C. 3803(g)(2).

**§ 142.1 [Amended]**

■ 7. In § 142.1, amend paragraph (b) by removing “\$12,537” and adding in its place “\$13,508”.

**PART 146—NEW RESTRICTIONS ON LOBBYING**

■ 8. The authority citation for part 146 is revised to read as follows:

**Authority:** 31 U.S.C. 1352 and 15 U.S.C. 634(b)(6).

**§ 146.400 [Amended]**

■ 9. Amend § 146.400 by removing “\$22,021” wherever it appears and adding in its place “\$23,727” and by removing “\$220,213” wherever it appears and adding in its place “\$237,268”.

**Isabella Casillas Guzman,**  
*Administrator.*

[FR Doc. 2023–16217 Filed 7–31–23; 8:45 am]

BILLING CODE 8026–09–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA–2022–1296; Project Identifier MCAI–2022–00628–T; Amendment 39–22495; AD 2023–13–10]

RIN 2120–AA64

**Airworthiness Directives; Airbus SAS Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2020–20–05 and AD 2022–09–16, which applied to certain Airbus SAS Model A318 series; A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N; A320 series; and A321 series airplanes. AD 2020–20–05 and AD 2022–09–16 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions in AD 2022–09–16, and also requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations; as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 5, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 5, 2023

**ADDRESSES:**

**AD Docket:** You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1296; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**Material Incorporated by Reference:**

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADS@easa.europa.eu](mailto:ADS@easa.europa.eu); website [easa.europa.eu](http://easa.europa.eu). You may find this material on the EASA website at [ad.easa.europa.eu](http://ad.easa.europa.eu).

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1296.

**FOR FURTHER INFORMATION CONTACT:** Dan Rodina, Aviation Safety Engineer, FAA,

1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email [dan.rodina@faa.gov](mailto:dan.rodina@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–20–05, Amendment 39–21261 (85 FR 65197, October 15, 2020) (AD 2020–20–05), and AD 2022–09–16, Amendment 39–22036 (87 FR 31943, May 26, 2022) (AD 2022–09–16). AD 2020–20–05 and AD 2022–09–16 applied to certain Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, and –153N airplanes; Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes; and Model –111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes. AD 2020–20–05 and AD 2022–09–16 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2020–20–05 and AD 2022–09–16 to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on October 20, 2022 (87 FR 63712). The NPRM was prompted by AD 2022–0085, dated May 12, 2022, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022–0085) (also referred to as the MCAI). The MCAI states that new and/or more restrictive maintenance tasks have been published.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1296.

In the NPRM, the FAA proposed to continue to require the actions in AD 2022–09–16 and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2022–0085. The NPRM also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2021–0140.

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to supersede AD 2020–20–05 and AD 2022–09–16.

The SNPRM published in the **Federal Register** on March 23, 2023 (88 FR 17429) (the SNPRM). The SNPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. In the SNPRM, the FAA proposed to continue to require the actions in AD 2022–09–16 and require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive airworthiness limitations, as specified in EASA AD 2022–0085. The NPRM also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2021–0140. The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

### Discussion of Final Airworthiness Directive

#### Comments

The FAA received a comment from Air Line Pilots Association, International (ALPA), who supported the SNPRM without change.

The FAA received an additional comment from United Airlines. The following presents the comment received on the SNPRM and the FAA's response.

#### Request To Allow Airbus Statement of Airworthiness Compliance (ASAC)

United Airlines requested that the FAA allow Airbus-issued ASACs as acceptable means of compliance when they support extensions to the compliance time of specified airworthiness limitation section (ALS) part 2 tasks.

The FAA has determined that the requested change is unnecessary because the provisions of paragraph (r)(2) permit means of compliance approved by Airbus SAS's EASA Design Organization Approval (DOA), provided that the approval includes the DOA-authorized signature. This AD has not been changed with regard to this request.

#### Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined

that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the SNPRM. None of the changes will increase the economic burden on any operator.

#### Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0085 and EASA AD 2023–0008. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits. These documents are distinct since one includes all damage tolerant airworthiness limitations items and the other revises certain damage tolerant airworthiness limitation items.

This AD would also require EASA AD 2021–0140, which the Director of the Federal Register approved for incorporation by reference as of June 30, 2022 (87 FR 31943, May 26, 2022).

This AD would also require EASA AD 2020–0036R1, which the Director of the Federal Register approved for incorporation by reference as of November 19, 2020 (85 FR 65197, October 15, 2020).

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

#### Costs of Compliance

The FAA estimates that this AD affects 1,864 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2020–20–05 and AD 2022–09–16 to be \$7,650 (90 work-hours × \$85 per work-hour).

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

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

#### Regulatory Findings

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

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

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

#### List of Subjects in 14 CFR Part 39

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

#### The Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
  - a. Removing Airworthiness Directive (AD) 2020–20–05, Amendment 39–21261 (85 FR 65197, October 15, 2020); and AD 2022–09–16, Amendment 39–22036 (87 FR 31943, May 26, 2022); and
  - b. Adding the following new AD:

**2023–13–10 Airbus SAS:** Amendment 39–22495; Docket No. FAA–2022–1296; Project Identifier MCAI–2022–00628–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective September 5, 2023.

**(b) Affected ADs**

This AD replaces AD 2020–20–05, Amendment 39–21261 (85 FR 65197, October 15, 2020) (AD 2020–20–05); and AD 2022–09–16, Amendment 39–22036 (87 FR 31943, May 26, 2022) (AD 2022–09–16).

**(c) Applicability**

This AD applies to Airbus SAS airplanes specified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 10, 2022.

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, –133, –151N, –153N, and –171N airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –251NX, –252N, –252NX, –253N, –253NX, –271N, –271NX, –272N, and –272NX airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

**(e) Unsafe Condition**

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, accidental damage, or corrosion in principal structural elements, which could result in reduced structural integrity of the airplane.

**(f) Compliance**

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

**(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes From AD 2020–20–05**

This paragraph restates the requirements of paragraph (i) of AD 2020–20–05, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 11, 2019: Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2020–0036R1, dated June 24, 2020 (EASA AD 2020–0036R1). Accomplishing the maintenance or inspection program revision required by paragraph (o) of this AD terminates the requirements of this paragraph.

**(h) Retained Exceptions to EASA AD 2020–0036R1, With No Changes**

This paragraph restates the requirements of paragraph (j) of AD 2020–20–05, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0036R1 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2020–0036R1 specifies revising “the AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the “tasks and associated thresholds and intervals” specified in paragraph (3) of EASA AD 2020–0036R1 within 90 days after November 19, 2020 (the effective date of AD 2020–20–05).

(3) The initial compliance times for doing the tasks specified in paragraph (3) of EASA AD 2020–0036R1 are at the applicable “associated thresholds” specified in paragraph (3) of EASA AD 2020–0036R1, or within 90 days after November 19, 2020 (the effective date of AD 2020–20–05), whichever occurs later.

(4) The provisions specified in paragraphs (4), (5), and (6) of EASA AD 2020–0036R1 do not apply to this AD.

(5) The “Remarks” section of EASA AD 2020–0036R1 does not apply to this AD.

**(i) Retained Provisions for Alternative Actions or Intervals From AD 2020–20–05, With New Exception**

This paragraph restates the requirements of paragraph (k) of AD 2020–20–05, with new exception. Except as required by paragraphs (k) and (o) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2020–0036R1.

**(j) Retained Credit for Original EASA AD, With No Changes**

This paragraph restates the credit provided in paragraph (l) of AD 2020–20–05, with no changes. This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before November 19, 2020 (the effective date of AD 2020–20–05) using EASA AD 2020–0036, dated February 26, 2020.

**(k) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes From AD 2022–09–16**

This paragraph restates the requirements of paragraph (g) of AD 2022–09–16, with no changes. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 10, 2020: Except as specified in paragraph (l) of this AD, comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2021–0140, dated June 14, 2021 (EASA AD 2021–0140). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (o) of this AD terminates the requirements of this paragraph.

**(l) Retained Exceptions to EASA AD 2021–0140**

This paragraph restates the requirements of paragraph (h) of AD 2022–09–16, with no changes.

(1) Where EASA AD 2021–0140 refers to its effective date, this AD requires using June 30, 2022 (the effective date of AD 2022–09–16).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0140 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0140 specifies revising “the approved [aircraft maintenance program] AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after June 30, 2022 (the effective date of AD 2022–09–16).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0140 is at the applicable “thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2021–0140, or within 90 days after June 30, 2022 (the effective date of AD 2022–09–16), whichever occurs later.

(5) The provisions specified in paragraph (4) of EASA AD 2021–0140 do not apply to this AD.

(6) The “Remarks” section of EASA AD 2021–0140 does not apply to this AD.

**(m) Retained Provisions for Alternative Actions or Intervals From AD 2022–09–16, With New Exception**

This paragraph restates the requirements of paragraph (i) of AD 2022–09–16, with new exception. Except as required by paragraph (o) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (k) of this AD, no alternative actions (e.g., inspections) or intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2021–0140.

**(n) Retained Terminating Action for Certain Requirements in AD 2020–20–05, With Revised References**

This paragraph restates the terminating action specified in paragraph (i) of AD 2022–09–16, with revised references. Accomplishing the actions required by paragraph (k) of this AD, including incorporating Task 531135–03–1 as required by EASA AD 2021–0140, terminates Task 531135–01–2, as required by EASA AD 2020–0036R1 by the requirements in paragraph (g) of this AD.

**(o) New Revision of the Existing Maintenance or Inspection Program**

Except as specified in paragraph (p) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0085, dated May 12, 2022 (EASA AD 2022–0085) and EASA AD 2023–0008, dated January 16, 2023 (EASA AD 2023–0008). Where EASA AD 2023–0008 affects the same airworthiness limitations as those in EASA AD 2022–0085, the airworthiness limitations referenced in EASA AD 2023–0008 prevail. Accomplishing the revision of the existing maintenance or

inspection program required by this paragraph terminates the requirements of paragraphs (g) and (i) of this AD.

**(p) Exceptions to EASA AD 2022–0085 and to EASA AD 2023–0008**

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0085 and of EASA AD 2023–0008 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0085 and of EASA AD 2023–0008 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0085 and of EASA AD 2023–0008 is at the applicable “thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2022–0085 and of EASA AD 2023–0008, respectively, or within 90 days after the effective date of this AD, whichever occurs later. Where EASA AD 2023–0008 affects the same airworthiness limitations as those in EASA AD 2022–0085, the airworthiness limitations referenced in EASA AD 2023–0008 prevail.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0085 and of EASA AD 2023–0008 do not apply to this AD.

(5) This AD does not adopt the “Remarks” section of EASA AD 2022–0085 and of EASA AD 2023–0008.

**(q) New Provisions for Alternative Actions and Intervals**

After the existing maintenance or inspection program has been revised as required by paragraph (o) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0085 or EASA AD 2023–0008, as applicable.

**(r) Additional FAA AD Provisions**

The following provisions also apply to this AD:

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

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

(ii) AMOCs approved previously for AD 2022–09–16 are approved as AMOCs for the corresponding provisions of EASA AD 2021–0140 that are required by paragraph (i) of this AD.

(iii) AMOCs approved previously for AD 2020–20–05 are approved as AMOCs for the

corresponding provisions of EASA AD 2020–0036R1 that are required by paragraph (g) of this AD.

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

**(s) Additional Information**

For more information about this AD, contact Dan Rodina, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 206–231–3225; email [dan.rodina@faa.gov](mailto:dan.rodina@faa.gov).

**(t) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on September 5, 2023.

(i) European Union Aviation Safety Agency (EASA) AD 2022–0085, dated May 12, 2022.

(ii) European Union Aviation Safety Agency (EASA) AD 2023–0008, dated January 16, 2023.

(4) The following service information was approved for IBR on June 30, 2022 (87 FR 31943, May 26, 2022).

(i) European Union Aviation Safety Agency (EASA) AD 2021–0140, dated June 14, 2021.

(ii) [Reserved]

(5) The following service information was approved for IBR on November 19, 2020 (85 FR 65197, October 15, 2020).

(i) European Union Aviation Safety Agency (EASA) AD 2020–0036R1, dated June 24, 2020.

(ii) [Reserved]

(6) For the EASA ADs identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); website [easa.europa.eu](http://easa.europa.eu). You may find these EASA ADs on the EASA website at [ad.easa.europa.eu](http://ad.easa.europa.eu).

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

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

Issued on July 25, 2023.

**Victor Wicklund,**

*Deputy Director, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2023–16166 Filed 7–31–23; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA–2023–0656; Project Identifier MCAI–2022–01433–T; Amendment 39–22498; AD 2023–13–13]

RIN 2120–AA64

**Airworthiness Directives; Airbus SAS Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by reports of a non-full life clearance in the low-pressure hydraulic pipes of the nose landing gear return line, due to two quality escapes. This AD requires replacing the affected aluminum pipes with titanium pipes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 5, 2023.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 5, 2023.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at [regulations.gov](http://regulations.gov) under Docket No. FAA–2023–0656; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Material Incorporated by Reference:*

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); website [easa.europa.eu](http://easa.europa.eu). You may find this material on the EASA website [ad.easa.europa.eu](http://ad.easa.europa.eu).

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For

information on the availability of this material at the FAA, call 206-231-3195. It is also available in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0656.

**FOR FURTHER INFORMATION CONTACT:** Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email [9-avs-nyaco-cos@faa.gov](mailto:9-avs-nyaco-cos@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A350-941 and -1041 airplanes. The NPRM published in the **Federal Register** on March 30, 2023 (88 FR 19021). The NPRM was prompted by AD 2022-0217R1, dated March 1, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2022-0217R1) (also referred to as the MCAI). The MCAI states Airbus received reports from the manufacturer of a non-full life clearance in the low-pressure hydraulic pipes of the nose landing gear return line, due to two separate quality escapes. One quality escape occurred after alodine process application on aluminum pipes, when black spots and stains caused by corrosion pitting were found on inner and outer diameters. In a second quality escape, aluminum pipes were identified with an average ovality value (which measures the maximum and minimum outer diameter of the pipe) above the admissible value. This condition, if not corrected, could lead to a premature rupture in the yellow hydraulic line, which, in case of additional independent system failures, could result in reduced airplane controllability.

In the NPRM, the FAA proposed to require replacing the affected aluminum pipes with titanium pipes, as specified in EASA AD 2022-0217R1. The NPRM also proposed to prohibit the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products. You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-0656.

**Discussion of Final Airworthiness Directive**

**Comments**

The FAA received comments from an individual and Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

The FAA received an additional comment from Delta Air Lines (Delta). The following presents the comment received on the NPRM and the FAA's response to the comment.

**Request for Change in Compliance Time**

Delta requested a change to the compliance time for airplanes having an affected part listed in the A350-941 Service Bulletin A350-29-P020, dated July 28, 2022, modification of low pressure tubes S11-12, from before exceeding 6 years since airplane date of manufacture, or within 10 months after the effective date of this revised [EASA] AD to 7,600 flight cycles. Delta expressed Airbus Engineering has determined the impacted pipes, based on test results and analytical calculation, have a maximum life limitation of 7,600 flight cycles. Delta stated that Airbus developed a compliance time to ensure the affected parts were replaced at their 6 year check. However, due to a materials shortage, some affected aircraft did not embody Service Bulletin A350-29-P020, dated July 28, 2022, at their 6 year check and instead, would need to use the 10 months after the effective date timeline. Delta expressed that 10 months after the effective date would likely not align with a required aircraft check and does not follow the Airbus calculated flight-cycle limit. Therefore, Delta stated that a flight-cycle limit of 7,600 flight cycles should either replace the calendar-driven compliance time; or for affected aircraft that already completed the 6 year check the compliance time should be 7,600 flight cycles since date of manufacture.

The FAA considered the recommendations of the manufacturer, the availability of parts and the safety implications, and determined that accomplishing the applicable action prior to the accumulation of 7,000 total

flight cycles, will provide an adequate level of safety. The FAA determined that 7,000 flight cycles is more appropriate than 7,600 flight cycles based on an average fleet usage of 600 to 700 flight cycles a year; this revised compliance time will ensure the unsafe condition is addressed in a timely manner. The FAA has changed this AD to include an additional exception to the EASA AD that will allow for accomplishing the actions at the latest of before exceeding 6 years since airplane date of manufacture, within 10 months after the effective date of this AD or prior to the accumulation of 7,000 flight cycles.

**Conclusion**

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

**Related Service Information Under 1 CFR Part 51**

EASA AD 2022-0217R1 specifies procedures for replacing the affected aluminum pipes with titanium pipes. EASA AD 2022-0217R1 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.

**Costs of Compliance**

The FAA estimates that this AD affects 24 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 130 work-hours × \$85 per hour = \$11,050 .....	Up to \$16,500 .....	Up to \$27,550 .....	Up to \$661,200.

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

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

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

#### List of Subjects in 14 CFR Part 39

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

#### The Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

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

**2023–13–13 Airbus SAS:** Amendment 39–22498; Docket No. FAA–2023–0656; Project Identifier MCAI–2022–01433–T.

##### (a) Effective Date

This airworthiness directive (AD) is effective September 5, 2023.

##### (b) Affected ADs

None.

##### (c) Applicability

This AD applies all Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category.

##### (d) Subject

Air Transport Association (ATA) of America Code: 29, Hydraulic Power.

##### (e) Unsafe Condition

This AD was prompted by reports of a non-life clearance in the low-pressure hydraulic pipes of the nose landing gear return line within the yellow hydraulic line system, due to two quality escapes. The FAA is issuing this AD to address the quality escapes in the manufacture of these pipes. The unsafe condition, if not addressed, could result in premature rupture in the yellow hydraulic line, which, in case of additional independent system failures, could result in reduced airplane controllability.

##### (f) Compliance

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

##### (g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0217R1, dated March 1, 2023 (EASA AD 2022–0217R1).

##### (h) Exceptions to EASA AD 2022–0217R1

(1) Where EASA AD 2022–0217R1 refers to its effective date, this AD requires using the effective date of this AD.

(2) This AD does not adopt the "Remarks" section of EASA AD 2022–0217R1.

(3) Where EASA AD 2022–0217R1 refers to November 18, 2022 (the effective date of EASA AD 2022–0217), this AD requires using the effective date of this AD.

(4) Where table (2) of EASA AD 2022–0217R specifies a compliance time of "Before exceeding 6 years since aeroplane date of manufacture, or within 10 months after the effective date of this revised AD, whichever occurs later", this AD requires using "Before exceeding 6 years since airplane date of manufacture, within 10 months after the effective date of this AD, or prior to the accumulation of 7,000 total flight cycles, whichever occurs latest."

#### (i) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or 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)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

#### (j) Additional Information

For more information about this AD, contact Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email [9-avs-nyaco-cos@faa.gov](mailto:9-avs-nyaco-cos@faa.gov).

#### (k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0217R1, dated March 1, 2023.

(ii) [Reserved]

(3) For EASA AD 2022–0217R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); website [easa.europa.eu](http://easa.europa.eu). You may find this EASA AD on the EASA website: [ad.easa.europa.eu](http://ad.easa.europa.eu).

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des

Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195.

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

Issued on July 7, 2023.

**Michael Linegang,**

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

[FR Doc. 2023-16235 Filed 7-31-23; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2023-0015; Project Identifier AD-2022-01281-T; Amendment 39-22496; AD 2023-13-11]

RIN 2120-AA64

#### **Airworthiness Directives; AVOX Systems Inc. (Formerly Scott Aviation) Oxygen Cylinder and Valve Assemblies; and Oxygen Valve Assemblies**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is superseding Airworthiness Directive (AD) 2022-04-09, which applied to certain AVOX Systems Inc. (formerly Scott Aviation) oxygen cylinder and valve assemblies; and oxygen valve assemblies; installed on but not limited to various transport airplanes. AD 2022-04-09 required an inspection of the oxygen valve assemblies, and oxygen cylinder and valve assemblies, to determine the serial number; for certain assemblies and parts, a detailed inspection of the gap between the bottom of the packing retainer and top of the valve body on the assemblies; and replacement of assemblies having unacceptable gaps. This AD was prompted by a determination that additional assemblies and parts are affected by the unsafe condition. This AD requires an inspection of the oxygen valve assemblies, and oxygen cylinder and valve assemblies, to determine the serial number of the valve, cylinder, and entire assembly; for certain assemblies and parts, a detailed inspection for correct spacing of the gap between the bottom of the packing retainer and top of the valve body on the assemblies and

replacement of assemblies having unacceptable gaps. This AD also limits the installation of affected parts under certain conditions and reporting certain inspection results and returning certain assemblies to the manufacturer. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 5, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 5, 2023.

#### **ADDRESSES:**

**AD Docket:** You may examine the AD docket at [regulations.gov](http://regulations.gov) under Docket No. FAA-2023-0015; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

#### **Material Incorporated by Reference:**

- For service information identified in this final rule, contact AVOX Systems Inc., 225 Erie Street, Lancaster, NY 14086; telephone 716-683-5100; website [safranaerosystems.com](http://safranaerosystems.com).

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at [regulations.gov](http://regulations.gov) under Docket No. FAA-2023-0015.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516-228-7300; email [9-avs-nyaco-cos@faa.gov](mailto:9-avs-nyaco-cos@faa.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2022-04-09, Amendment 39-21951 (87 FR 10958, February 28, 2022) (AD 2022-04-09). AD 2022-04-09 applied to certain AVOX Systems Inc. (formerly Scott Aviation) oxygen cylinder and valve assemblies, and oxygen valve assemblies, installed on but not limited to various transport airplanes. AD 2022-04-09 was prompted by reports of cylinder and valve assemblies having oxygen leakage from the valve assembly vent hole, caused by the absence of a

guide that maintains appropriate spacing between certain parts. The NPRM published in the **Federal Register** on January 27, 2023 (88 FR 5278). The NPRM was prompted by a determination that additional assemblies and parts are affected by the unsafe condition. In the NPRM, the FAA proposed to continue to require an inspection of the oxygen valve assemblies, and oxygen cylinder and valve assemblies, to determine the serial number of the valve, cylinder, and entire assembly. For assemblies and parts with certain serial numbers, the FAA also proposed to continue to require a detailed inspection for correct spacing of the gap between the bottom of the packing retainer and top of the valve body on the assemblies, and replacement of assemblies having unacceptable gaps. The NPRM also proposed to limit the installation of affected parts under certain conditions and reporting inspection results and returning certain assemblies to the manufacturer. The FAA is issuing this AD to address oxygen leakage from the cylinder and valve assemblies, which could result in decreased or insufficient oxygen supply during a depressurization event; and heating or flow friction, which could cause an ignition event in the valve assembly.

#### **Discussion of Final Airworthiness Directive**

##### **Comments**

The FAA received comments from four commenters, including Atlas Air, Aviation Partners Boeing, FlyPersia Airlines, and SIA Engineering. The following presents the comments received on the NPRM and the FAA's response to each comment.

#### **Effect of Winglets on Accomplishment of the Proposed Actions**

Aviation Partners Boeing stated that the installation of winglets per Supplemental Type Certificate (STC) ST00830SE, STC ST01219SE, STC ST01518SE, and STC ST01920SE does not affect the accomplishment of the manufacturer's service instructions.

The FAA agrees with the commenter that STC ST00830SE, STC ST01219SE, STC ST01518SE, and STC ST01920SE do not affect the accomplishment of the manufacturer's service instructions. Therefore, the installation of STC ST00830SE, STC ST01219SE, STC ST01518SE, and STC ST01920SE do not affect the ability to accomplish the actions required by this AD. The FAA has not changed this AD in this regard.

**Request To Change the Applicability for Certain Airplanes**

FlyPersia Airlines requested that paragraph (c)(12) of the proposed AD be changed to “The Boeing Company Airplanes.” The commenter asserted that some of the affected oxygen cylinder and valve assemblies may be installed on other Boeing airplanes.

The FAA does not agree with the change requested. The applicability of this AD includes the airplane models that are known to be affected. However, as stated in paragraph (c) of this AD, the affected oxygen cylinder and valve assemblies might be installed on, but are not limited to, the aircraft identified in paragraphs (c)(1) through (12) of this AD, certificated in any category. This AD has not been changed in regard to this request.

**Request for Clarification on Compliance of a Specific Airplane**

SIA Engineering requested clarification on whether Boeing Model 737-8 airplane, Manufacturer Serial Number (MSN) 44257, is in compliance with the proposed AD. The commenter declared that the airplane was delivered in May of 2022 and was in compliance with AD 2022-04-09. The commenter also pointed out that the proposed AD provided credit for the service information that was required by AD 2022-04-09 and asked if credit may be taken for airplanes that have complied with AD 2022-04-09 and reported the results as required by that AD.

The FAA agrees to clarify. An airplane without a part identified in paragraph (c) of this AD is not affected by this AD. However, an airplane delivered without an affected part, but on which the part was later replaced with an affected part (one identified in paragraph (c) of this AD) is affected by this AD and must comply with this AD; this includes complying with the revised parts installation prohibition specified in paragraph (k) of this AD.

**Request To Correct Typographical Error**

Atlas Air and SIA Engineering noted a typographical error in the regulatory text of the proposed AD. The commenters pointed out that the paragraph designation of the Parts Installation Limitation paragraph should have been designated as paragraph (k) of the proposed AD.

The FAA agrees and has redesignated that paragraph, and subsequent paragraphs, accordingly.

**Conclusion**

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed the following service information, which describes procedures for an inspection to determine the serial numbers of the oxygen cylinder and valve assemblies, and the oxygen valve assemblies, a detailed inspection for correct spacing of the gap between the bottom of the packing retainer and top of the valve body on the assemblies, parts marking, inspection report, and return of parts to the manufacturer. These documents are distinct since they apply to different assembly part numbers.

- AVOX Systems Inc. Alert Service Bulletin 10015804-35-01, Revision 03, dated June 7, 2021.
- AVOX Systems Inc. Alert Service Bulletin 10015804-35-02, Revision 03, dated March 11, 2022.
- AVOX Systems Inc. Alert Service Bulletin 10015804-35-03, Revision 03, dated June 18, 2021.

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

**Costs of Compliance**

The FAA estimates that this AD affects 3,034 oxygen cylinder and valve assemblies, and oxygen valve assemblies, installed on various transport category airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Serial number inspection .....	1 work-hour × \$85 per hour = \$85 .....	None	\$85	\$257,890
Reporting .....	1 work-hour × \$85 per hour = \$85 .....	\$0	85	257,890

The FAA estimates the following costs to do any necessary follow-on

actions that would be required based on the results of the inspection. The FAA

has no way of determining the number of aircraft that might need these actions:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Detailed inspection .....	1 work-hour × \$85 per hour = \$85 .....	\$0	\$85
Replacement .....	1 work-hour × \$85 per hour = \$85 .....	* 0	85

\* The FAA has received no definitive data on the parts cost for the on-condition replacements.

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

**Paperwork Reduction Act**

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the

requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120-0056. Public

reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

#### Authority for This Rulemaking

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

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

#### Regulatory Findings

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

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

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

#### List of Subjects in 14 CFR Part 39

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

#### The Amendment

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

#### PART 39—AIRWORTHINESS DIRECTIVES

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

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

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
  - a. Removing Airworthiness Directive (AD) 2022–04–09, Amendment 39–21951 (87 FR 10958, February 28, 2022); and
  - b. Adding the following new AD:

**2023–13–11 AVOX Systems Inc. (formerly Scott Aviation):** Amendment 39–22496; Docket No. FAA–2023–0015; Project Identifier AD–2022–01281–T.

#### (a) Effective Date

This airworthiness directive (AD) is effective September 5, 2023.

#### (b) Affected ADs

This AD replaces AD 2022–04–09, Amendment 39–21951 (87 FR 10958, February 28, 2022) (AD 2022–04–09).

#### (c) Applicability

This AD applies to AVOX Systems Inc. (formerly Scott Aviation) oxygen cylinder and valve assemblies having part number (P/N) 89794077, 89794015, 891511–14, 806835–01, 807982–01, 808433–01, or 891311–14; and oxygen valve assemblies (body and gage assemblies) having P/N 807206–01. These assemblies might be installed on, but not limited to, the aircraft identified in paragraphs (c)(1) through (12) of this AD, certificated in any category.

(1) Airbus SAS Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes.

(2) Airbus SAS Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes.

(3) Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes.

(4) Airbus SAS Model A318–111, –112, –121, and –122 airplanes.

(5) Airbus SAS Model A319–111, –112, –113, –114, –115, –131, –132, –133, and –151N airplanes.

(6) Airbus SAS Model A320–211, –212, –214, –216, –231, –232, –233, –251N, –252N, –253N, –271N, –272N, and –273N airplanes.

(7) Airbus SAS Model A321–111, –112, –131, –211, –212, –213, –231, –232, –251N, –252N, –253N, –271N, –272N, –251NX, –252NX, –253NX, –271NX, and –272NX airplanes.

(8) Airbus SAS Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, –343, and –941 airplanes.

(9) Airbus Model A340–211, –212, –213, –311, –312, –313, –541, and –642 airplanes.

(10) ATR—GIE Avions de Transport Régional Model ATR42–200, –300, –320, and –500 airplanes.

(11) ATR—GIE Avions de Transport Régional Model ATR72–101, –102, –201, –202, –211, –212, and –212A airplanes.

(12) The Boeing Company Model 747–8 series airplanes.

#### (d) Subject

Air Transport Association (ATA) of America Code 35, Oxygen.

#### (e) Unsafe Condition

This AD was prompted by reports of cylinder and valve assemblies having oxygen leakage from the valve assembly vent hole, caused by the absence of a guide that maintains appropriate spacing between certain parts. The FAA is issuing this AD to address oxygen leakage from cylinder and valve assemblies. The unsafe condition, if not addressed, could result in decreased or insufficient oxygen supply during a depressurization event; and heating or flow friction, which could cause an ignition event in the valve assembly.

#### (f) Compliance

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

#### (g) Definition of Detailed Inspection

For the purposes of this AD, a detailed inspection is an intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.

#### (h) Identification of Affected Cylinder and Valve Assemblies

Within 60 days after the effective date of this AD, inspect the oxygen valve assemblies, and oxygen cylinder and valve assemblies, to determine if the serial numbers of the valve, cylinder, and entire assembly, are listed in Appendix 1 or Appendix 2, "Affected Shipments," of the applicable service information identified in paragraphs (h)(1) through (3) of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the serial numbers can be conclusively determined from that review.

(1) AVOX Systems Inc. Alert Service Bulletin 10015804–35–01, Revision 03, dated June 7, 2021.

(2) AVOX Systems Inc. Alert Service Bulletin 10015804–35–02, Revision 03, dated March 11, 2022.

(3) AVOX Systems Inc. Alert Service Bulletin 10015804–35–03, Revision 03, dated June 18, 2021.

**(i) Inspection of the Gap, Parts Marking Actions, and Replacement, With No Changes**

If, during any inspection or records review required by paragraph (h) of this AD, any oxygen valve assembly, valve or cylinder of an oxygen cylinder and valve assembly, or oxygen cylinder and valve assembly having an affected serial number is found: Before further flight, do a detailed inspection for correct spacing of the gap between the bottom of the packing retainer and top of the valve body, in accordance with paragraph 3.C. of the Accomplishment Instructions of the applicable service information identified in paragraphs (h)(1) through (3) of this AD.

(1) If the gap is found to be acceptable, as defined in the applicable service information identified in paragraphs (h)(1) through (3) of this AD, before further flight, do the parts marking actions in accordance with paragraph 3.D.(1) of the Accomplishment Instructions of the applicable service information identified in paragraphs (h)(1) through (3) of this AD.

(2) If the gap is found to be unacceptable, as defined in the applicable service information identified in paragraphs (h)(1) through (3) of this AD, before further flight, remove the affected assembly, in accordance with paragraphs 3.D.(2) or 3.D.(3), as applicable, of the Accomplishment Instructions of the applicable service information identified in paragraphs (h)(1) through (3) of this AD; and replace with a serviceable assembly.

**(j) Reporting and Return of Parts**

(1) Report the results of the inspection required by paragraph (i) of this AD within the applicable time specified in paragraph (j)(1)(i) or (ii) of this AD. Report the results in accordance with paragraph 3.D.(1)(a) of the Accomplishment Instructions of the applicable service information identified in paragraphs (h)(1) through (3) of this AD.

(i) If the inspection was done on or after the effective date of this AD: Submit the report within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

(2) If, during the inspection required by paragraph (i) of this AD, any gap is found to be unacceptable, within the applicable time specified in paragraph (j)(2)(i) or (ii) of this AD, return the assembly to the manufacturer in accordance with paragraph 3.D.(2) or 3.D.(3), as applicable, of the Accomplishment Instructions of the applicable service information identified in paragraphs (h)(1) through (3) of this AD, except you are not required to contact AVOX Systems Inc. for shipping instructions.

(i) If the inspection was done on or after the effective date of this AD: Return the assembly within 30 days after the inspection.

(ii) If the inspection was done before the effective date of this AD: Return the assembly within 30 days after the effective date of this AD.

**(k) Parts Installation Limitation**

As of the effective date of this AD, no AVOX Systems Inc. oxygen valve assembly, or valve or cylinder that is part of an oxygen

cylinder and valve assembly, or oxygen cylinder and valve assembly having an affected serial number identified in Appendix 1, "Affected Shipments," or Appendix 2, "Affected Shipments," of any AVOX Systems Inc. service information identified in paragraphs (h)(1) through (3) of this AD may be installed on any airplane unless the requirements of paragraph (i) of this AD have been accomplished on that affected assembly.

**(l) Credit for Previous Actions**

(1) This paragraph provides credit for the actions specified in paragraphs (h) or (i) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (l)(1)(i) through (iii) of this AD. This service information is not incorporated by reference in this AD.

(i) AVOX Systems Inc. Service Bulletin 10015804-35-01, dated March 6, 2019; and AVOX Systems Inc. Alert Service Bulletin 10015804-35-01, Revision 01, dated July 9, 2019.

(ii) AVOX Systems Inc. Alert Service Bulletin 10015804-35-02, Revision 1, dated September 4, 2019.

(iii) AVOX Systems Inc. Service Bulletin 10015804-35-03, dated April 11, 2019; and AVOX Systems Inc. Alert Service Bulletin 10015804-35-03, Revision 01, dated May 21, 2019.

(2) This paragraph provides credit for the actions specified in paragraphs (h) or (i) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (l)(2)(i) through (iii) of this AD, which was incorporated by reference in AD 2022-04-09.

(i) AVOX Systems Inc. Alert Service Bulletin 10015804-35-01, Revision 02, dated October 16, 2019.

(ii) AVOX Systems Inc. Alert Service Bulletin 10015804-35-02, Revision 2, dated October 31, 2019.

(iii) AVOX Systems Inc. Alert Service Bulletin 10015804-35-03, Revision 02, dated October 15, 2019.

**(m) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, East Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the East Certification Branch, send it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (n) of this AD or email to: [9-avs-nyaco-cos@faa.gov](mailto:9-avs-nyaco-cos@faa.gov). If mailing information, also submit information by email.

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

**(n) Related Information**

For more information about this AD, contact Elizabeth Dowling, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite

410, Westbury, NY 11590; telephone 516-228-7300; email [9-avs-nyaco-cos@faa.gov](mailto:9-avs-nyaco-cos@faa.gov).

**(o) Material Incorporated by Reference**

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

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

(i) AVOX Systems Inc. Alert Service Bulletin 10015804-35-01, Revision 03, dated June 7, 2021.

(ii) AVOX Systems Inc. Alert Service Bulletin 10015804-35-02, Revision 03, dated March 11, 2022.

(iii) AVOX Systems Inc. Alert Service Bulletin 10015804-35-03, Revision 03, dated June 18, 2021.

(3) For service information identified in this AD, contact AVOX Systems Inc., 225 Erie Street, Lancaster, NY 14086; telephone 716-683-5100; website [safranaerosystems.com](http://safranaerosystems.com).

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

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

Issued on July 7, 2023.

**Michael Linegang,**

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

[FR Doc. 2023-16192 Filed 7-31-23; 8:45 am]

**BILLING CODE 4910-13-P**

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

**[Docket No. FAA-2022-0458; Project Identifier AD-2021-00633-T; Amendment 39-22494; AD 2023-13-09]**

**RIN 2120-AA64**

**Airworthiness Directives; The Boeing Company Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**Editorial Note:** Editorial Note: Rule document 2023-15305 originally published on pages 46673-46677 in the issue of Thursday, July 20, 2023. In that publication, on page 46676, in the first column, in the "(c) Applicability" paragraph, the text "-300," should have appeared. The rule is

republished here corrected and in its entirety.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 767 airplanes. This AD was prompted by reports of inoperative manual and alternate horizontal stabilizer trim switches. This AD requires repetitive inspections for immersion of each limit switch and position transmitter module (LSPTM) and of the LSPTM electrical wiring, repetitive inspections for blockage of the drain holes and cleaning of each drain hole, repetitive inspections for loose or cracked leveling compound, and applicable on-condition actions. For certain airplanes, this AD also requires installing two new drain holes, performing repetitive inspections for blockage of the drain holes and cleaning each drain hole, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective August 24, 2023.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of August 24, 2023.

**ADDRESSES:**

*AD Docket:* You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-0458; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

*Material Incorporated by Reference:*

- For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website [myboeingfleet.com](https://myboeingfleet.com).

- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2022-0458.

**FOR FURTHER INFORMATION CONTACT:**

Doug Tsuji, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3548; email: [Douglas.Tsujifaa@gmail.com](mailto:Douglas.Tsujifaa@gmail.com).

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 767 airplanes. The NPRM published in the *Federal Register* on April 25, 2022 (87 FR 24276). The NPRM was prompted by reports of inoperative manual and alternate horizontal stabilizer trim switches, as a result of blocked drain holes in the area aft of body station (STA) 1725.5, which caused water to accumulate and eventually submerge the three LSPTMs, affecting their function. In the NPRM, the FAA proposed to require repetitive inspections for immersion of each LSPTM and of the LSPTM electrical wiring, repetitive inspections for blockage of the drain holes and cleaning of each drain hole, repetitive inspections for loose or cracked leveling compound, and applicable on-condition actions. For certain airplanes, the FAA proposed to also require installing two new drain holes, performing repetitive inspections for blockage of the drain holes and cleaning each drain hole, and applicable on-condition actions. The FAA is issuing this AD to address collected water or ice that could damage the LSPTMs and cause stabilizer trim position sensors to generate corrupt or erroneous signals to the flight crew. This condition, if not addressed, could result in misleading or confusing flight deck indications, a high speed overrun during takeoff, or a low altitude stall immediately after takeoff.

**Discussion of Final Airworthiness Directive**

**Comments**

The FAA received comments from The Air Line Pilots Association, International (ALPA), United Airlines, and an individual who supported the NPRM without change.

The FAA received additional comments from four commenters, including UPS, FedEx, Delta Air Lines (Delta), and Aviation Partners Boeing (APB). The following presents the comments received on the NPRM and the FAA's response to each comment.

**Effect of Winglets on Accomplishment of the Proposed Actions**

APB stated that the installation of winglets per Supplemental Type Certificate (STC) ST01920SE does not affect the accomplishment of the manufacturer's service instructions.

The FAA agrees with the commenter that STC ST01920SE does not affect the accomplishment of the manufacturer's

service instructions. Therefore, the installation of STC ST01920SE does not affect the ability to accomplish the actions required by this AD. The FAA has not changed this AD in this regard.

**Request To Revise Inspection Interval**

FedEx requested that the repetitive interval for the inspections specified in Boeing Alert Requirements Bulletin 767-27A0240 RB, dated January 19, 2021, be revised from 90 days to 225 days. FedEx noted that, in anticipation of an AD, it had begun inspecting all Model 767-300F aircraft at 90 day intervals, but could not maintain that schedule, and even a 120 day inspection interval was challenging to comply with. FedEx added that, during those initial inspections, it found only one aircraft with a clogged drain hole and no evidence of water pooling, damaged leveling compound, or damaged LSPTMs in its fleet. Based on those findings, FedEx stated that it had revised its inspection intervals to 450 flight cycles (the equivalent of 225 days). FedEx noted that if the FAA mandates a 90 day repetitive interval, it will be forced to ground aircraft. FedEx concluded that a 225 day inspection interval would eliminate undue burden on operators while maintaining an acceptable level of safety.

The FAA partially agrees with the commenter's request. Based on the FAA's risk assessment, the FAA has determined that a 225 day interval, which equates to approximately 3 inspections during the 24 month interval before the new drain holes must be added, is not adequate to address the unsafe condition because the inspections would not be frequent enough. However, the FAA has determined that extending the interval to 150 days, which equates to approximately 5 inspections during the 24 month interval before the new drain holes must be added, provides an adequate level of safety. The FAA has added paragraph (h)(4) of this AD to specify the 150 day inspection interval.

**Request To Clarify Exception Language**

Delta requested that paragraph (h)(3) of the proposed AD be revised to clarify the intent. Delta claimed the wording is very confusing and initially lead it to believe that both service bulletins, Boeing Alert Requirements Bulletin 767-27A0243 RB, dated May 28, 2021, and Boeing Alert Requirements Bulletin 767-27A0240 RB, dated January 19, 2021, must be accomplished in 90 days. Delta added that it understands the intent of paragraph (h)(3) of the proposed AD is to address a discrepancy where Boeing Alert Requirements

Bulletin 767–27A0243 RB, dated May 28, 2021, Action 1, gives a compliance time of 24 months to do Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, which in turn has an initial compliance time of 90 days. Delta suggested that paragraph (h)(3) could be clarified to specify the compliance times for each referenced bulletin.

The FAA agrees with the commenter's request. The FAA has revised paragraph (h)(3) of this AD to clarify that although Action 1 in Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, specifies to accomplish the actions in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, within 24 months after the date of issuance of the original airworthiness certificate or original export certificate of airworthiness, or within 24 months after the original issue date of Boeing Alert Requirements Bulletin 767–27A0243 RB, whichever occurs later; Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, contains the applicable compliance times for accomplishing the actions specified in Action 1. The applicable compliance times for all other actions in Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, is at the times specified in Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, except as specified in paragraph (h)(1) of this AD.

#### **Request To Delay AD Issuance Until Parts Are Available**

FedEx requested that the FAA delay issuance of a final rule until parts are available from Boeing. FedEx noted that it is planning to modify its aircraft as soon as possible, which would allow it to stop the repetitive inspections. However, FedEx stated that it has been trying unsuccessfully to order the necessary parts from Boeing since August, 2021. FedEx added that it was told the delivery schedule was “to be determined,” causing it to miss many scheduled aircraft checks.

The FAA disagrees with the commenter's request. The FAA notes that this AD requires repetitive inspections until the terminating modification is accomplished, so delaying issuance of this AD would also delay those vital inspections. Additionally, the FAA has confirmed with the manufacturer that adequate parts will be available to comply with this AD in the required compliance time. This AD has not been changed regarding this issue.

#### **Request To Revise Certain Notes**

FedEx requested that the FAA revise Note 1 to paragraph (g)(1) and Note 2 to paragraph (g)(2). FedEx requested revised wording to ensure that the new AD would not require the service information referenced in those notes.

The FAA agrees to clarify. The wording in the notes is intended to inform operators that the service information specified contains additional guidance for accomplishing the required actions. The service information referenced in the notes is not mandated by this AD, and operators are not required to use it. This AD has not been changed regarding this issue.

#### **Request To Allow Skipping Close Access in Certain Situations**

Delta requested that the proposed AD be revised to allow operators to skip certain close access steps. Delta stated that certain conditions in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021; and Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021, include reference to close access or open access steps. Delta added that, based on how an operator would perform the steps, it doesn't make sense to close access when finishing the actions in one table, only to have to open access to begin work on the actions in the next table. Delta noted that some close access steps in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, include a flagnote allowing operators to skip the close access steps if additional work is required. Delta concluded that the flagnote should have been included for close access steps throughout Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021; and Boeing Alert Requirements Bulletin 767–27A0243 RB, dated May 28, 2021.

The FAA agrees to clarify. The close access steps are not listed in the “Action” or “Method of Compliance” columns in the referenced service information. Instead, the close access steps are in a “Refer to” column, which is for reference only; the procedures within that column are not required by this AD and are for guidance only. Therefore, operators may deviate from those steps using accepted procedures. Acceptable deviations include not performing close access steps until all applicable actions are completed. This AD has not been changed regarding this issue.

#### **Request To Not Require Certain Actions**

UPS requested that the proposed AD be revised to not require the actions

specified in paragraph (g)(2) of the proposed AD. UPS stated that it understands that accomplishment of the repetitive inspections at the shorter interval specified in Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, is an acceptable means to detect and prevent the accumulation of water and ice in the area of the LSPTMs. UPS suggested that these frequent inspections provide an equivalent level of safety as adding new drain holes and inspections with a longer inspection interval. Therefore, UPS requested that the actions in paragraph (g)(2) of the proposed AD be made optional and terminate the actions in paragraph (g)(1) of the proposed AD if accomplished.

The FAA disagrees with the commenter's request. The addition of the two drain holes will create a configuration where multiple unique blockage events must occur before the accumulation of water or ice can happen. The FAA has therefore determined that the addition of drain holes, combined with the repetitive inspections, cleaning, and on-condition actions, is the best method to address the unsafe condition. However, under the provisions specified in paragraph (i) of this AD, the FAA will consider requests for alternative methods of compliance (AMOCs). This AD has not been changed regarding this issue.

#### **Conclusion**

The FAA reviewed the relevant data, considered any comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

#### **Related Service Information Under 1 CFR Part 51**

The FAA reviewed Boeing Alert Requirements Bulletin 767–27A0240 RB, dated January 19, 2021, which specifies procedures for repetitive general visual inspections (GVIs) for immersion in water or ice of each LSPTM and of the LSPTM electrical wiring, repetitive GVIs for blockage of the three drain holes and cleaning of each drain hole, repetitive GVIs for loose or cracked leveling compound, and applicable on-condition actions. On-condition actions include removing any water or ice, doing a detailed inspection for damage (corrosion or water damage) of any immersed LSPTM

or LSPTM electrical wiring, installing a serviceable LSPTM, repairing or replacing any damaged LSPTM electrical wiring, clearing any drain hole blockages, and repairing any loose or cracked leveling compound.

The FAA also reviewed Boeing Alert Requirements Bulletin 767-27A0243 RB, dated May 28, 2021. This service

information specifies procedures for installing two new drain holes, performing repetitive GVIs for blockage of the five drain holes and cleaning each drain hole, and applicable on-condition actions. On-condition actions include clearing any drain hole blockages.

This service information is reasonably available because the interested parties

have access to it through their normal course of business or by the means identified in **ADDRESSES**.

**Costs of Compliance**

The FAA estimates that this AD affects 613 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

**ESTIMATED COSTS**

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Drill drain holes .....	5 work-hours × \$85 per hour = \$425 .....	\$2,770	\$3,195 .....	Up to \$1,958,535.
Repetitive GVI and cleaning of 5 drain holes.	2 work-hours × \$85 per hour = \$170 per inspection cycle.	0	\$170 per inspection cycle.	Up to \$104,210 per inspection cycle.
Repetitive GVI of LSPTM .....	1 work-hour × \$85 per hour = \$85 per inspection cycle.	0	\$85 per inspection cycle.	\$52,105 per inspection cycle.
Repetitive GVI of LSPTM electrical wiring	1 work-hour × \$85 per hour = \$85 per inspection cycle.	0	\$85 per inspection cycle.	\$52,105 per inspection cycle.
Repetitive GVI and cleaning of 3 drain holes.	1 work-hour × \$85 per hour = \$85 per inspection cycle.	0	\$85 per inspection cycle.	\$52,105 per inspection cycle.
Repetitive GVI of leveling compound .....	1 work-hour × \$85 per hour = \$85 per inspection cycle.	0	\$85 per inspection cycle.	\$52,105 per inspection cycle.

The FAA estimates the following costs to do any necessary inspections that would be required based on the

results of the inspection. The agency has no way of determining the number of

aircraft that might need these inspections:

**ON-CONDITION COSTS**

Action	Labor cost	Parts cost	Cost per product
Detailed inspection of LSPTM or LSPTM electrical wiring.	1 work-hour × \$85 per hour = \$85 .....	\$0	\$85

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

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

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

**2023–13–09 The Boeing Company:**  
Amendment 39–22494; Docket No. FAA–2022–0458; Project Identifier AD–2021–00633–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective August 24, 2023.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company Model 767-200, -300, -300F, -400ER, and -2C series airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 27, Flight controls;

**(e) Unsafe Condition**

This AD was prompted by reports of inoperative manual and alternate horizontal stabilizer trim switches; an investigation found that certain drain holes were blocked, causing water and ice to collect and subsequently cover the limit switch and position transmitter modules (LSPTMs), which affected their function. The FAA is issuing this AD to address collected water or ice that could damage the LSPTMs and cause stabilizer trim position sensors to generate corrupt or erroneous signals to the flight crew. This condition, if not addressed, could result in misleading or confusing flight deck indications, a high speed overrun during takeoff, or a low altitude stall immediately after takeoff.

**(f) Compliance**

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

**(g) Required Actions**

(1) For all Model 767-200, -300, -300F, and -400ER airplanes: Except as specified by paragraph (h) of this AD, at the applicable times specified in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 767-27A0240 RB, dated January 19, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 767-27A0240 RB, dated January 19, 2021.

**Note 1 to paragraph (g)(1):** Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 767-27A0240, dated January 19, 2021, which is referred to in Boeing Alert Requirements Bulletin 767-27A0240 RB, dated January 19, 2021.

(2) For Model 767-200, -300, -300F, and -400ER airplanes, as identified in Boeing Alert Requirements Bulletin 767-27A0243 RB, dated May 28, 2021: Except as specified by paragraph (h) of this AD, at the applicable times specified in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 767-27A0243 RB, dated May 28, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 767-27A0243 RB, dated May 28, 2021. Accomplishing the installation of two new drain holes required by this paragraph terminates the repetitive inspections of the drain holes required by paragraph (g)(1) of this AD.

**Note 2 to paragraph (g)(2):** Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 767-27A0243, dated May 28, 2021, which is referred to in Boeing Alert

Requirements Bulletin 767-27A0243 RB, dated May 28, 2021.

(3) For Model 767-2C airplanes: Within 90 days after the effective date of this AD, inspect the LSPTMs, LSPTM electrical wiring, drain holes, and leveling compound; install two new drain holes as applicable; and do applicable on-condition actions in accordance with a method approved by the Manager, AIR-520 Continued Operational Safety Branch, FAA.

**(h) Exceptions to Service Information Specifications**

(1) Where Boeing Alert Requirements Bulletin 767-27A0243 RB, dated May 28, 2021, uses the phrase "the original issue date of the Requirements Bulletin 767-27A0243 RB," this AD requires using "the effective date of this AD."

(2) Where Boeing Alert Requirements Bulletin 767-27A0240 RB, dated January 19, 2021, uses the phrase "the original issue date of the Requirements Bulletin 767-27A0240 RB," this AD requires using "the effective date of this AD."

(3) Where Boeing Alert Requirements Bulletin 767-27A0243 RB, dated May 28, 2021, specifies a compliance time for Action 1 (accomplishment of Boeing Alert Requirements Bulletin 767-27A0240 RB, dated January 19, 2021), for this AD the compliance times for accomplishing the actions in Boeing Alert Requirements Bulletin 767-27A0240 RB, dated January 19, 2021, are as specified in paragraph (g)(1) of this AD.

(4) Where the "Repeat Interval (Not to Exceed)" column of the Compliance tables in Boeing Alert Requirements Bulletin 767-27A0240 RB, dated January 19, 2021, specifies "90 days," this AD requires using "150 days."

**(i) Alternative Methods of Compliance (AMOCs)**

(1) 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 certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto:9-ANM-Seattle-ACO-AMOC-Requests@faa.gov).

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

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, AIR-520 Continued Operational Safety Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

**(j) Additional Information**

(1) For more information about this AD, contact Doug Tsuji, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3548; email: [Douglas.Tsuji@faa.gov](mailto:Douglas.Tsuji@faa.gov).

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

**(k) Material Incorporated by Reference**

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

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

(i) Boeing Alert Requirements Bulletin 767-27A0240 RB, dated January 19, 2021.

(ii) Boeing Alert Requirements Bulletin 767-27A0243 RB, dated May 28, 2021.

(3) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; website [myboeingfleet.com](http://myboeingfleet.com).

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

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

Issued on June 28, 2023.

**Michael Linegang,**

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

[FR Doc. R1-2023-15305 Filed 7-31-23; 8:45 am]

**BILLING CODE 0099-10-D**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

**[Docket No. FAA-2022-0245; Airspace Docket No. 19-AAL-49]**

**RIN 2120-AA66**

**Establishment of United States Area Navigation (RNAV) Route T-380; Emmonak, AK**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes United States Area Navigation (RNAV) T-route,

T-380, in the vicinity of Emmonak, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

**DATES:** Effective date 0901 UTC, October 5, 2023. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11 and publication of conforming amendments.

**ADDRESSES:** A copy of the notice of proposed rulemaking (NPRM), all comments received, this final rule, and all background material may be viewed online at [www.regulations.gov](http://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 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at [www.faa.gov/air\\_traffic/publications/](http://www.faa.gov/air_traffic/publications/). You may also contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

**FOR FURTHER INFORMATION CONTACT:** Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

#### **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 expands the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System by lessening the dependency on ground-based navigation.

##### **History**

The FAA published a NPRM for Docket No. FAA-2022-0244 in the **Federal Register** (87 FR 16679; March 24, 2022), establishing RNAV T-route, T-380, in the vicinity of Emmonak, AK in support of a large and comprehensive

T-route modernization project for the state of Alaska. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal. No comments were received.

##### **Incorporation by Reference**

United States Area Navigation routes are published in paragraph 2006 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document amends the current version of that order, FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. These amendments will be published in the next update to FAA Order JO 7400.11.

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

##### **The Rule**

This action amends 14 CFR part 71 by establishing RNAV route T-380 in the vicinity of Emmonak, AK in support of a large and comprehensive T-route modernization project in the state of Alaska.

The new route is described below.

**T-380:** T-380 extends from the Emmonak, AK, (ENM) Very High Frequency (VHF) Omnidirectional Range/Distance Measuring Equipment (VOR/DME) to the Sparrevohn, AK (SQA), VOR/DME, due to the decommissioning of the St. Mary's, (SMA) AK, the Aniak, (ANI) AK, and the Cairn Mountain, (CRN) AK, Non-directional Radio Beacons (NDB).

The full description of T-380 is listed in the amendments to part 71 set forth below. This action is necessary to support T-route modernization project for the state of Alaska.

##### **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 Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that 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 airspace action of establishing RNAV route T-380 in the vicinity of Emmonak, AK qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points), and paragraph 5-6.5i, which categorically excludes from further environmental review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

##### **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**

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

Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

**§ 71.1 [Amended]**

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

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

*Paragraph 6011 United States Area Navigation Routes*

**T-380 EMMONAK, AK (ENM) TO SPARREVOHN, AK (SQA) [NEW]**

Emmonak, AK (ENM) .....	VOR/DME	(Lat. 62°47'04.52" N, long. 164°29'15.12" W).
HUROF, AK .....	WP	(Lat. 62°05'37.50" N, long. 163°41'00.03" W).
JOPEF, AK .....	WP	(Lat. 62°03'33.30" N, long. 163°17'07.68" W).
CIBUP, AK .....	WP	(Lat. 61°34'53.76" N, long. 159°32'34.95" W).
AMEDE, AK .....	WP	(Lat. 61°34'17.31" N, long. 158°25'46.86" W).
CERTU, AK .....	WP	(Lat. 61°25'08.81" N, long. 157°15'46.63" W).
FABGI, AK .....	WP	(Lat. 61°13'51.69" N, long. 156°14'37.32" W).
Sparrevohn, AK (SQA) .....	VOR/DME	(Lat. 61°05'54.89" N, long. 155°38'04.49" W).

\* \* \* \* \*

Issued in Washington, DC, on July 26, 2023.

**Karen L. Chiodini,**  
*Acting Manager, Rules and Regulation Group.*

[FR Doc. 2023–16208 Filed 7–31–23; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Office of the Secretary**

**14 CFR Part 382**

[Docket No. DOT–OST–2021–0137]

**RIN No. 2105–AE89**

**Accessible Lavatories on Single-Aisle Aircraft**

**AGENCY:** Office of the Secretary (OST), U.S. Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Department of Transportation (Department or DOT) is issuing a final rule to amend the Department’s Air Carrier Access Act (ACAA) regulation to improve the accessibility of lavatories on single-aisle aircraft. This final rule is intended to ensure that our air transportation system is safe and accessible to individuals with disabilities.

**DATES:** This rule is effective October 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** Robert Gorman, Senior Trial Attorney, Office of Aviation Consumer Protection, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, 202–366–9342, 202–366–7152 (fax), *robert.gorman@dot.gov* (email). You may also contact Blane Workie, Assistant General Counsel, Office of Aviation Consumer Protection, Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC

20590, 202–366–9342, 202–366–7152 (fax), *blane.workie@dot.gov*.

**SUPPLEMENTARY INFORMATION:**

**1. Purpose of Regulatory Action**

The Department is committed to ensuring that our air transportation system is safe and accessible for all. This includes taking necessary action to remove transportation barriers that exist for individuals with disabilities. Like all individuals, those with disabilities rely on transportation for all aspects of their lives. Transportation connects individuals to family and friends, to jobs and to vital services, and it opens the door to opportunity.

While accessible lavatories have been required on twin-aisle aircraft for decades, until now, there has been no requirement that airlines provide accessible lavatories on single-aisle aircraft. However, single-aisle aircraft are increasingly used by airlines for long-haul flights because the fuel efficiency and range of the aircraft have improved. The percentage of flights between 1,500 and 3,000 miles flown by single-aisle aircraft increased from less than 40 percent in 1991 to 86 percent in 2021.<sup>1</sup> These flights can last four or more hours.

The inability to safely access and use the lavatory on long flights can impact the dignity of passengers with disabilities and deter them from traveling by air, limiting their independence and freedom to travel. This final rule addresses a human rights issue and promotes freedom to travel for people with disabilities. It is an unfortunate reality that today, many air travelers with disabilities, knowing that they will not be able to use the lavatory during a flight, may dehydrate themselves or even withhold bodily functions so that they do not need to

urinate. These actions can cause adverse health effects, including increased chances of urinary tract infections. Other passengers may use adult diapers or catheters, which they may find degrading and uncomfortable. Some wheelchair users avoid flying altogether. For example, a recent survey conducted by Paralyzed Veterans of America (PVA) and 11 other veterans’ and disability advocacy organizations found that 56% of respondents reported that inaccessible lavatories were reason enough to choose not to fly unless absolutely necessary.<sup>2</sup> These are conditions that passengers without disabilities would justifiably consider intolerable.

Regulation is necessary because the private marketplace has not met this basic need for accessible lavatories. While a relatively small number of single-aisle aircraft do have lavatories that approximate the size and functionality of accessible twin-aisle aircraft lavatories, the vast majority of aircraft lavatories are too small to accommodate on-board wheelchairs or attendants. While accessible lavatory options do exist in the marketplace, airlines have largely chosen to forgo them in favor of an additional row of seats or extra galley space. Existing lavatories often lack accessible features and a safe and reliable means of accessing those lavatories using an on-board wheelchair. Information regarding the accessible features of lavatories is difficult to obtain.

We expect this rule to directly benefit millions of individuals with mobility impairments who cannot independently access the lavatory as a result of neuromuscular injury, disease, or

<sup>2</sup> Comment of PVA, available at <https://www.regulations.gov/comment/DOT-OST-2021-0137-0350>, Exhibit A. PVA represents over 16,000 veterans of the U.S. armed forces with spinal cord injury or disease. See <https://pva.org/find-support/membership/>.

<sup>1</sup> TS T-100 All Segment data, retrieved November 2022.

weakness. The rule will also benefit individuals with visual or other impairments who can access the lavatory but need accessible features within the lavatory. We also anticipate that the rule will indirectly benefit passengers of size and families with small children.

**2. Statutory Authority**

The Air Carrier Access Act (ACAA), 49 U.S.C. 41705, prohibits discrimination in airline service based on disability. When enacted in 1986, the ACAA applied only to U.S. air carriers. On April 5, 2000, the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century amended the ACAA to include foreign carriers. The ACAA, while prohibiting discrimination by U.S. and foreign air carriers in air transportation against qualified individuals with disabilities, does not specify how carriers must act to avoid such discrimination. The statute similarly does not specify how the Department should regulate with respect to these issues. In addition to the ACAA, the Department’s authority to regulate nondiscrimination in airline service on the basis of disability is based in the Department’s rulemaking authority under 49 U.S.C. 40113, which states that the Department may take action that it considers necessary to carry out this part, including prescribing regulations. The Department, through reasonable interpretation of its statutory authority, has issued regulations (at 14 CFR part 382) that require carriers to

provide nondiscriminatory service to individuals with disabilities.

**3. Summary of Rulemaking Activities**

In 2016, the Department established the Advisory Committee on Accessible Air Transportation (ACCESS Advisory Committee or Committee) to negotiate and develop proposed regulations on various issues, including accessible lavatories on single-aisle aircraft.<sup>3</sup> The Committee consisted of stakeholders including disability rights advocates, airlines, flight attendants, aircraft manufacturers, and the Department itself. On November 22, 2016, the Committee reached consensus on recommendations for new regulatory proposals to improve the accessibility of lavatories on single-aisle aircraft.<sup>4</sup> The agreement included recommendations for both short-term and long-term accessibility improvements. During the negotiated rulemaking process, the Department indicated that if the stakeholders reached consensus, the Department would act in good faith to propose rules reflecting that consensus.

In June 2019, the Department announced that the most appropriate course of action was to conduct two separate accessible lavatory rulemakings: one for short-term improvements, and one for long-term improvements. On January 2, 2020, the Department published a notice of proposed rulemaking (NPRM) relating to short-term improvements (the Part 1 NPRM).<sup>5</sup> In that rulemaking, the Department proposed improvements to

lavatory interiors, additional training and information procedures relating to lavatory accessibility, and improvements to the aircraft’s on-board wheelchair (OBW), but without requiring airlines to expand the size of the lavatory itself. The comment period to the Part 1 NPRM closed on March 2, 2020.

On December 16, 2021, the Department and the Architectural Transportation Barriers and Compliance Board (Access Board) held a joint public meeting to gather additional information regarding proposed improvements to the OBW. In connection with this public meeting, the Department reopened the comment period for the Part 1 NPRM from December 16, 2021, to January 17, 2022.

On March 28, 2022, the Department issued an NPRM regarding long-term accessibility improvements that would require airlines to install larger lavatories on certain single-aisle aircraft to permit a qualified individual with a disability to perform a seated independent (unassisted) and dependent (assisted) transfer from an OBW to and from the toilet (the Part 2 NPRM).<sup>6</sup> In that rulemaking, the Department expressed its intention to issue one final rule regarding accessible lavatories that would address the issues in both the Part 1 NPRM and the Part 2 NPRM. The comment period to the Part 2 NPRM closed on May 28, 2022.

**4. Summary of the Major Provisions**

**ESTIMATED COSTS OF ON-CONDITION ACTIONS**

Subject	Final Rule	Applicability
Lavatory Interiors .....	Lavatory must have grab bars, accessible faucets and controls, accessible call buttons and door locks, minimum obstruction to the passage of an on-board wheelchair (OBW), toe clearance, and an available visual barrier for privacy. Retrofitting not required, but accessibility features are required if lavatory is replaced.	New single-aisle aircraft with 125+ seats, delivered 3 years after effective date of the rule.
OBW improvements ....	OBW must facilitate safe transfer to and from the aircraft seat, have locking wheels, and have adequate padding, supports and restraints.. OBW must permit partial entry into lavatory in forward position to permit transfer from OBW to toilet. OBW must be maneuverable into the lavatory so as to completely close the lavatory door; if this is not possible in the short term when lavatories are not required to be expanded beyond current measures, airlines must provide visual barrier on request.	Operators of single-aisle aircraft with 125+ seats, 3 years after effective date of the rule
Training and Information.	Airlines must stow OBW in any safe available stowage space ..... Annual hands-on training required regarding OBW use, stowage, and assisting passengers to/from the lavatory on the OBW. Information required within aircraft and on airline web sites regarding accessibility features of lavatory.	Operators of single-aisle aircraft with 60+ seats, 3 years after effective date of the rule
International Symbol of Accessibility.	Symbol must be removed from lavatories that cannot accommodate an assisted independent transfer from OBW to toilet seat. Symbol must be applied to lavatories that can do so.	Operators of single-aisle aircraft with 60+ seats, 3 years after effective date of the rule
Sharps and bio-waste ..	Airlines must develop procedures for handling sharps and bio-waste and must inform passengers of those procedures on request.	Operators of single-aisle aircraft with 60+ seats, 3 years after effective date of the rule

<sup>3</sup> 81 FR 26178 (May 2, 2016).

<sup>4</sup> <https://www.transportation.gov/office-general-counsel/negotiated-regulations/final-resolution-access-committee>.

<sup>5</sup> 85 FR 27 (January 2, 2020), available at <https://www.federalregister.gov/documents/2020/01/02/2019-27631/accessible-lavatories-on-single-aisle-aircraft-part-1>.

<sup>6</sup> 87 FR 17215 (March 28, 2022), available at <https://www.federalregister.gov/documents/2022/03/28/2022-05869/accessible-lavatories-on-single-aisle-aircraft-part-2>.

## ESTIMATED COSTS OF ON-CONDITION ACTIONS—Continued

Subject	Final Rule	Applicability
Expanded lavatory size	Lavatory must permit a person with a disability and an attendant, both equivalent in size to a 95th percentile male, to approach, enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the OBW, in a closed space that affords privacy equivalent to that afforded to ambulatory users.	New single-aisle aircraft with 125+ seats, ordered 10 years or delivered 12 years after effective date, or on new type-certificated aircraft designs filed 1 year after effective date.

## Discussion

### I. Short-Term Improvements

#### A. Overview

##### 1. NPRM and Comments

The Part 1 NPRM addressed accessibility improvements that could be implemented on a relatively short-term basis that did not involve expanding the size of the lavatory itself. These improvements included accessible lavatory interiors, information and training requirements, and improvements to the aircraft's OBW. In general, the NPRM proposed performance standards rather than design standards.<sup>7</sup> The Department also indicated that it was considering whether to prohibit the floor dimensions (footprint) of lavatories from being further *reduced* from current measurements, on the ground that further reduction would adversely impact accessibility.

The Department received 336 comments to the Part 1 NPRM during the original comment period (January 2–March 2, 2020). The majority of comments were from individuals. All individual commenters either expressed support for the rule, or expressed the view that lavatories should be larger, or both. Broadly speaking, disability advocates expressed a preference for design standards over performance standards, observing that design standards are used for Amtrak and commuter rail. They supported the proposal that lavatory footprints should not be reduced beyond current measurements. They generally supported the information and training requirements. Airlines supported the

Department's proposed improvements to lavatory interiors, including the adoption of performance standards. They also supported the Department's proposals for information, signage, and procedures for disposing of sharps (such as needles and syringes) and bio-waste (defined as any waste containing infectious materials or potentially infectious substances). However, they opposed the Department's OBW proposal in its entirety, arguing that the Department failed to adequately consult with stakeholders and failed to adequately consider safety. They also opposed the position that lavatory footprints must not be reduced from current measurements. Aircraft manufacturers (Airbus and Boeing) generally supported the Part 1 NPRM. Airbus generally commented that the proposals were feasible from an engineering perspective. Boeing supported the Department's view that at least one lavatory should not be reduced from existing measurements and supported the use of performance standards.

##### 2. OBW Standards—Public Meeting and Comment

As noted above, the Department and the Access Board held a joint public meeting to solicit input from stakeholders regarding OBW standards.<sup>8</sup> The Department indicated that the meeting was intended to satisfy the consultation provisions of the negotiated rulemaking with respect to OBW standards.<sup>9</sup> The Department specifically solicited comment from disability advocates, airlines, and aircraft manufacturers regarding all aspects of OBW design, including but not limited to costs, benefits, safety

considerations, and stowage. The Department also made significant efforts to elicit data and comment from OBW manufacturers themselves, with no success; OBW manufacturers did not participate in the meeting or file comments. During the reopened comment period, the Department received a total of 12 comments from individuals and stakeholders.<sup>10</sup> We will discuss the details of this meeting and stakeholder comments in greater detail below.

### B. Section-by-Section Analysis

#### 1. Improvements to Existing Lavatory Interiors

##### NPRM and Comments

The Department proposed that grab bars be installed and positioned as required to meet the needs of individuals with disabilities. The proposed rule did not include a specific weight-support minimum threshold (e.g., 250 pounds). In keeping with the Department's preference for performance standards, we indicated that a specific weight threshold would be unduly prescriptive, and that grab bars must necessarily support significant weight in order to adequately meet the needs of individuals with disabilities. The Department sought comment on whether this general performance standard provides sufficient guidance to airlines and lavatory manufacturers. The Department sought comment on whether a weight-support minimum threshold is necessary, and if so, what that threshold would be. Airlines for America (A4A) and the International Air Transport Association (IATA)<sup>11</sup> supported the

<sup>7</sup> In general, performance standards describe a function that should be met, but leave flexibility in how to meet that standard. Design standards describe a function with greater technical specificity but may, as a result, limit the ways that such a standard could be met. Performance standards are consistent with Executive Order (E.O.) 12866, section 1(8) ("Each agency . . . shall, to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt."). The Part 1 NPRM referenced DOT Order 2100.6 (2018), which provided guidance regarding its own rulemaking procedures, including a preference for performance standards. While the Department has repealed Order 2100.6, the adoption of performance standards remains consistent with E.O. 12866.

<sup>8</sup> Minutes of the meeting are available at <https://www.regulations.gov/document/DOT-OST-2019-0180-0363>.

<sup>9</sup> Specifically, the Access Advisory Committee agreed that the new OBW standards would apply to aircraft with FAA-certificated seating capacity of 125 seats or more, and that the OBW would: (1) permit passage in the aircraft aisle; (2) fit within available stowage space; and (3) not require modification to lavatory interiors. The stakeholders further agreed that DOT must "consult with advocates, airlines, aircraft manufacturers, manufacturers of OBW, flight attendant association(s) and other stakeholders in developing these standards," and include the new standards in its NPRM.

<sup>10</sup> PVA, A4A/IATA, the Regional Airline Association (RAA), Spirit Airlines, Boeing, Airbus, the Transport Workers Union of America, and five individuals. PVA's letter was co-signed by All Wheels Up, the Christopher & Dana Reeve Foundation, Cure SMA, the Disability Rights Education & Defense Fund (DREDF), the Epilepsy Foundation, Hand in Hand: The Domestic Employers Network, the Health Equity Collaborative, the Muscular Dystrophy Association (MDA), the National Council on Independent Living (NCIL), the National Disability Rights Network (NDRN), and the United Spinal Association (United Spinal).

<sup>11</sup> A4A is a trade association representing U.S. airlines. IATA is a trade association representing foreign airlines.

proposal and asked the Department to clarify in guidance or in the preamble that airlines may comply with the performance standard by reference to other Federal standards, such as Americans with Disabilities Act (ADA) standards. Boeing supported the Department's use of performance standards throughout the Part 1 NPRM.

Next, the Department proposed that lavatory faucets have controls with tactile information concerning temperature. Alternatively, airlines may comply with this requirement by ensuring that lavatory water temperature is adjusted to eliminate the risk of scalding for all passengers. The proposed rule would also require that automatic or hand-operated faucets shall dispense water for a minimum of five seconds for each application or while the hand is below the faucet. Here, A4A and IATA asked the Department to consider the increased chance of wasted water.

Next, the Department proposed that attendant call buttons and door locks must be accessible to an individual seated in the lavatory. We sought comment on whether to further define "accessible" with respect to call buttons and door locks. For example, we sought comment on whether they should be discernible through the sense of touch and/or through specific means of communication such as braille, or whether airlines should be permitted to develop their own methods of providing accessibility. On this topic, the Consortium for Constituents with Disabilities (CCD)<sup>12</sup> and the Ability Center of Greater Toledo urged the Department to require that buttons and door controls be marked to assist passengers with visual disabilities by using braille, large font, contrasting colors, and embossed symbols.

Next, the Department proposed that lavatory controls and dispensers must be discernible through the sense of touch, and that operable parts of the lavatory must be operable with one hand and not require tight pinching, grasping, or twisting of the wrist. In the preamble to the proposed rule, we noted that such requirements would apply if those accessible operable parts are reasonably available and certificated for the applicable aircraft type. We sought comment on the availability of accessible controls and other lavatory parts that are operable by passengers with disabilities, along with the costs and benefits of requiring such accessible

controls. The Ability Center of Greater Toledo indicated that if automatic faucets are not available, lever faucet handles should be used as opposed to knobs so that the faucet is operable with one hand and does not require tight pinching. A4A and IATA urged the Department to state in the regulatory text, rather than the preamble, that such requirements would apply if those accessible operable parts are reasonably available and certificated for the applicable aircraft type. They indicated that they did not want to be in the position of filing "waivers" to establish that such parts are not available.

Next, the Department proposed to require the lavatory door sill to provide minimum obstruction for the passage of an OBW, consistent with applicable safety regulations. The Department recognized that door sills must prevent the spillage of water into the aircraft cabin. The provision was intended to promote accessibility without compromising safety. We sought comment on whether the term "minimum obstruction" should be further defined and if so, what that definition should be. The comments that we received on this issue supported the proposed rule as written.

Next, recognizing that adequate toe clearance is necessary to permit the OBW to maneuver into and out of the lavatory, the Department proposed to require airlines not to reduce toe clearance below the current measurements of the lavatory. The Department sought comment on this proposed provision and on whether the term "toe clearance" should be specifically defined. Here, the Open Doors Organization remarked that toe clearance should be clearly identified, "with minimum measurements determined by industry experts." Airlines supported the provision as written. Boeing suggested that the rule be amended to provide that "toe clearance must not be reduced from current measurements *applicable to the selected lavatory existing design.*" Airbus suggested that "alternatively, toe clearance reduction can be compensated by design measures to achieve equivalent performance by wheelchair users."

Finally, the Department proposed that airlines must provide a visual barrier, on request, for passengers with disabilities who may require the use of the lavatory but who cannot do so with the door closed. The purpose of the visual barrier is to afford passengers with disabilities a level of privacy equivalent to that afforded to ambulatory users. We sought comment on the means by which this proposed

visual barrier may be installed and operated in an efficient and cost-effective manner, consistent with the privacy interests of passengers entering and using the lavatory. One disability advocate (Christopher Wood, of Flying Disabled) remarked that a curtain would be an inappropriate visual barrier, and that the barrier should be rigid and lockable. In contrast, Boeing urged the Department to clarify that an opaque curtain would be a barrier that provides "substantially equivalent" privacy. A4A and IATA commented that the Department should confirm or clarify that the barrier must provide "substantially equivalent" privacy only in the visual sense. They remarked that DOT should clarify that airlines have flexibility to choose the best barrier for their aircraft, and the barrier does not have to be permanent or physically attached to the aircraft. They also commented that the barrier requirement should only apply to aft-facing lavatories or the SpaceFlex models on Airbus A320 aircraft because barriers on mid or forward lavatories pose safety and security hazards. Spirit asked the Department to clarify that airlines should not be required to change aircraft interiors to accommodate a barrier. Spirit also stated that airlines should be deemed compliant if they use all reasonable efforts to put up an appropriate barrier but cannot.

The Department proposed that lavatories on new aircraft with an FAA-certificated maximum capacity of 125 seats or more should have these accessible features. The Department expressed the view that because aircraft with fewer than 125 seats tend to be shorter-haul aircraft, with shorter flight times, it may not be cost-beneficial to require interior improvements to lavatories on those aircraft. The Department sought comment on this issue.

PVA<sup>13</sup> urged the Department to "fully consider" requiring improved lavatory interiors on smaller aircraft. Open Doors and the Ability Center of Greater Toledo commented that these requirements should apply to lavatories on aircraft with a capacity of 60 or more, because the improvements do not require expanding the footprint of the lavatory itself. Airlines supported the proposed rule as written, with IATA asking the

<sup>12</sup> CCD is a coalition of disability advocacy organizations including but not limited to the American Council of the Blind, the American Federation of the Blind, and the DREDF.

<sup>13</sup> PVA's comment to the Part 1 NPRM was cosigned by Access Living of Metropolitan Chicago, American Association of People with Disabilities, Autistic Self Advocacy Network, Arc of the United States, Bazelon Center for Mental Health Law, Christopher and Dana Reeve Foundation, the DREDF, Epilepsy Foundation, MDA, NCIL, NDRN, National Multiple Sclerosis Society, and United Spinal.

Department to clarify that the rule applies to newly manufactured aircraft, rather than existing aircraft that are newly acquired by the carrier.

#### DOT Response

After carefully considering the comments, the Department has decided to adopt requirements for lavatory interiors mostly as proposed. With respect to grab bars, the rule text provides that they must be “provided and positioned as required to meet the needs of individuals with disabilities.” Complying with ADA grab bar standards would be an acceptable way to comply with this provision.

With respect to the provision that “attendant call buttons and door locks must be accessible to an individual seated in the lavatory,” we agree with CCD’s comment that these elements must be readily usable by passengers with visual disabilities. While the rule does not specifically prescribe how airlines must comply with this provision, we agree that features such as braille, large font, contrasting colors, and embossed symbols are all available means of compliance.

With respect to the provision that “lavatory controls and dispensers must be discernible through the sense of touch, and that operable parts of the lavatory must be operable with one hand and not require tight pinching, grasping, or twisting of the wrist,” we agree with airlines’ request that they should not be held responsible for obtaining lavatory controls and dispensers that meet those standards if those accessible operable parts are not reasonably available and certificated for the applicable aircraft type. The Department specifies in the rule text that an airline is not responsible for acquiring such lavatory controls and dispensers so long as an airline makes reasonable efforts to purchase such items and informs the Department of the unavailability despite the airline’s reasonable efforts. In these situations, the Department requires airlines to purchase lavatory controls and dispensers that comply with as many requirements as set forth. For example, as the Ability Center of Greater Toledo noted, if automatic faucets are not available, lever faucet handles should be purchased as opposed to knobs so that the faucet is operable with one hand.

We have adopted, as proposed, the requirement that toe clearance not be reduced below current measurements. We have determined that it is not necessary to require that toe clearance should be set with minimum measurements determined by industry experts, because a performance-standard

approach still ensures that the OBW is able to maneuver into and out of the lavatory while providing flexibility to airlines in how this is done. The purpose of adequate toe clearance is to permit the passenger to access the lavatory by means of the OBW (for example, partial entry of the OBW in a forward-facing position to facilitate a stand-and-pivot maneuver).<sup>14</sup> Airlines may or may not find it necessary to increase toe clearance within the interior of the lavatory to meet this OBW performance standard, depending on the design of their lavatories and OBWs. However, we prohibit airlines from reducing existing toe clearance to prevent reduction in accessibility.

Next, we will adopt as written the proposed rule text relating to the visual barrier. The text states that “the aircraft must include a visual barrier that must be provided upon request of a passenger with a disability. The barrier must provide passengers with disabilities using the lavatory (with the lavatory door open) a level of privacy substantially equivalent to that provided to ambulatory users.” The barrier does not need to be permanent or physically attached to the aircraft to afford that level of privacy. The term “visual barrier” adequately indicates that the privacy is of a visual nature. In sum, we believe that the proposed rule text provides sufficient flexibility for airlines to provide the necessary privacy without compromising safety. We do, however, clarify in rule text that visual barriers are only appropriate as a short-term accessibility improvement. They will not be an appropriate means of providing privacy for the larger lavatories that will be required in the longer term.

Finally, we remain of the view that changes to lavatory interiors should be provided on new single-aisle aircraft with an FAA-certificated maximum seating capacity of 125 or more, because such aircraft tend to operate longer flights where the need for a lavatory access is greatest. As the Regulatory Impact Analysis explains, single-aisle aircraft with at least 125 seats are used for most domestic flights in the United States (67% in 2021) and are

<sup>14</sup> See Comment of ACCESS Advisory Committee member Katharine Hunter-Zaworski, Oregon State University, at 3 (“Toe clearance measurements are dependent on the design of the OBW. Prior design work has clearly shown that increasing the toe clearance under cabinets increases the overall accessibility of the lavatory by increasing maneuvering space. The height of the footrest on OBW is dependent on the design of the OBW. The fact that both the OBW and lavatory design affect toe clearance illustrates the need to consider the OBW and lavatory as a system when establishing regulatory requirements on either one.”)

increasingly used for longer flights due to improvements in fuel efficiency and range. In response to IATA’s comment, we believe that the rule text already adequately conveys that the rule applies to newly manufactured aircraft delivered three years after the effective date of the final rule, rather than existing aircraft that are newly acquired by an airline.

#### 2. Retrofitting

##### NPRM and Comments

The Department proposed that retrofitting of lavatories on aircraft currently in service would not be required; however, if an airline replaces a lavatory three years or more after the effective date of the rule, airlines would be required to install a lavatory that meets the new requirements. Under this proposal, “a lavatory is not considered replaced if it is removed for specified maintenance, safety checks, or any other action that results in returning the same lavatory into service.” For retrofitted lavatories, there would be no requirement to install a visual barrier if doing so would obstruct the visibility of exit signs.

A4A and IATA suggested that DOT clarify in the preamble to the final rule that to trigger the new compliant lavatory, airlines must totally replace the lavatory shell, not only replace limited components. Boeing suggested that the Department clarify that retrofitting would not be required for “any other action that results in returning the same lavatory part number or lavatory with the same design intent into service.” Boeing reasoned that “there may be instances where, during a heavy maintenance check, a lavatory is removed and must be replaced with a new lavatory of the same part number or design intent.”

##### DOT Response

We have decided to adopt the final rule as proposed. The text provides that “a lavatory is not considered replaced if it is removed for specified maintenance, safety checks, or any other action that results in returning the same lavatory into service.” In our view, the regulatory text adequately explains what constitutes a replacement lavatory that triggers installation of a compliant lavatory.<sup>15</sup> We reject Boeing’s

<sup>15</sup> We also note that this retrofitting provision, which requires retrofitting on a lavatory-by-lavatory basis rather than a component-by-component basis, is consistent with prior law. See now-repealed section 382.63(c) (“You are not required to retrofit cabin interiors of existing aircraft to comply with the requirements of this section. However, if you replace a lavatory on an aircraft with more than one

suggestion that retrofitting is not required if the airline wishes to replace an existing lavatory with a new lavatory of the same part number or design intent. To the contrary, the Department is of the view that this is the type of replacement where the airline would be required to install a compliant lavatory.

### 3. Training

#### NPRM and Comments

The Department proposed training and information requirements that would apply to airlines operating aircraft with an FAA-certificated maximum capacity of greater than 60 seats (*i.e.*, airlines that do not qualify as small businesses under 14 CFR 399.73). The training and information requirements would apply to the airlines' operations generally, not to the operation of any specific aircraft. These provisions would apply three years after the effective date of the final rule.

Specifically, the Department proposed to require airlines to train flight attendants to proficiency on proper procedures for assisting qualified individuals with disabilities to and from the lavatory from the aircraft seat.<sup>16</sup> Such training would include annual hands-on training on the retrieval, assembly, stowage, and use of the aircraft's OBW, and training regarding the accessibility features of the lavatory. The Department sought comment on whether annual training is necessary, or whether a different frequency of training would be more appropriate.

Stakeholders generally supported this proposal. PVA contended that the rule should include training on "any assembly or modifications to accessibility features" of accessible lavatories.<sup>17</sup> PVA reasoned that certain lavatories, such as the SpaceFlex lavatory installed on certain Airbus aircraft, require flight attendants to remove a partition to create a larger lavatory space. A4A supported the rule as written without the phrase suggested by PVA. A4A also stated that DOT should consider hands-on training on a phased-in schedule, combined with online/video training. A4A recommended that DOT clarify exactly what constitutes hands-on training of

aisle, you must replace it with an accessible lavatory.")

<sup>16</sup> Airlines are already required to train their personnel to proficiency on the airline's procedures concerning the provision of air travel to passengers with a disability, including the proper and safe operation of any equipment used to accommodate passengers with a disability. 14 CFR 382.141(a)(1)(ii).

<sup>17</sup> This phrase was included in the original Term Sheet reflecting the stakeholders' agreement. In the Part 1 NPRM, DOT declined to include this phrase.

interior lavatory features. A4A also argued that it is not feasible to provide hands-on training for retrieval and stowage of OBWs on every aircraft type, so the training should only address following instructions on how to stow and retrieve any type of OBW. Finally, A4A asserted its belief that DOT has not conducted a complete analysis of the costs of hands-on training, but A4A did not supply any such data to assist the Department's analysis. IATA indicated that DOT should clarify specifically whether contractor employees are included, or instead clarify that the rule only applies to flight attendants. IATA expressed the view that annual hands-on training is onerous, and that DOT did not adequately consider the costs of training and constructing lavatory mockups. Spirit expressed safety concerns to the extent that the rule requires flight attendants to lift passengers out of their seats, because many contracts limit flight attendants from lifting more than 50 pounds. Responses to these comments pertaining to the economic analysis can be found in the RIA.

At the OBW public meeting held in December 2021, stakeholders discussed whether to clarify that the training requirements should include the "transfer features" of the OBW. In supplemental comments, A4A and IATA indicated that they supported this amendment. RAA, representing regional airlines, asked the Department to clarify that staff must only be trained with respect to each airline's operational environment.

#### DOT Response

After review of the comments, we are adopting training requirements largely as proposed. In our view, annual hands-on training is necessary and appropriate with respect to any OBW that the flight attendant may be required to retrieve, use, and stow. We are also persuaded by PVA's comment to specifically include training on "any assembly or modifications to accessibility features" of a lavatory. Such an addition would make it clear that airlines are required to provide hands-on training with respect to elements such as the movable partition of a SpaceFlex lavatory, because such a partition would be an "accessibility feature" of the lavatory. Also, the training requirements apply only to flight attendants rather than off-aircraft contractors because flight attendants would be the staff that assist passengers in flight to access the lavatory.

We agree with the stakeholders' suggestion to clarify that training must include the "transfer features" of the

OBW. In response to Spirit's comment, we note that while the rule would require flight attendants to assist passengers in *transferring* to and from the OBW, and maneuvering the OBW to and from the lavatory, it does not necessarily require staff to *lift* passengers. In other words, flight attendants are required to assist the person with a disability to transfer to the aisle chair as best as they can but may not be able to physically lift or carry the person even with the use of a sliding board. We have not amended the rule text to clarify that staff must only be trained with respect to each airline's operational environment, because we believe that the rule is already sufficiently clear on that point.

### 4. Information

#### NPRM and Comments

The Department proposed to require airlines to provide information, on request, to qualified individuals with a disability or persons making inquiries on their behalf concerning the accessibility of aircraft lavatories. We proposed that this information must also be available on the carrier's website, and in printed or electronic form on the aircraft, including picture diagrams of accessibility features in the lavatory and the location and usage of all controls and dispensers. We stated that the intent of this proposal is to provide passengers with accurate information about the types of accessibility features that will be available on the aircraft, so that passengers may plan their flights appropriately.

PVA urged the Department to require that this information be "affirmatively sent" to anyone who self-identifies as using a mobility device or a service animal. In response to the Part 2 NPRM, NDRN noted that many airlines with relatively accessible lavatories in their fleet (such as the Airbus SpaceFlex) do not make clear to passengers whether their specific flight actually includes such a lavatory. RAA, representing regional carriers, urged the Department to reconsider the website requirement. RAA explained that the vast majority of its airline members are operating carriers that do not market flights or sell tickets. RAA explained that its members operate flights through agreements with larger mainline partners (marketing carriers) who are responsible for providing flight information to the public. RAA contended that because the traveling public rarely visits RAA members' websites, the more appropriate rule would be to apply the

information requirements to marketing carriers.

#### DOT Response

On further review of this provision, and after reviewing the comments, we believe it is appropriate to clarify the Department's intent with respect to information on accessibility of aircraft lavatories. First, rather than broadly requiring airlines to provide information regarding "the accessibility of aircraft lavatories," the final rule specifies that the information must include, at a minimum, information about the accessibility features of aircraft lavatories that are set forth in § 382.63(f) (relating to lavatory interiors). This change is consistent with the proposed requirement that the information must include picture diagrams of accessibility features in the lavatory and the location and usage of all controls and dispensers.

We also note that, consistent with the current requirements of part 382, this information must be flight-specific to the extent possible. Specifically, a different provision of part 382 states that carriers must provide, on request, certain information "concerning the accessibility of the aircraft expected to make a particular flight," including "whether the aircraft has an accessible lavatory."<sup>18</sup> Under current rules, that information "must be specific to the aircraft you [airlines] expect to use for the flight unless it is unfeasible for you to do so (e.g., because unpredictable circumstances such as weather or a mechanical problem require substitution of another aircraft that could affect the location or availability of an accommodation)." In keeping with current rules, this final rule requires airlines to provide the required information regarding the accessibility of lavatory features on a flight-specific basis.<sup>19</sup>

We do find persuasive RAA's comment that the website requirement should not apply to operating carriers that do not market flights or sell tickets. In situations where the operating and marketing carrier are different entities, the operating carrier is the airline that flies the aircraft while the marketing carrier is the airline that sells the ticket and generally provides flight-specific information to the public. Under this rule, marketing carriers will have the responsibility to provide information on their website concerning the accessibility of aircraft lavatories. We

<sup>18</sup> 14 CFR 382.41(e). We have amended § 382.41(e) to add a cross-reference to the provisions of this final rule.

<sup>19</sup> While the rule, as written, does not require airlines to provide information regarding the aircraft's OBW, we encourage airlines to do so.

have amended the final rule accordingly.

#### 5. International Symbol of Accessibility NPRM and Comments

The Department proposed to require airlines to remove the International Symbol of Accessibility from new and in-service aircraft that are equipped with lavatories that are not capable of facilitating a seated independent transfer (*i.e.*, a transfer from an OBW to the toilet seat without requiring the use of an assistant). In the Part 1 NPRM, we noted that removal of the symbol is the only proposed requirement that would apply to existing in-service lavatories, and to lavatories on aircraft with FAA-certificated maximum capacity of fewer than 125 seats. We noted that the goal is to provide greater consistency regarding the use of the symbol.

Stakeholders generally supported this provision. Airlines, while in favor of the rule, commented that DOT had not adequately considered the cost of such removal (without providing data to assist in the Department's analysis).

#### DOT Response

We adopt the proposal as written. In addition, we are requiring airlines to *include* the International Symbol of Accessibility if the lavatory *is* capable of facilitating a seated independent transfer. As noted above, the Department's intent is to provide greater consistency as to the meaning of the symbol as it applies to lavatories on single-aisle aircraft. Accordingly, it is appropriate to specify when the symbol must be applied, as well as when it must be removed. We note that at present, the additional cost of this provision will be relatively low, as few lavatories on single-aisle aircraft are capable of facilitating a seated independent transfer. As fully accessible lavatories become more commonplace, we expect the proper use and application of the symbol to grow.

#### 6. Procedures for Sharps and Bio-Waste NPRM and Comments

The Department proposed to require airlines to develop and, on request, inform passengers about their procedures for disposing of sharps and bio-waste. The Department reasoned that as lavatories on single aisle aircraft become more accessible, they may be used increasingly as a location where passengers with disabilities may perform personal functions which require the disposal of sharps and bio-waste. Like the information and training requirements, the proposed rule would apply to airlines that operate aircraft

with a maximum FAA-certificated capacity of more than 60 seats.

All responses to this proposal were in support. A4A and IATA asked the Department to clarify that airlines are not required to provide special facilities or equipment for disposal.

#### DOT Response

We adopt the proposal as written. The intent of the rule is to require airlines to develop procedures for sharps and bio-waste disposal and to inform passengers of those procedures on request. The rule does not require any specific type of disposal procedures; similarly, the rule does not require airlines to provide special facilities or equipment for disposal.

#### 7a. OBW Features

##### NPRM and Comments

As a first step in developing proposed OBW standards for the Part 1 NPRM, the Department asked the Access Board to develop advisory guidelines for technical assistance. The Department then adapted the Access Board's design standards into more flexible performance standards. The Department proposed that airlines could use the Access Board's design standards as one method of compliance. In the Part 1 NPRM, the Department proposed that the OBW have the following features:

(1) it must be maneuverable both forward and backward through the aircraft aisle by an attendant;  
 (2) it must be maneuverable in a forward orientation partially into at least one aircraft lavatory to permit transfer from the on-board wheelchair to the toilet;<sup>20</sup>

(3) it must be maneuverable into the aircraft lavatory in a backward orientation to permit positioning over the toilet lid without protruding into the clear space needed to completely close the lavatory door (an over-the-toilet, or "OTT" feature);

(4) the height of the OBW seat must align with the height of the aircraft seat so as to facilitate a safe transfer between the OBW seat and the aircraft seat;

(5) it must have wheels that lock in the direction of travel, and that lock in place so as to permit safe transfers, with any other moving parts being capable of being secured such that they do not move while the occupied OBW is being maneuvered;

<sup>20</sup> The goal of this requirement is to accommodate passengers who can enter the lavatory using a "stand-and-pivot" maneuver. Specifically, the passenger would approach and partially enter the lavatory while seated on the OBW, then stand and pivot 180 degrees to the toilet, at which point the OBW would be removed and the door would be closed.

(6) when occupied for use, it shall not tip or fall in any direction under normal operating conditions;

(7) it must have a padded seat and backrest, and must be free of sharp or abrasive components;

(8) it must have arm supports that are sufficiently structurally sound to permit transfers and repositionable so as to allow for unobstructed transfers; adequate back support; torso and leg restraints that are adequate to prevent injury during transport; and a unitary foot support that provides sufficient clearance to traverse the threshold of the lavatory and is repositionable so as to allow for unobstructed transfer, with all restraints operable by the passenger; and

(9) it must prominently display instructions for proper use.

As noted above, the Department then held a public meeting to solicit additional comment and data regarding OBW standards. At the meeting, a representative of PVA expressed support for the OBW provisions set forth in the Part 1 NPRM but indicated that they should be expressed as design standards rather than performance standards.

A4A and IATA expressed support for many of the Department's OBW proposals. However, they expressed significant design, cost, and safety concerns regarding the Department's proposal that the OBW be maneuverable into the lavatory in a backwards position such that it would be positioned over the closed toilet seat (the OTT feature). A representative of the Volpe Center, which performed the regulatory analysis on the Part 1 NPRM, asked questions of the meeting attendees about the feasibility and cost of manufacturing OBWs with an OTT feature. This individual noted that the OTT feature could be implemented either by (1) manufacturing different OBWs to accommodate different toilet seat heights, or (2) by manufacturing a single adjustable OBW that accommodates multiple toilet seat heights. This commenter noted that neither product exists on the market today, and that the cost and feasibility of producing either design is largely unknown. An engineer from the University of Hamburg, which developed the original prototype of the OTT design, indicated that an OBW with a height fixed to the toilet lid may be problematic in terms of transfers to and from the aircraft seat, while adjustable-height OBWs pose different design challenges.

In supplemental comments following the OBW meeting, PVA again expressed support for the proposed design features, but urged the Department to

adopt design standards. A4A and IATA expressed strong support for all of the proposed OBW design features, except for element (3) (the OTT feature). They urged the Department to withdraw this proposal based on safety and feasibility concerns. Specifically, they argued that the Department lacked data from which to conclude that such a feature can be manufactured at all, let alone that it would meet FAA safety standards. They expressed concerns that the design may add weight, complexity, and safety hazards to the OBW, particularly if the OTT design is adjustable to fit over toilet lids of various sizes. They also noted that the Department has limited data from which to estimate the costs of designing and manufacturing such a device. Airlines urged the Department to continue to consult with stakeholders regarding the OTT feature, but not to impose the requirement in a final rule.

Airbus commented that it generally supported the Department's performance standards. However, Airbus expressed concern that a fully compliant OBW may be too large to be transported down the aircraft aisle or into the lavatory, or stowed in existing spaces. Airbus also noted that the OTT feature would not be necessary on its accessible Airbus A220 lavatories, because that lavatory was designed to facilitate an independent transfer using the aircraft's existing OBW.

The Department proposed that these new OBW features should be required on new single-aisle aircraft with a maximum FAA-certificated capacity of 125 seats or more. In this way, the OBW provisions mirror the provisions relating to the accessible features of lavatory interiors. Again, the Department reasoned that larger aircraft tend to conduct longer flights where the need to access the lavatory may be greatest.

PVA urged the Department to "seriously consider" expanding these OBW standards to smaller aircraft. The Ability Center of Greater Toledo agreed, noting that individuals may have the need to access lavatories on shorter flights as well. A4A urged the Department not to expand OBW standards to smaller aircraft unless the Department engaged in a full consultation process to determine feasibility, safety, and costs. A4A noted that smaller aircraft have smaller aisles, smaller lavatory entrances, smaller stowage spaces, and fewer crew resources.

#### DOT Response

After review of the Part 1 NPRM comments, the information gathered at the OBW public meeting, and the post-meeting supplemental comments, we

have decided to finalize these OBW provisions largely as proposed, with one important amendment. We remain of the view that performance standards provide meaningful guideposts for safety and accessibility while providing stakeholders flexibility and the opportunity to innovate in how to meet those standards. We also remain of the view that these new OBW standards should apply to new aircraft with a maximum capacity of 125 seats or more, because those aircraft tend to fly longer routes where the need for lavatory use in flight is greatest.

However, we have reconsidered the proposal to require that the OBW must be maneuverable into the aircraft lavatory in a backward orientation to permit positioning over the toilet lid without protruding into the clear space needed to completely close the lavatory door (the OTT requirement above). The purpose of the proposed OTT requirement was to assist passengers with significant mobility impairments who cannot use the "stand-and-pivot" maneuver to enter the lavatory. The OTT requirement was intended to allow such passengers full access to the lavatory space while still seated on the OBW to permit non-toileting functions such as catheterization.

We recognize that members of the ACCESS Advisory Committee saw and used a simple prototype OBW with an OTT feature developed by the University of Hamburg. On the other hand, since the development of that prototype in 2016, we have seen no evidence that it is feasible to manufacture a fully compliant OBW with an OTT feature. The costs of developing such a device remain unknown. We also share stakeholders' concerns about the complexity and safety of such a device, particularly if it is adjustable to accommodate various aircraft seat heights and toilet seat heights. Accordingly, we have eliminated this requirement.

We remain concerned, however, about lavatory accessibility for passengers who are unable to use the stand-and-pivot maneuver. We also recognize that an OTT design may not be the only method for accommodating such passengers. For example, certain Airbus SpaceFlex lavatories are large enough to accommodate an OBW inside the lavatory space without the use of an OTT design. Accordingly, rather than specifically mandating an OTT design, we have adjusted this requirement to broadly state that the OBW must be maneuverable into the aircraft lavatory without protruding into the clear space needed to completely close the lavatory door. If the lavatory itself is not large

enough to accommodate an OBW without an OTT feature, and an OBW with an OTT feature is not available, airlines must provide the use of a visual barrier on request to enable the passenger to perform lavatory functions in privacy (see section 7c, below). A visual barrier would not be an acceptable means of compliance for lavatories that are required to be expanded beyond current measurements. As for comments to expand the OBW standards to smaller aircraft, the Department plans to address this issue as part of its rulemaking on Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs.<sup>21</sup>

#### 7b. OBW Stowage

NPRM, Public Meeting, and Comment

The Department proposed that airlines are not required to expand the existing FAA-certificated on-board wheelchair stowage space of the aircraft, or to modify the interior arrangement of the lavatory or the aircraft, in order to comply with the OBW provisions of the rule. During the OBW public meeting, Airbus and Boeing provided information regarding available stowage spaces.

In supplemental comments to the OBW public meeting, PVA commented that because OBWs serve a critical function with respect to lavatory accessibility, the final rule “should require an air carrier to use any FAA-approved OBW stowage location, not just its preferred or existing stowage location.” Airlines supported DOT’s proposal as written. Spirit contended that if a compliant OBW does not fit in the existing space, then airlines should not be required to provide such an OBW. Spirit also argued that airlines should not be required to stow the OBW in an alternate location such as an overhead bin, this would limit bin space and raise prices for consumers. They also expressed safety concerns for flight attendants if the new OBW weighs more than 50 pounds.

The Transport Workers Union of America, AFL–CIO, expressed concerns regarding the safe operation of OBWs while in flight, noting that it would be unsafe to operate them unless the aircraft is at a safe cruising altitude. They asked DOT to provide guidance to the public about when OBWs can be used.

#### DOT Response

We remain of the view that airlines should not be required to *expand* the existing FAA-certificated on-board wheelchair stowage space of the aircraft, or to *modify* the interior arrangement of the lavatory or the aircraft, in order to comply with the OBW provisions of the rule. These provisions are consistent with the overarching premise that short-term solutions should not require modification of aircraft interiors. On the other hand, we agree with PVA that we should amend the final rule relating to stowage.

We recognize the possibility that newly compliant OBWs may not fit within pre-existing OBW stowage spaces. The rule as proposed could be reasonably interpreted to read that if the new OBW does not fit within pre-existing OBW stowage spaces, then airlines would not be required to supply them at all. We agree with PVA that this is unacceptable. Compliant OBWs will include important new safety and accessibility features. Accordingly, the Department is requiring airlines to stow the OBW in any other available stowage space where it can be safely accommodated (e.g., a stowage closet or an overhead bin). Airlines are also required to seek any necessary approval from the FAA to stow the OBW in this alternate location. We also note that all ACAA requirements are subject to safety restrictions, including the use of the OBW. We have added rule text clarifying this point. Airline training should also make it clear to relevant staff that OBW stowage spaces does not affect the options for individuals with disabilities to stow personal wheelchairs on board.

#### 7c. Potential Unavailability of Fully Compliant OBWs

NPRM, Public Meeting, and Comment

In the Part 1 NPRM, the Department recognized that airlines typically rely on third parties to develop and manufacture OBWs, and that an OBW meeting all of the Department’s proposed requirements does not currently exist. Accordingly, the Department proposed that airlines would not be responsible for the failure of third parties to develop and deliver an OBW that complies with a required feature described above, so long as the airline notifies and demonstrates to the Department that an OBW meeting that requirement is unavailable despite the airline’s reasonable efforts.

PVA generally agreed with this proposal but argued that there should be a “higher standard of proof.” A4A strongly supported this provision,

noting that extensive design and testing is necessary to determine whether an OBW meeting DOT’s new standards can be made commercially available and safely stowable on-board the aircraft.

#### DOT Response

After review of the comments and on further consideration, the Department has decided to amend the final rule in certain material respects. First, the final rule clarifies that airlines must acquire an OBW with as many required features as are available, even if no OBW is available that meets *all* of the required standards. Next, the final rule relieves airlines of the burden of proving a negative: *i.e.*, *demonstrating* that an OBW with a required feature is unavailable despite the airline’s reasonable efforts. The final rule still requires airlines to make reasonable efforts to purchase OBWs with all required features. If an OBW with a required feature is unavailable despite reasonable efforts, airlines must *inform* the Department of that fact. Finally, the Department recognizes that many OBWs may not be maneuverable in the aircraft lavatory as required without protruding into the clear space needed to completely close the lavatory door (e.g., because the OBW is not of an OTT design and/or because the lavatory itself is too small to allow full entry of the OBW). The final rule specifies that if airlines cannot provide an OBW meeting that requirement, then they must provide the use of a visual barrier on request to enable the passenger to perform lavatory functions in private. The intent of this rule is to provide an option for passengers who cannot enter the lavatory by performing a stand-and-pivot from the OBW. The Department anticipates that while such passengers may not be able to fully enter the lavatory, they may be able to perform non-toileting functions such as catheterization in the lavatory area behind a visual barrier.

#### 7d. Replacement of OBWs

NPRM, Public Meeting, and Comment

The Department proposed that if an airline replaced an OBW on aircraft with an FAA-certificated maximum seating capacity of 125 or more on a date later than three years after the effective date of the final rule, then the airline must replace it with an on-board wheelchair that meets the new OBW standards. This proposal mirrors the requirement (described above) relating to retrofitting and replacement of aircraft lavatories themselves. A4A commented that airlines should be permitted to replace a broken or worn-

<sup>21</sup> RIN 2105–AF14; <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202210&RIN=2105-AF14>.

out OBW with a new OBW of the same part number, and that the new standards should be required only if airlines adopt a new OBW design. Airbus commented that relocating the OBW stowage space should not count as replacing the OBW.

#### DOT Response

We are adopting the proposed rule as written. As written, airlines are provided a three-year time frame to acquire compliant OBWs. If an airline replaces an OBW after that date, it is reasonable to require airlines to provide a new OBW that meets DOT's updated safety and accessibility standards, because such OBWs will presumably be available and on the market by that time. This rule is also consistent with the general rule, found at 14 CFR 382.71(b), which states that airlines must ensure that any replacement or refurbishing of the aircraft cabin or its elements does not reduce the accessibility of that element to a level below that specified for new aircraft in part 382.

#### 8. Prohibition on Reducing Existing Lavatory Footprint

##### NPRM and Comments

In the Part 1 NPRM, the Department solicited comment on whether to prohibit airlines from reducing lavatory footprints below their current size. The Department sought comment and data on the extent to which the footprint of aircraft lavatories on single-aisle aircraft has been reduced in recent years, and the effect that any such reduction has on accessibility for passengers with disabilities.

Three disability advocacy organizations (PVA, the National Multiple Sclerosis Society and Flying Disabled) urged the Department to prohibit further reduction of lavatory footprints. PVA argued that such a provision would be consistent with the spirit of part 382.<sup>22</sup> A4A and IATA urged the Department not to adopt such a proposal. A4A contended that the Department does not have baseline data on current lavatory footprints, and without that data, it cannot calculate the cost of the proposal (which may be significant). IATA argued that if the lavatory met performance standards, airlines should be permitted to select a footprint that is best suited to their operations. Boeing supported the Department's suggestion, reasoning that maintaining one lavatory on single aisle

aircraft at current size would not further limit accessibility to the traveling public as a whole. Like A4A, Boeing noted that clarity on starting lavatory measurements would be necessary as there are a variety of different designs in the industry.

#### DOT Response

After reviewing the comments on this issue, we do not have sufficient data to prohibit airlines from further reducing the footprint of lavatories at this time, though this remains an area of interest given that the small size of current lavatories is one significant reason that they are largely inaccessible today. DOT may revisit this issue in a future rulemaking.

#### 9. Effective Date

Airlines are required to comply with all of the short-term accessibility improvements discussed above three years after the effective date of this final rule. This time frame will allow airlines, aircraft manufacturers, OBW manufacturers, and other stakeholders sufficient time to develop accessible lavatory interiors, training programs, accessibility information, compliant OBWs, and appropriate OBW stowage space.

## II. Long-Term Improvements

### A. Overview

The Department addressed long-term improvements in the Part 2 NPRM. The Department proposed to require that airlines expand the size of at least one lavatory on new single-aisle aircraft with an FAA-certificated maximum capacity of 125 seats or more. The most significant issue in the NPRM was the time frame for implementation. The Department proposed that the rule would apply to new single-aisle aircraft ordered 18 years after the effective date of the final rule, or delivered 20 years after the effective date of the final rule (18/20).<sup>23</sup> The Department proposed this time frame because it tracked the ACCESS Advisory Committee's agreement from 2016.<sup>24</sup> At the same time, the Department recognized the slow pace of this proposed implementation period, particularly in light of the roughly six-year delay

<sup>23</sup> In this document, two numbers separated by a slash refers to a single implementation period. For example, "15/17" would mean that the rule applies to new single-aisle aircraft ordered 15 years after the effective date of the final rule and delivered 17 years after the effective date of the final rule.

<sup>24</sup> As noted above, during the ACCESS Advisory Committee process, the Department publicly committed that if the Committee reached consensus, the Department would propose a rule tracking that agreement to the extent possible.

between the date of the Committee's agreement (in 2016) and the issuance of the Part 2 NPRM (in 2022). The Department sought comment and data on whether and how to accelerate this implementation period for the final rule.

The comment period closed on May 28, 2022. Broadly speaking, disability rights organizations supported the rule but also urged a faster implementation period. For example, PVA argued that the Department should subtract the six-year delay in issuance of the rulemaking, and therefore that the requirement for larger lavatories should apply to aircraft ordered 12 years after the effective date of the final rule or delivered 14 years after the effective date of the final rule (12/14). The MDA urged the Department to adopt a 10-year maximum implementation. United Spinal did not propose a specific time frame but urged the Department to act "with all deliberate speed." Individual commenters universally supported the rule but urged the Department for a faster implementation period. Certain advocates also urged the Department to apply the rule to smaller aircraft.

Airlines supported the proposal as written. A4A/IATA argued that if the Department reduced the implementation period, (1) it should be to 15/17, (2) DOT must fully explain the basis, data, and information that justifies its deviation from the original proposal, and (3) DOT must allow stakeholders to submit supplemental comment. Airbus and Boeing supplied technical comments, with Boeing also supporting the implementation time frame as written. DOT's responses to these and other significant issues raised by the commenters are provided below.

### B. Section-by-Section Analysis

#### 1. Applicability: Aircraft Size

##### NPRM and Comments

The Department proposed that larger lavatories would be required on new single-aisle aircraft with an FAA-certificated maximum capacity of 125 seats or more. The Department reasoned that such aircraft operate a significant percentage of longer-haul flights, where the in-flight need for a lavatory would be greatest. The Department sought comment on the costs and benefits of extending the rule to smaller aircraft. The Department noted that the Committee considered, but rejected, a rule that would require accessible lavatories based on the length of the flight as opposed to the size of the aircraft. The Committee also rejected other approaches such as phased or tiered approaches to full accessibility.

<sup>22</sup> Specifically, PVA cited 14 CFR 382.71, which states, "You must ensure that any replacement or refurbishing of the aircraft cabin or its elements does not reduce the accessibility of that element to a level below that specified for new aircraft in this part."

Nevertheless, the Department sought comment on these issues as well.

Two organizations (Open Doors and Disability Rights PA) urged the Department to apply the rule to all new aircraft. Airlines supported the proposal as written, contending that this standard captures the near-total volume of U.S. passenger traffic. A4A and IATA further stated that aircraft with fewer than 125 seats are only used on short flights, that requiring accessible lavatories on smaller aircraft would impose substantial costs that may increase fares and potentially disrupt service to smaller communities, and that there is no technical solution for accessible lavatories on these smaller aircraft.<sup>25</sup> Spirit Airlines also supported the rule as written, and further argued that it should apply on a fleet-wide basis instead of a route-by-route basis. Similarly, RAA supported the 125-seat standard and preferred the seating-capacity approach instead of a scheduled-duration approach.<sup>26</sup> Boeing commented that the proposed standard is reasonable, noting that smaller aircraft are operated on shorter routes, there is no current technical solution for smaller aircraft, and lowering the threshold would increase compliance costs. Airbus did not comment.

#### DOT Response

The Department is finalizing this aspect of the proposal as written. We recognize that determining a reasonable threshold for larger accessible lavatories will always involve a measure of judgment. On balance, the Department continues to hold the view that a 125-seat threshold is reasonable because it covers a substantial portion of lengthy flights. As we explain in the RIA, we chose not to extend the rule to aircraft with 100 to 124 seats because aircraft of this size are increasingly rare, leading to uncertainty about the benefits of extending the rule to such aircraft. In contrast, flights on aircraft of 125 seats or more made up 58% of all flights and 90% of medium- and long-haul flights in 2021. We do recognize that in general, as future aircraft become more efficient, smaller aircraft may increasingly operate longer flights; if so, the Department may revisit this issue in the future. Finally, after reviewing the comments, we find essentially no support for alternative standards of applicability such as scheduled flight length, or for tiered/phased approaches

to implementing fully accessible lavatories.<sup>27</sup>

#### 2. Lavatory Size: Accommodation of Passenger and Attendant NPRM and Comments

The Department proposed that for applicable aircraft, airlines must include at least one lavatory of sufficient size to (1) permit a qualified individual with a disability equivalent in size to a 95th percentile male to approach, enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair, in a closed space that affords privacy equivalent to that afforded to ambulatory users; and (2) permit an assistant equivalent in size to a 95th percentile male to assist a qualified individual with a disability, including assisting in transfers between the toilet and the aircraft's on-board wheelchair, within a closed space that affords privacy equivalent to that afforded to ambulatory users.

NDRN commented that the 95th percentile standard was preferable to the non-specific standard set forth in the rule for twin-aisle aircraft lavatories, which are inconsistent in terms of accessibility. A4A and IATA supported the proposal, noting that it tracked the Committee's agreement. Airbus supported the proposal, noting that the 95th percentile overweight/tall U.S. male is an appropriate reference measure for an assisted transfer within the limited space of a lavatory.<sup>28</sup> Boeing argued that the 95th percentile standard should be placed in guidance, rather than regulatory text, noting that DOT took this approach with respect to the size of twin-aisle aircraft. Boeing also urged the Department to add that airlines may use curtains to create the

<sup>27</sup> A4A and IATA stated that public comment is essential to any further adjustments to the implementation and further suggests that it would lead to a lack of consistency for no clear benefit. They specifically oppose different phases of assisted vs. unassisted transfer, a view shared by Boeing, who added that such an idea was specifically rejected in the negotiated rulemaking. Passenger-advocacy organizations also opposed additional phases or tiers, largely because they find them unnecessary. NDRN commented that the current rulemaking supports attendant-accommodating lavatories without further phases or tiers. United Spinal Association and PVA shared similar views that there should not be further tiering or phasing, but if such is implemented, it should not increase the implementation timeframe.

<sup>28</sup> Airbus also asked if the Department truly intended to require a space that accommodates both a 95th percentile male passenger and a 95th percentile male attendant at the same time, noting that this "worst case scenario" would be extremely rare. We believe that the rule text is sufficiently clear regarding the intended lavatory size and agree that the scenario described by Airbus is likely to be rare.

closed space that affords privacy equivalent to that afforded to ambulatory users.

#### DOT Response

After reviewing the comments, the Department is finalizing the proposed rule as written. We have chosen to place size standards in the rule text, rather than in guidance, because those standards are necessary to ensure that the lavatory is of sufficient size to accommodate larger passengers and larger attendants alike. We have not adopted Boeing's suggestion that in the long term, airlines should be permitted to use curtains to help create a substantially equivalent privacy space. Such visual barriers may be necessary in the short term when lavatories are not required to be expanded beyond current measurements. However, such a solution would be inappropriate in the long term, given that the Department is providing airlines and aircraft manufacturers ample time to engineer and develop fully compliant solutions.

#### 3. Lavatory Interiors

##### NPRM and Comments

In the Part 2 NPRM, the Department included for reference its proposed rules from the Part 1 NPRM relating to lavatory interiors. The Department did not propose new rules for lavatory interiors that would apply to the larger lavatories described in the Part 2 NPRM.

PVA noted that passengers with disabilities should be able to access flush controls, call buttons, the lavatory door, the sink, paper towels, and trash dispenser from a seated position. A4A supported the proposal as written. Boeing noted that larger lavatories may produce situations where certain controls may not be reachable from a seated position (on the toilet or on the OBW).

##### DOT Response

The Department is adopting the provisions regarding lavatory interiors as described above in the discussion of the Part 1 NPRM. In response to PVA's comment, we anticipate that passengers with disabilities will be able to access, from a seated position, the components that they described.

#### 4. Implementation: Effective Date and Retrofitting

##### NPRM and Comments

In keeping with its commitment to the ACCESS Advisory Committee, the Department proposed to require accessible lavatories on new single-aisle aircraft that are: (1) ordered 18 years after the effective date of the final rule;

<sup>25</sup> Comment of A4A/IATA at 16–17.

<sup>26</sup> Comment of RAA at 2–3.

(2) delivered 20 years after the effective date of the final rule; or (3) part of a new type-certificated design filed with the FAA or a foreign carrier's safety authority one year after the effective date of the final rule.<sup>29</sup> The Department also proposed that airlines not be required to retrofit existing aircraft to install larger lavatories. This proposal was consistent not only with the ACCESS Advisory Committee's agreement, but also with existing part 382.<sup>30</sup> The Department asked extensive questions regarding whether and how to accelerate this time frame for the final rule, along with the costs and benefits of doing so.

As noted above, disability advocates argued for a more accelerated implementation period. PVA and NDRN stated that the Department should deduct the 6-year gap between the Committee's agreement and the Part 2 NPRM, for a current implementation period of 12/14 rather than 18/20. They argued that this reduction would meet the parties' reasonable expectations at the time the agreement was formed. The MDA urged the Department to adopt a 10-year maximum implementation. United Spinal did not propose a specific time frame but urged the Department to act "with all deliberate speed," including a requirement for retrofitting when an aircraft is taken out of service.<sup>31</sup> Similarly, advocacy organizations including AARP, FlyersRights, Disability Rights Pennsylvania, Flying Disabled, and Dementia-Friendly Airports Working Group all argued for significantly accelerated implementation. Some urged retrofitting, and others noted that DOT required accessible lavatories on twin-aisle aircraft within only two years from the date of that rule. FlyersRights argued that the larger lavatories should also be required on aircraft

manufactured pursuant to *amended* type certificates filed three years after the effective date of the final rule.

Airlines supported the proposed rule as written. A4A/IATA posited that the six-year delay identified by PVA was a result of the Department's choices and not those of the stakeholders. A4A/IATA opposed any reduction in the rule's proposed timing and asked for a full explanation of DOT's justification for any accelerated implementation, as well as additional public comment if such a reduction would occur. With those qualifications, A4A/IATA indicated that it was open to supporting a 15/17 implementation period. Spirit Airlines described the timeline as proposed by the Department as "reasonable."

As for aircraft manufacturers, Boeing asked the Department to honor the timeline of the negotiated rulemaking.<sup>32</sup> Airbus did not comment on the implementation period but noted that many of its aircraft are already accessible, with more on the way to delivery.

#### DOT Response

After careful consideration of all of the comments, the Department concludes that a faster implementation period is both necessary and appropriate. First, in our view, requiring accessible lavatories on an 18/20 implementation period would penalize passengers with disabilities and other stakeholders who would benefit from the rule, for the Department's own delay in finalizing the rule. The Department proposed 18/20 years for the implementation period to honor the promise to stakeholders during the negotiated rulemaking. However, given the technical feasibility of having accessible lavatories earlier and the Department's position that accessible toileting is a basic human need and right, the Department determined that it is unacceptable to have individuals with disabilities wait another 18/20 years after the effective date of the rule. In our view, reducing the implementation period by six years would be the *minimum* that the Department could do to maintain the reasonable expectations of the stakeholders as expressed in the 2016 ACCESS Advisory Committee's Term Sheet. Given the significance of accessible lavatories to passengers with disabilities and other stakeholders, it is also appropriate to do more than the

bare minimum. The Department is mandating implementation on the fastest basis that is both realistic and economically feasible. After reviewing the record of the ACCESS Advisory Committee and the comments received to the NPRM, we believe that a 10/12 implementation period for newly-manufactured aircraft is realistic from a technological, engineering, and manufacturing perspective. This is particularly true given that the core lavatory specifications found in this final rule are essentially unchanged from the 2016 Term Sheet and the 2021 NPRM. In short, we are confident that technical solutions do exist, and can be implemented within a 10/12 time frame. This time frame also allows airlines and manufacturers time to satisfy existing orders and deliveries without interruption.

So far as we can determine, the primary driver of industry's concern is cost, in the form of lost revenue from removal of seats and/or impingement of a larger lavatory into space that could be used for galleys (food and beverage service).<sup>33</sup> As we explain in our Regulatory Impact Analysis, those costs may be recoverable in the form of higher air fares. Moreover, while the Department could reduce those burdens by extending the implementation period, any such extension will necessarily impose burdens on passengers with disabilities who will be forced to wait longer to enjoy the basic human dignity of being able to use a lavatory on a long-haul flight.

Our economic analysis reflects that with a 10/12 implementation period, that net revenue impacts to airlines will range from a loss of 1.6 percent to a gain of less than one percent. Airfare increases could range from zero to 3 or 4 percent of baseline airfares, depending on the ability of airlines to pass on increased costs through increases in airfare. These are relatively small impacts considering access to toilets is a basic human need and should be available to all.

We have considered the even more aggressive solution of retrofitting, but continue to hold the view that retrofitting should not be required

<sup>33</sup> During the Access Advisory Committee proceedings, industry stakeholders expressed concern about mandating accessible lavatories in the middle of an aircraft's ordering/manufacturing cycle, and maintaining fleet commonality, (*i.e.*, realizing the considerable cost savings that arise from having predictable features among an aircraft's fleet). See <https://www.transportation.gov/office-general-counsel/negotiated-regulations/3rd-plenary-meeting-%E2%80%93-93-presentation-airplane-life-cycle>. We have not seen evidence that a 10/12 implementation period would significantly impact either of these concerns.

<sup>29</sup> Most newly manufactured aircraft are based on an *existing* type-certificated design that has already been filed with the FAA. The intent of the "new type-certificated design" provision is to require fully accessible lavatories as part of any newly designed aircraft, so long as the design is filed more than one year after the effective date of the rule. A4A and IATA asked the Department to clarify that this provision "is referring to a clean sheet design (*i.e.*, new TCDS and pursuant to 14 CFR 21.19), not aircraft that are already type certificated (*e.g.*, B737-MAX) with amended type certification programs." We believe that the rule is adequately clear that this provision refers to clean sheet designs.

<sup>30</sup> See 14 CFR 382.63 ("You are not required to retrofit cabin interiors of existing aircraft to comply with the requirements of this section. However, if you replace a lavatory on an aircraft with more than one aisle, you must replace it with an accessible lavatory.")

<sup>31</sup> Comment of United Spinal at 2 ("DOT should require accessible lavatories be installed in all single-aisle aircraft that are taken out of service for any other changes to the cabin.")

<sup>32</sup> Boeing provided proprietary information regarding the options that it has explored and is currently exploring for providing accessible lavatory solutions, along with the advantages and disadvantages of those options as viewed by its airline customers.

because of cost uncertainties. Similarly, we have not required accessible lavatories on amended type-certificated aircraft earlier than 10/12 because this could again require either retrofitting or early replacement of existing aircraft, which would add significant costs or may not be technically feasible due to the production cycle of new aircraft. We will continue to require accessible lavatories on new type-certificated (clean sheet) designs filed with the FAA or a foreign safety authority more than 1 year after the effective date of the rule.<sup>34</sup>

### III. Severability

The overall purpose of this rule is to improve accessibility of lavatories on single-aisle aircraft in both the short term and the long term. The short-term elements include improvements to lavatory interiors, information requirements, training requirements, required procedures for sharps and bio-waste, removal of the International Symbol of Accessibility, improvements to the aircraft's OBW, and a requirement for a visual barrier under certain circumstances. All of these measures are designed to improve accessibility in the time period before the size of the lavatories themselves must be expanded. The Department finds that these short-term improvements can operate independently of the long-term measures to increase the size of the lavatory. Moreover, while the short-term measures form a suite of improvements, they can each function separately from each other. For example, the required standards for an accessible OBW can function separately from the required improvements to existing lavatory interiors.

The long-term improvements include a lavatory size requirement for the passenger onboard an OBW, a lavatory size requirement for the passenger's attendant, and a requirement that airlines provide such lavatories on new single-aisle aircraft within a 10/12 time frame as discussed above. These measures can function separately from each other and are intended to operate as such. In the event that a court were to invalidate one or more of this final rule's unique provisions, the Department's intent is that the

remaining provisions should remain in effect to the greatest extent possible.

### Regulatory Analyses and Notices

*A. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), Executive Order 14094 (Modernizing Regulatory Review) and DOT Regulatory Policies and Procedures*

This final rule has been determined to be significant under section 3(f)(1) of Executive Order 12866 ("Regulatory Planning and Review"), as amended by Executive Order 14094, ("Modernizing Regulatory Review"),<sup>35</sup> and under the Department of Transportation's Regulatory Policies and Procedures because of its considerable interest to the disability community and the aviation industry. It has been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. A summary of the Department's economic analysis is provided in the paragraphs to follow, and the complete Regulatory Impact Analysis is available in the docket for this rulemaking.

The objective of the rule is to ensure that passengers with disabilities not only can access lavatories on single-aisle aircraft, but also have privacy and dignity while using the lavatory during air travel. As such, this final rule addresses a human rights issue and promotes freedom to travel for people with disabilities. The lack of accessible lavatories on single-aisle aircraft makes air travel difficult for passengers with disabilities, especially if they use wheelchairs and need help transferring to a lavatory toilet. Some of the passengers, knowing that they will not be able to use the lavatory during a flight, may dehydrate themselves or even withhold bodily functions so that they do not need to urinate. These actions can cause adverse health effects, including increased chances of urinary tract infections. Other passengers may use adult diapers or catheters, which they may find degrading and uncomfortable. Some wheelchair users avoid flying altogether.

The Department has determined that regulation is necessary because society cannot count on the private market to provide accessible lavatories reliably. The provision of accessible lavatories involves resource costs, as evident in the airlines' comments on the proposed rule and their reluctance to comply with the terms they agreed to during a negotiated rulemaking. Moreover, the lack of reliable information on

accessibility means that consumers do not have an adequate mechanism for expressing their preferences when they have a choice between flights with or without accessible lavatories. This final rule includes requirements that airlines provide accurate and consistent accessibility information under a more immediate timeframe to address the information problem. Accurate information benefits passengers with disabilities as well as those who simply would prefer additional space to perform routine lavatory functions if presented with the option.

The primary benefits of the rule are due to expected improvements in the quality of travel experience for persons with disabilities who currently participate in the market for air travel. In addition, greater convenience and accessibility could lead passengers with disabilities to increase their use of air travel, either by switching from slower modes of travel or by making more long-distance trips. Assigning monetary values to such basic human rights as the ability to relieve oneself involves intangible dimensions that are inherently difficult to quantify. These values are not necessarily observed in the market. Nevertheless, the Department gives full consideration to such unquantified and non-monetized benefits in its evaluation of this rule. These attributes interact with and can be difficult to empirically distinguish from other aspects, including convenience or reductions in the amount of time needed for travel planning or for travel itself, that are easier to value. Using an estimate of passengers' willingness to pay to avoid inconvenience, the benefits analysis applies a value of \$194 one-way trip to monetize benefits of accessible lavatories to passengers with disabilities.

The cost analysis is premised on the assumption that installing an accessible lavatory will require airlines, on average, to eliminate three passenger seats per aircraft. The three-seat loss assumption originated from airline industry analysis presented early in the rulemaking proceedings, and the Department recognizes that there will be variation in impacts across airlines. The Department lacks sufficient data to support an alternative assumption.

Table 1 summarizes the results of the analysis and the potential economic effects of the rule over the analysis timeframe, 2023–2067. Benefits analyzed over 2023–2067 are \$1 billion at a 3% discount rate or \$571 million at a 7% discount rate. The loss of three passenger seats per aircraft results in societal costs that include lost producer

<sup>34</sup> During the Access Advisory Committee proceedings, stakeholders learned that it took Bombardier approximately 20 years to manufacture its C-series aircraft from a clean-sheet design that included an accessible lavatory. It does not logically follow, that it necessarily takes 20 years to implement accessibly lavatory solutions on existing type-certificated aircraft. As we also explained in the NPRM, airline customers largely chose *not* to select the accessible-lavatory option on the C-Series (now Airbus A220) aircraft that they ordered.

<sup>35</sup> 88 FR 21879 (Apr. 11, 2023).

surplus due to the reduction in the number of passengers transported and the value of lost consumption. There also are resource costs due to manufacturing and designing improved lavatories and on-board wheelchairs as well as for flight attendant training. The cost analyzed over 2023 through 2067, are \$459 million at a 3% discount rate or \$228 million at a 7% discount rate. The rule also could result in a transfer from passengers to airlines due to airlines increasing airfares in response to the reduced supply of seats. The annualized transfers estimated for the primary analysis are \$2.2 billion at a 3% discount rate or \$1.1 billion at a 7% discount rate.

Passengers might experience economic effects in the form of increased airfares. The primary analysis estimates that in 2060 when all aircraft have accessible lavatories, domestic passengers would pay an additional \$2.54 per ticket on average and international passengers would pay an

additional \$12.28. Passengers flying in earlier years, when some aircraft would not have accessible lavatories and reduced seating, would experience smaller airfare increases. The increase in ticket prices and resulting transfer from passengers offsets the direct revenue loss to airlines. Analysis of potential revenue and price effects suggests that relative to the baseline, net revenue impacts to airlines will range from a loss of 1.6 percent loss to a gain of less than one percent. Airfare increases could range from zero to 3 or 4 percent of baseline airfares, depending on the ability of airlines to pass on increased costs through increases in airfare. Segments of the market characterized by a low price elasticity of demand will experience the largest potential fare increases, while the most price sensitive passengers will likely experience little to no airfare increases. In any case, the Department does not view compromises in accessibility as an acceptable mechanism for airlines to

achieve or maintain lower prices in the market for air travel when the solution is technically and economically feasible.

Based upon the economic analysis and other information received from stakeholders throughout the rulemaking, the Department finds that the benefits of the final rule justify its costs. While the benefits of the rule have not been monetized, the available information sufficiently demonstrates that the status quo is untenable for passengers with disabilities who want or need to travel by air. In the context of the market for air travel and the airline industry, the estimated costs and expected impacts to airfares and industry revenues are reasonable, especially when viewed against the lengthy lead time for compliance and that industry agreed to make the accessibility improvements reflected in the final rule in 2016. These facts considered as a whole provide the basis for the Department’s reasoned determination that the benefits of the rule justify its costs.

TABLE 1—SUMMARY OF ECONOMIC IMPACTS, 2023–2067  
[2021 dollars, millions]

Item	Total present value (3% discount)	Annualized (3% discount)	Total present value (7% discount)	Annualized (7% discount)
Benefits .....	\$21,166	\$1,019	\$7,282	\$571
Costs:				
Lost producer surplus .....	8,997	433	2,733	214
Value of lost consumption (deadweight loss) .....	459	22	127	10
Resource costs for lavatories, onboard wheelchairs, and flight attendant training .....	94	4	48	4
Total societal costs .....	9,549	459	2,908	228
Net benefits .....	11,616	560	4,374	343
Other economic effects:				
Transfers from passengers to airlines .....	44,785	2,157	13,562	1,063

**B. Regulatory Flexibility Act**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. A direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft (*i.e.*, aircraft with up to 60 seats/18,000-pound payload capacity). Relative to typical airlines’ operating costs and revenues, the impact is expected to be nonsignificant. We received no comment on the preliminary finding of nonsignificance or, more generally, the potential impact of this rulemaking on small entities. Therefore, the

Department certifies that this final rule will not have a significant impact on a substantial number of small entities.

**C. Executive Order 13132 (Federalism)**

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”). This final rule does not include any provision that: (1) on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts State law. States are already preempted from regulating in this area by the Airline Deregulation Act, 49

U.S.C. 41713. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

**D. Executive Order 13084**

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 (“Consultation and Coordination with Indian Tribal Governments”). Because this rulemaking does not significantly or uniquely affect the communities of the Indian Tribal governments or impose substantial direct compliance costs on them, the funding and consultation requirements of Executive Order 13084 do not apply.

### E. Paperwork Reduction Act

This final rule adds two new collections of information that would require approval OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3501 *et seq.*). The rule requires carriers operating at least one aircraft with an FAA-certificated maximum seating capacity of 60 or more to provide information, on request, to qualified individuals with a disability or persons making inquiries on their behalf concerning, at a minimum, the accessibility features of aircraft lavatories set forth in the rule. A “carrier” is defined as a U.S. citizen or foreign citizen that undertakes, directly or indirectly, or by a lease or any other arrangement, to engage in air transportation.

This information must be available on the carrier’s website (if the carrier markets tickets to the public). The information must also be provided in printed or electronic form on the aircraft, including picture diagrams of accessibility features in the lavatory and the location and usage of all controls and dispensers. Carriers must provide the information required by this rule three years after the effective date of the rule.

Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing notice of the proposed information collection and a 60-day comment period, and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The Department has not yet published a notice of the proposed information collection because the information will not be required until three years after the effective date of the final rule.

### F. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by States, local or Tribal governments, or by the private sector, of \$100 million or more (adjusted annually for inflation with base year of 1995) in any one year. The 2021 threshold after adjustment for inflation is \$165 million, using the Implicit Price Deflator for the Gross Domestic Product. The assessment may be included in conjunction with other assessments, as it is here.

The final rule is unlikely to result in expenditures by State, local, or Tribal governments of more than \$100 million annually. However, it is estimated to result costs to the airline industry that may exceed \$165 million annually. The estimated costs are discussed in the Department’s Regulatory Impact Analysis.

### G. National Environmental Policy Act

The Department has analyzed the environmental impacts of this action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency’s NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS).<sup>36</sup> In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS.<sup>37</sup> Paragraph 4.c.6.i of DOT Order 5610.1C categorically excludes “[a]ctions relating to consumer protection, including regulations.” Because this rulemaking relates to ensuring both the nondiscriminatory access to air transportation for consumers with disabilities, as well as the safe transport of the traveling public, this rulemaking is a consumer protection rulemaking. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

### H. Congressional Review Act

Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (the Congressional Review Act), OMB’s Office of Information and Regulatory Affairs has found that this rule falls within the scope of 5 U.S.C. 804(2).

### List of Subjects in 14 CFR Part 382

Air Carriers, Civil rights, Consumer protection, Individuals with Disabilities, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of Transportation amends 14 CFR part 382 as follows:

<sup>36</sup> See 40 CFR 1508.4.

<sup>37</sup> Id.

## PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

■ 1. The authority citation for part 382 continues to read as follows:

**Authority:** 49 U.S.C. 41702, 41705, 41712, and 41310.

### Subpart C—Information for Passengers

■ 2. In § 382.41, revise paragraph (e) to read as follows:

#### § 382.41 What flight-related information must carriers provide to qualified individuals with a disability?

\* \* \* \* \*

(e) Information regarding accessibility of lavatories (*see* § 382.63(h)); and

\* \* \* \* \*

### Subpart E—Accessibility of Aircraft

■ 3. In § 382.63, add the phrase “not covered in paragraph (f) of this section” after the word “aircraft” in paragraph (b), and add paragraphs (f), (g), and (h) to read as follows:

#### § 382.63 What are the requirements for accessible lavatories?

\* \* \* \* \*

(f) As a carrier, you must ensure that all new single-aisle aircraft that you operate with an FAA-certificated maximum seating capacity of 125 or more that are delivered on or after October 2, 2026, and on which lavatories are provided shall include at least one lavatory that meets the following specifications:

(1) Grab bars must be provided and positioned as required to meet the needs of individuals with disabilities.

(2) Lavatory faucets must have controls with tactile information concerning temperature. Alternatively, carriers may comply with this requirement by ensuring that lavatory water temperature is adjusted to eliminate the risk of scalding for all passengers. Automatic or hand-operated faucets shall dispense water for a minimum of five seconds for each application or while the hand is below the faucet.

(3) Attendant call buttons and door locks must be accessible to an individual seated within the lavatory.

(4) Lavatory controls and dispensers must be discernible through the sense of touch. Operable parts within the lavatory must be operable with one hand and must not require tight grasping, pinching, or twisting of the wrist. You must comply with these requirements to the extent that such accessible components are reasonably

available and certificated for the applicable aircraft type. You are not responsible for acquiring lavatory controls and dispensers with an accessible feature described above so long as you inform the Department of their unavailability despite your reasonable efforts.

(5) The lavatory door sill must provide minimum obstruction to the passage of the on-board wheelchair across the sill while preventing the leakage of fluids from the lavatory floor and trip hazards during an emergency evacuation.

(6) Toe clearance must not be reduced from current measurements.

(7) The aircraft must include a visual barrier that must be provided upon request of a passenger with a disability. The barrier must provide passengers with disabilities using the lavatory (with the lavatory door open) a level of privacy substantially equivalent to that provided to ambulatory users. Visual barriers are not an acceptable method of providing privacy with respect to lavatories covered in § 382.64.

(g) You are not required to retrofit cabin interiors of existing single-aisle aircraft to comply with the requirements of paragraph (f) of this section. However, if you replace a lavatory on a single-aisle aircraft after October 2, 2026, you must replace it with a lavatory complying with the requirements of paragraph (f) of this section. Under this paragraph (g), a lavatory is not considered replaced if it is removed for specified maintenance, safety checks, or any other action that results in returning the same lavatory into service. For retrofit lavatories, there shall be no requirement to install a visual barrier if doing so will obstruct the visibility of exit signs.

(h) As a carrier operating at least one aircraft with an FAA-certificated maximum seating capacity of 60 or more, you must comply with the following requirements:

(1) You must train flight attendants to proficiency on an annual basis to provide assistance in transporting qualified individuals with disabilities to and from the lavatory from the aircraft seat. Such training shall include hands-on training on the retrieval, assembly, stowage, transfer features, and use of the aircraft's on-board wheelchair, and regarding the accessibility features of the lavatory, including any assembly or modifications to accessibility features.

(2) You must provide information, on request, to qualified individuals with a disability or persons making inquiries on their behalf concerning, at a minimum, the accessibility features of aircraft lavatories set forth in paragraph

(f) of this section. This information must also be available on the carrier's website (if the carrier markets tickets to the public), and in printed or electronic form on the aircraft, including picture diagrams of accessibility features in the lavatory and the location and usage of all controls and dispensers.

(3) You must remove or conceal the International Symbol of Accessibility from new and in-service aircraft equipped with lavatories that are not capable of facilitating a seated independent transfer (*i.e.*, a transfer from an on-board wheelchair to the toilet seat without requiring the use of an assistant). You must include the International Symbol of Accessibility if the lavatory is capable of providing a seated independent transfer.

(4) You must develop and, upon request, inform passengers of trash disposal procedures and processes for sharps and bio-waste.

(5) You must comply with the provisions of this paragraph (h) by October 2, 2026.

■ 4. Section 382.64 is added to read as follows:

**§ 382.64 What are the requirements for large accessible lavatories on single-aisle aircraft?**

(a) As a carrier, you must ensure that all new single-aisle aircraft that you operate with an FAA-certificated maximum seating capacity of 125 seats or more in which lavatories are provided, shall include at least one lavatory of sufficient size to:

(1) Permit a qualified individual with a disability equivalent in size to a 95th percentile male to approach, enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair, in a closed space that affords privacy equivalent to that afforded to ambulatory users; and

(2) Permit an assistant equivalent in size to a 95th percentile male to assist a qualified individual with a disability, including assisting in transfers between the toilet and the aircraft's on-board wheelchair, within a closed space that affords privacy equivalent to that afforded to ambulatory users.

(b) You are not required to retrofit cabin interiors of existing single-aisle aircraft to comply with the requirements of paragraph (a) of this section.

(c) As a carrier, you must comply with the requirements of this section with respect to new aircraft that you operate that were originally ordered after October 3, 2033, or delivered after October 2, 2035, or are part of a new type-certificated design filed with the

FAA or a foreign carrier's safety authority after October 2, 2024.

■ 5. In § 382.65, add paragraphs (e), (f), (g), and (h) as follows:

**§ 382.65 What are the requirements concerning on-board wheelchairs?**

\* \* \* \* \*

(e) As a carrier, you must ensure that all new single-aisle aircraft that you operate with an FAA-certificated maximum seating capacity of 125 or more that are delivered on or after October 2, 2026, and on which lavatories are provided include an on-board wheelchair meeting the requirements of this section. The Access Board's published nonbinding technical assistance on aircraft on-board wheelchairs may be relied upon for compliance with these requirements.

(1) The on-board wheelchair must be maneuverable both forward and backward through the aircraft aisle by an attendant.

(2) The height of the on-board wheelchair seat must align with the height of the aircraft seat so as to facilitate a safe transfer between the on-board wheelchair seat and the aircraft seat.

(3) The on-board wheelchair must have wheels that lock in the direction of travel, and that lock in place so as to permit safe transfers. Any other moving parts of the on-board wheelchair must be capable of being secured such that they do not move while the occupied on-board wheelchair is being maneuvered.

(4) The on-board wheelchair shall be designed not to tip or fall in any direction under normal operating conditions when occupied for use.

(5) The on-board wheelchair must have a padded seat and backrest and must be free of sharp or abrasive components.

(6) The on-board wheelchair must have arm supports that are sufficiently structurally sound to permit transfers and repositionable so as to allow for unobstructed transfers; adequate back support; torso and leg restraints that are adequate to prevent injury during transport; and a unitary foot support that provides sufficient clearance to traverse the threshold of the lavatory and is repositionable so as to allow for unobstructed transfer. All restraints must be operable by the passenger.

(7) The on-board wheelchair must be maneuverable in a forward orientation partially into at least one aircraft lavatory to permit transfer from the on-board wheelchair to the toilet.

(8) The on-board wheelchair must be maneuverable into the aircraft lavatory without protruding into the clear space

needed to completely close the lavatory door.

(9) The on-board wheelchair must prominently display instructions for proper use.

(f) You are not required to expand the existing FAA-certificated on-board wheelchair stowage space of the aircraft, or modify the interior arrangement of the lavatory or the aircraft, in order to comply with this section. However, if the on-board wheelchair that you obtain does not fit within the original stowage space, and another space exists (*e.g.*, an overhead compartment) where the on-board wheelchair could fit consistent with FAA safety standards, then you must stow the on-board wheelchair in that space and must request any necessary FAA approval to do so. You are not required to make the on-board wheelchair available if the pilot-in-command determines that safety or security considerations preclude its use.

(g) You must acquire an OBW that complies with as many requirements set forth in paragraph (e) of this section as are available. You are not responsible for the failure of third parties to develop and deliver an on-board wheelchair that complies with a requirement set forth in paragraph (e) of this section so long as you make reasonable efforts to purchase such an OBW and inform the Department at the address cited in § 382.159 that an on-board wheelchair meeting that requirement is unavailable despite your reasonable efforts. If you cannot provide a wheelchair meeting requirement (e)(8) of this section despite your reasonable efforts, then you must provide, on request, the use of the visual barrier (*e.g.*, a curtain) described in § 382.63(f)(7) to enable the passenger to perform lavatory functions in privacy.

(h) If you replace an on-board wheelchair on aircraft with an FAA-certificated maximum seating capacity of 125 or more after October 2, 2026, then you must replace it with an on-board wheelchair that meets the standards set forth in paragraph (e) of this section.

Issued this 25th day of July, 2023, in Washington, DC.

**Peter Paul Montgomery Buttigieg**,  
Secretary.

[FR Doc. 2023–16178 Filed 7–31–23; 8:45 am]

**BILLING CODE 4910–9X–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

#### 21 CFR Part 1300, 1302, and 1308

[Docket No. DEA–481]

RIN 1117–AB81

#### Implementation of the Designer Anabolic Steroid Control Act of 2014

**AGENCY:** Drug Enforcement Administration (DEA), Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** On December 18, 2014, the Designer Anabolic Steroid Control Act of 2014 (DASCA) became law. The Act amended the Controlled Substances Act to revise and add specified substances to the definition of “anabolic steroid.” The Act provided a new mechanism for temporary and permanent scheduling of anabolic steroids, and added specific labeling requirements for products containing anabolic steroids. The Drug Enforcement Administration (DEA) is publishing this rule to amend and reorganize its regulations to make them consistent with DASCA regarding the updated definition, specific substances, criteria and timeframes applicable to temporary and permanent scheduling of anabolic steroids, and labeling requirements.

**DATES:** This final rule is effective August 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Terrence L. Boos, Ph.D., Chief (DOE), Diversion Control Division, Drug Enforcement Administration; Mailing Address: 8701 Morrisette Drive, Springfield, Virginia 22152. Telephone: (571) 362–3249.

**SUPPLEMENTARY INFORMATION:** On December 18, 2014, the Designer Anabolic Steroid Control Act of 2014, Public Law 113–260 (128 Stat. 2929) (DASCA), became law. The purpose of this final rule is to codify in Drug Enforcement Administration (DEA) regulations the statutory amendments to the Controlled Substances Act (CSA) made by DASCA. This final rule merely conforms the DEA’s regulations to the statutory amendments to the CSA that have already taken effect, and does not add additional requirements to the regulations. Thus, because this rule does no more than incorporate statutory amendments into DEA’s regulations, publishing a notice of proposed rulemaking and soliciting public comment are unnecessary; and the rule is instead being issued as a final rule effective immediately.

## DASCA’s Changes to the CSA

A House Report for DASCA stated that the purpose of the Act is “to more effectively regulate anabolic steroids.” H.R. Rep. No. 113–587, Part 2, at 4 (2014). DASCA makes four changes to the CSA: DASCA (1) revises and adds additional substances to the existing definition of “anabolic steroid” in 21 U.S.C. 802(41); (2) provides a new mechanism for temporary and permanent scheduling of anabolic steroids in 21 U.S.C. 811(i); (3) adds labeling requirements for anabolic steroids under 21 U.S.C. 825(e); and (4) provides new penalties for violating the labeling requirements under 21 U.S.C. 842(a)(16) and 842(c)(1)(C) and (D).

It is evident from the enactment of DASCA that Congress believed the prior two public laws addressing steroids under the CSA (the Anabolic Steroids Control Act of 1990, Pub. L. 101–647, and the Anabolic Steroid Control Act of 2004, Pub. L. 108–358) had not sufficiently stemmed the misuse of anabolic steroids by athletes, students, and others. Among other things, Congress found that the prior statutory definition of an anabolic steroid was too narrow and that this narrowness was being exploited by some manufacturers and distributors. DASCA was designed to remedy this situation by: (1) expressly controlling under the CSA additional anabolic steroids that have emerged in the United States in recent years; and (2) expanding the definition of an anabolic steroid to allow other such steroids to be controlled as they emerged in the future. Indeed, the word “designer” in DASCA’s title reflects that Congress was targeting those who sought to circumvent the CSA by producing anabolic steroids that were slightly different in chemical structure from those substances specifically listed in the CSA but which were intended to cause the same effects—and thus were potentially harmful to users. The following statement by one of the sponsors of the legislation, Senator Whitehouse, illustrates these considerations:

[A] loophole in current law allows for designer anabolic steroids to easily be found on the internet, in gyms, and even in retail stores.

Designer steroids are produced by reverse engineering existing illegal steroids and then slightly modifying the chemical composition, so that the resulting product is not on [DEA’s] list of controlled substances. When taken by consumers, designer steroids can cause serious medical consequences, including liver injury and increased risk of heart attack and stroke. They may also lead to psychological effects such as aggression, hostility, and addiction.

160 Cong. Rec. S891–892 (daily ed. Feb. 11, 2014) (statement of Sen. Whitehouse); *accord* 160 Cong. Rec. H7460 (daily ed. Sept. 15, 2014) (statement of Rep. Pitts); *id.* at H7461 (statement of Rep. Christensen); *id.* (statement of Rep. Waxman).

#### *Changes to the Definition of an Anabolic Steroid*

To curtail the foregoing activity, DAsCA amended the CSA definition of “anabolic steroid” by adding 22 new substances to the prior statutory list of anabolic steroids. *See* 21 U.S.C. 802(41)(A)(i)–(lxxiv). While the statute lists 25 substances, two of these substances are duplicates of substances previously listed in the regulatory definition of anabolic steroid, and one substance is included twice on the statutory list, bringing the actual number to 22 new specific substances. In particular, methasterone and prostanazol were included in the statute but were already listed, albeit under alternative chemical names, in the regulatory definition of anabolic steroid.<sup>1</sup> 4-Chloro-17 $\alpha$ -methyl-androsta-1,4-diene-3,17 $\beta$ -diol is listed twice in the statute. *See id.* 802(41)(A)(liii), (lvii).

This rule revises the existing regulatory definition of “anabolic steroid” in 21 CFR 1300.01(b) to incorporate the revised statutory standard, moves the list of specifically named anabolic steroids from 21 CFR 1300.01(b) to 21 CFR 1308.13(f), and adds the 22 new substances included in DAsCA to the relocated list at 21 CFR 1308.13(f).<sup>2</sup> In addition to incorporating the language of the statutory amendments of DAsCA into DEA’s regulations, this rule relocates and makes a number of organizational and typographical changes to the regulatory list of anabolic steroids to improve the list’s clarity. These changes, however, do not add or remove any substances from this list beyond the 22 new substances added by DAsCA or otherwise alter DAsCA’s language. DAsCA expanded the definition of “anabolic steroid” to include a drug or hormonal substance (other than

estrogens, progestins, corticosteroids, and dehydroepiandrosterone) that is not listed and is derived from, or has a chemical structure substantially similar to a listed anabolic steroid or steroids, if it: (1) has been created or manufactured with the intent of producing a substance that either promotes muscle growth or otherwise causes a pharmacological effect similar to that of testosterone; or (2) has been, or is intended to be, marketed or otherwise promoted in any manner suggesting that consuming it will promote muscle growth or any pharmacological effect similar to that of testosterone. 21 U.S.C. 802(41)(C)(i). Unless otherwise excepted or listed in another schedule, all substances meeting the definition of “anabolic steroid” are controlled under schedule III of the CSA. *See id.* 812(c), Schedule III, (e); 21 CFR 1300.01(b), 1308.13(f). Thus, other substances that meet DAsCA’s revised definition of an anabolic steroid are also considered schedule III substances, even if they are not specifically listed in § 1308.13(f).

Under this modified definition, a substance shall not be considered to be a drug or hormonal substance if it: (1) is an herb or other botanical, a concentrate, metabolite, or extract of, or a constituent isolated directly from, an herb or other botanical, or a combination of two or more such substances; (2) is a dietary ingredient for purposes of the Federal Food, Drug and Cosmetic Act (FD&C Act); and (3) is not anabolic or androgenic. 21 U.S.C. 802(41)(C)(ii). Any person claiming the benefit of exemption or exception under this definition shall bear the burden in administrative or judicial proceedings of going forward with evidence with respect to such exemption or exception in accordance with 21 U.S.C. 885(a). 21 U.S.C. 802(41)(C)(iii).

#### *Changes to the Provisions Governing the Administrative Scheduling of Anabolic Steroids*

To further diminish the ability of illicit manufacturers of anabolic steroids to circumvent the law by producing new designer substances with similar effects, DAsCA also made it easier for DEA to add such substances to the list of anabolic steroids on a temporary and permanent basis. Specifically, DAsCA added a new subsection to the CSA (21 U.S.C. 811(i)), which gives the Attorney General (and thus the Administrator of DEA by delegation) the authority to issue a temporary order adding a drug or substance to the definition of “anabolic steroid” upon the finding that: (A) the substance satisfies the criteria for being considered an anabolic

steroid but is not already listed in 21 U.S.C. 802(41) or in the regulations of the Attorney General (in practice, the regulatory definition of “anabolic steroid” in 21 CFR 1300.01); and (B) such addition will assist in preventing abuse or misuse of the substance. 21 U.S.C. 811(i)(1). Such a temporary control order may last up to 24 months after the effective date, with a possible extension of 6 months, and may not take effect until 30 days after the date of the publication by the Attorney General of a notice in the **Federal Register** of the intention to issue such an order and the grounds upon which such an order is to be issued. 21 U.S.C. 811(i)(2). The Attorney General shall also transmit notice of a proposed order to the Secretary of Health and Human Services and take into consideration any comments submitted by the Secretary in response to that notice. 21 U.S.C. 811(i)(3). DAsCA also gives the DEA the authority to issue, by rule, a permanent order adding a drug or other substance to the definition of an anabolic steroid if that drug or other substance satisfies the criteria for being considered an anabolic steroid under 21 U.S.C. 802(41). 21 U.S.C. 811(i)(6).

Unlike scheduling under 21 U.S.C. 811(a), nothing in DAsCA requires this rulemaking to take place on the record after opportunity for a hearing, and thus these permanent orders may be issued pursuant to the informal rulemaking procedures prescribed by subchapter II of chapter 5 of Title 5 of the United States Code. *See* 5 U.S.C. 553(c).

#### *New Labeling Requirements for Anabolic Steroids*

To protect potential consumers from unknowingly ingesting anabolic steroids, and to ensure that all persons in the distribution chain identify those items that contain anabolic steroids, DAsCA also added a labeling requirement to the CSA. This labeling provision states that it is unlawful to import, export, manufacture, distribute, or dispense—or possess with intent to manufacture, distribute, or dispense—an anabolic steroid or product containing an anabolic steroid, unless the product bears a label clearly identifying the anabolic steroid or product containing an anabolic steroid by the nomenclature used by the International Union of Pure and Applied Chemistry (IUPAC). 21 U.S.C. 825(e)(1). DAsCA makes an exception to the IUPAC labeling requirement where the product is labeled in the manner required under the CSA and the FD&C Act; that is, the product is the subject of an approved application as described in 21 U.S.C. 355(b) or (j), or the product is

<sup>1</sup> Methasterone is currently identified as 2 $\alpha$ ,17 $\alpha$ -dimethyl-5 $\alpha$ -androstano-17 $\beta$ -ol-3-one in 21 CFR 1300.01(b)(“anabolic steroid”)(32), but as 2 $\alpha$ ,17 $\alpha$ -dimethyl-17 $\beta$ -hydroxy-5 $\alpha$ -androstano-3-one in 21 U.S.C. 802(41)(A)(lviii). Prostanazol is currently identified as 17 $\beta$ -hydroxy-5 $\alpha$ -androstano[3,2-c]pyrazole in 21 CFR 1300.01(b)(“anabolic steroid”)(58), but as [3,2-c]pyrazole-5 $\alpha$ -androstano-17 $\beta$ -ol in 21 U.S.C. 802(41)(A)(lxxiv). This rule revises the regulatory list of anabolic steroids to include all these variations of the chemical names of methasterone and prostanazol.

<sup>2</sup> Although the list is being relocated from 21 CFR 1300.01(b) to 21 CFR 1308.13(f), all listed or defined anabolic steroids will maintain the same Controlled Substance Code Number, 4000.

exempt from the provisions of 21 U.S.C. 355 because it is intended solely for investigational use as described in 21 U.S.C. 355(i) and it is being used exclusively for the purposes of a clinical trial that is the subject of an effective investigational new drug application. *Id.* 825(e)(2).

DASCA also added new civil fine provisions for failure to comply with the labeling requirements:

- For a violation by an importer, exporter, manufacturer, or distributor (except as provided in the subsequent paragraph), up to \$500,000 per instance of importation, exportation, manufacturing, distribution, or possession with intent to manufacture or distribute. 21 U.S.C. 842(c)(1)(C).

- In the case of a distribution, dispensing, or possession with intent to distribute or dispense in violation of the labeling requirements at the retail level, up to \$1,000 per violation. “At the retail level” refers to products sold, or held for sale, directly to the consumer for personal use. Each package, container, or other separate unit containing an anabolic steroid that is distributed, dispensed, or possessed with intent to distribute or dispense at the retail level is a separate violation. 21 U.S.C. 842(c)(1)(D). Failure to comply with labeling requirements may be taken into account by DEA when issuing or revoking a registration.<sup>3</sup>

These penalty provisions are discussed here for the sake of completeness and given their close connection with other DASCA provisions. DEA is not amending its regulations to incorporate these civil fine provisions, as DEA’s regulations do not address civil fines in general, making such amendment unnecessary.

### Impact of Statutory Changes on Regulatory Requirements

In enacting DASCA and expanding the scope of substances that fall within the CSA definition of an anabolic steroid, Congress increased the number of substances that are schedule III controlled substances and subject to the corresponding provisions of the CSA. This law added 22 new substances to the list of schedule III controlled substances, which are included in 21 CFR 1308.13(f).

Since December 18, 2014, the manufacture, import, export, distribution, or sale of a newly listed anabolic steroid or a substance meeting the revised definition of an anabolic steroid, except by DEA registrants, has been a violation of the CSA that may result in imprisonment and fines. 21

U.S.C. 841, 960. Possession of the steroids unless legally obtained is also subject to criminal penalties. 21 U.S.C. 844. Importation of these schedule III steroids is illegal unless the person importing the steroids is registered with DEA as an importer or researcher and files the required declaration for each shipment. Illegal importation of a schedule III anabolic steroid is a violation of the CSA that may result in imprisonment and fines. 21 U.S.C. 960(a)(1).

### Disposal of Anabolic Steroids

Persons who possess substances defined as anabolic steroids and who wish to dispose of them rather than becoming registered to handle them should contact their local DEA Diversion field office for assistance in disposing of these substances legally. The DEA Diversion field office will provide the person with instructions regarding the disposal. A list of local DEA Diversion field offices may be found at <https://apps2.deadiversion.usdoj.gov/contactDea/spring/fullSearch>.

### Good Cause for Issuing This Rule as a Final Rule Without Notice and Comment

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act (APA), 5 U.S.C. 553, including notice of proposed rulemaking and the opportunity for public comment, if such actions are determined to be unnecessary, impracticable, or contrary to the public interest. DEA finds there is good cause within the meaning of the APA to issue these amendments as a final rule without notice and comment, because these amendments, as explained above, merely conform to the implementing regulations with recent amendments to the CSA that have already taken effect (*see* 5 U.S.C. 553(b)(B), relating to notice and comment procedures). “[W]hen regulations merely restate the statute they implement, notice-and-comment procedures are unnecessary.” *Gray Panthers Advocacy Comm. v. Sullivan*, 936 F.2d 1284, 1291 (D.C. Cir. 1991); *see also United States v. Cain*, 583 F.3d 408, 420 (6th Cir. 2009) (contrasting legislative rules, which require notice-and-comment procedures, “with regulations that merely restate or interpret statutory obligations,” which do not); *Komjathy v. Nat’l Transp. Safety Bd.*, 832 F.2d 1294, 1296–97 (D.C. Cir. 1987) (*per curiam*) (when a rule “does no more than repeat, virtually verbatim, the statutory grant of authority,” notice-and-comment procedures are not required).

As DEA is simply incorporating the terms of DASCA into its regulations and making organizational and technical changes, publishing a notice of proposed rulemaking and soliciting public comment is unnecessary. The revised definition of “anabolic steroid,” the identification of 22 new specific substances as anabolic steroids, the new mechanism for temporary and permanent scheduling of anabolic steroids, and the revised labeling requirements for anabolic steroids have already been in effect since December 18, 2014. Moreover, while the list of anabolic steroids has been moved to § 1308.13(f), this change is a technical one; it imposes no new or substantive requirement on the public or DEA registrants. For the reasons discussed above, DEA also finds good cause exists to make this rule effective immediately upon publication. Therefore, we are issuing these amendments as a final rule, effective upon publication in the **Federal Register**. This rule constitutes final action on these changes under the APA, 5 U.S.C. 553.

### Regulatory Analysis

As explained above, DEA is issuing this final rule to revise its regulations so that they are consistent with the provisions of the CSA that were amended by the DASCA. In issuing this final rule, DEA has not gone beyond the statutory text enacted by Congress. DEA’s regulatory analysis is discussed below.

#### *Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)*

This final rule was developed in accordance with the principles of Executive Orders 12866 and 13563. 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). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866. Executive Order 12866 classifies a “significant regulatory action,” requiring review by the Office of Management and Budget (OMB), as any regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the

<sup>3</sup> See 21 U.S.C. 823(a), 824(a).

economy, productivity, competition, jobs, the environment, public health or safety, or State, local, 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 impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. This rule is not a "significant regulatory action" under Executive Order 12866.

On December 18, 2014, the Designer Anabolic Steroid Control Act of 2014 (DASCA) became law. The Act amended the Controlled Substances Act (CSA) to expand the general definition of "anabolic steroid" to include a broader range of substances, and to add 22 new specific substances to the list of named substances in the definition. The Act further provided a new mechanism for temporary and permanent scheduling of anabolic steroids as schedule III controlled substances, and added new labeling requirements for anabolic steroids, with penalties for violation of such requirements. These provisions of DASCA were self-implementing, and did not require any amendments to the Code of Federal Regulations in order to be effective. The 22 new specific substances that were not previously controlled and the other unnamed substances that meet DASCA's revised definition of anabolic steroid became schedule III substances with the passage of DASCA.

As stated above, the DEA is simply updating its regulations to be consistent with the exact terms of DASCA; this final rule does not change the legal status of these substances. Because the placement of these substances in schedule III, the revised general definition of "anabolic steroid," the criteria and timeframes applicable to temporary and permanent scheduling of anabolic steroids, and the labeling requirements for anabolic steroids (with penalties for violation) have already been in effect since December 18, 2014, any economic impact of DASCA has already been absorbed by the economy.

Therefore, this final rule will have no economic impact. Accordingly, the DEA does not anticipate that this rulemaking will have an annual effect on the economy of \$100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or

State, local, or tribal governments or communities.

#### *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, to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

#### *Executive Order 13132, Federalism*

This rulemaking does not preempt or modify any provision of State law, impose enforcement responsibilities on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

#### *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

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

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As explained above, the DEA determined that there was good cause to exempt this final rule from notice and comment. Consequently, the RFA does not apply to this final rule.

#### *Paperwork Reduction Act of 1995*

This rule does not involve a collection of information within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521.

#### *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 \$100,000,000 or more (adjusted annually for inflation) in any one year, and 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. 2 U.S.C. 1532.

#### *Congressional Review Act*

This final rule is not a major rule as defined by the Congressional Review

Act (CRA), 5 U.S.C. 804. However, pursuant to the CRA, the DEA is submitting a copy of this final rule to both Houses of Congress and to the Comptroller General.

#### **Signing Authority**

This document of the Drug Enforcement Administration was signed on July 18, 2023, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA **Federal Register Liaison Officer** has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

#### **List of Subjects**

##### *21 CFR Part 1300*

Chemicals, Drug traffic control.

##### *21 CFR Part 1302*

Drug traffic control, Exports, Imports, Labeling, Packaging and containers.

##### *21 CFR Part 1308*

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

For the reasons set forth above, 21 CFR parts 1300, 1302, and 1308 are amended as follows:

#### **PART 1300—DEFINITIONS**

- 1. The authority citation for part 1300 continues to read as follows:

**Authority:** 21 U.S.C. 802, 821, 822, 829, 871(b), 951, 958(f).

- 2. Section 1300.01 is amended in paragraph (b) by revising the definition of "Anabolic steroid" as follows:

##### **§ 1300.01 Definition relating to controlled substances.**

\* \* \* \* \*

(b) \* \* \*

*Anabolic steroid* means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and includes (but is not limited to) those substances listed in § 1308.13(f) of this chapter.

(1)(i) Except as provided in paragraph (1)(ii) of this definition, such term does not include an anabolic steroid that is expressly intended for administration

through implants to cattle or other nonhuman species and that has been approved by the Secretary of Health and Human Services for such administration.

(ii) If any person prescribes, dispenses, or distributes such steroid for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this definition.

(2)(i) Subject to paragraph (2)(ii) of this definition, a drug or hormonal substance (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone) that is not listed in § 1308.13(f) of this chapter and is derived from, or has a chemical structure substantially similar to, one or more anabolic steroids listed in § 1308.13(f) of this chapter shall be considered to be an anabolic steroid for purposes of this chapter if—

(A) The drug or substance has been created or manufactured with the intent of producing a drug or other substance that either—

(1) Promotes muscle growth; or

(2) Otherwise causes a pharmacological effect similar to that of testosterone; or

(B) The drug or substance has been, or is intended to be, marketed or otherwise promoted in any manner suggesting that consuming it will promote muscle growth or any other pharmacological effect similar to that of testosterone.

(ii) A substance shall not be considered to be a drug or hormonal substance for purposes of this definition if it—

(A) Is—

(1) An herb or other botanical;

(2) A concentrate, metabolite, or extract of, or a constituent isolated directly from, an herb or other botanical; or

(3) A combination of 2 or more substances described in paragraph (2)(ii)(A)(1) or (2) of this definition;

(B) Is a dietary ingredient for purposes of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*); and

(C) Is not anabolic or androgenic.

(iii) In accordance with 21 U.S.C. 885(a), any person claiming the benefit of an exemption or exception under paragraph (2)(ii) of this definition shall bear the burden of going forward with the evidence with respect to such exemption or exception.

\* \* \* \* \*

#### PART 1302—LABELING AND PACKAGING REQUIREMENTS FOR CONTROLLED SUBSTANCES

■ 3. The authority citation for part 1302 continues to read as follows:

**Authority:** 21 U.S.C. 821, 825, 871(b), 958(e).

■ 4. Section 1302.08 is added to read as follows:

#### § 1302.08 False labeling of anabolic steroids.

(a) It shall be unlawful to import, export, manufacture, distribute, dispense, or possess with intent to manufacture, distribute, or dispense, an anabolic steroid or product containing an anabolic steroid, unless the steroid or product bears a label clearly identifying an anabolic steroid or product containing an anabolic steroid by the nomenclature used by the International Union of Pure and Applied Chemistry (IUPAC).

(b)(1) A product described in paragraph (b)(2) of this section is exempt from the International Union of Pure and Applied Chemistry nomenclature requirement of this section if such product is labeled in the manner required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq.*).

(2) A product is described in this paragraph (b)(2) if the product—

(i) Is the subject of an approved application as described in section 505(b) or (j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b), (j)); or

(ii) Is exempt from the provisions of section 505 of the Federal Food, Drug, and Cosmetic Act relating to new drugs because—

(A) It is intended solely for investigational use as described in section 505(i) of the Federal Food, Drug, and Cosmetic Act; and

(B) Such product is being used exclusively for purposes of a clinical trial that is the subject of an effective investigational new drug application.

#### PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 5. The authority citation for part 1308 continues to read as follows:

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

■ 6. Section 1308.13 is amended by revising paragraph (f) to read as follows:

#### § 1308.13 Schedule III.

\* \* \* \* \*

(f) *Anabolic steroids.* Unless specifically excepted or unless listed in another schedule, any substance meeting the definition of anabolic steroid as set forth in § 1300.01 of this chapter, including any material, compound, mixture or preparation containing any quantity of the following

substances, including its salts, esters and ethers (4000):

- (1) 5 $\alpha$ -androstan-3,17-dione;
- (2) 5 $\alpha$ -androstan-3,6,17-trione;
- (3) 1-androstenediol (3 $\beta$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androst-1-ene);
- (4) 1-androstenediol (3 $\alpha$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androst-1-ene);
- (5) 4-androstenediol (3 $\beta$ ,17 $\beta$ -dihydroxy-androst-4-ene);
- (6) 5-androstenediol (3 $\beta$ ,17 $\beta$ -dihydroxy-androst-5-ene);
- (7) 1-androstenedione (5 $\alpha$ -androst-1-en-3,17-dione);
- (8) 4-androstenedione (androst-4-en-3,17-dione);
- (9) 5-androstenedione (androst-5-en-3,17-dione);
- (10) bolasterone (7 $\alpha$ ,17 $\alpha$ -dimethyl-17 $\beta$ -hydroxyandrost-4-en-3-one);
- (11) boldenone (17 $\beta$ -hydroxyandrost-1,4-diene-3-one);
- (12) boldione (androsta-1,4-diene-3,17-dione);
- (13) 6-bromo-androsta-1,4-diene-3,17-dione;
- (14) 6-bromo-androstan-3,17-dione;
- (15) calusterone (7 $\beta$ ,17 $\alpha$ -dimethyl-17 $\beta$ -hydroxyandrost-4-en-3-one);
- (16) 4-chloro-17 $\alpha$ -methyl-androsta-1,4-diene-3,17 $\beta$ -diol;
- (17) 4-chloro-17 $\alpha$ -methyl-androst-4-ene-3 $\beta$ ,17 $\beta$ -diol;
- (18) 4-chloro-17 $\alpha$ -methyl-17 $\beta$ -hydroxy-androst-4-en-3-one;
- (19) 4-chloro-17 $\alpha$ -methyl-17 $\beta$ -hydroxy-androst-4-ene-3,11-dione;
- (20) clostebol (4-chloro-17 $\beta$ -hydroxyandrost-4-en-3-one);
- (21) dehydrochloromethyltestosterone (4-chloro-17 $\beta$ -hydroxy-17 $\alpha$ -methyl-androst-1,4-dien-3-one);
- (22) desoxymethyltestosterone (17 $\alpha$ -methyl-5 $\alpha$ -androst-2-en-17 $\beta$ -ol) (a.k.a. “madol”);
- (23) 4-dihydrotestosterone (17 $\beta$ -hydroxy-androstan-3-one);
- (24)  $\Delta$ 1-dihydrotestosterone (a.k.a. “1-testosterone”) (17 $\beta$ -hydroxy-5 $\alpha$ -androst-1-en-3-one);
- (25) 3 $\beta$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androstane;
- (26) 3 $\alpha$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androstane;
- (27) 2 $\alpha$ ,17 $\alpha$ -dimethyl-17 $\beta$ -hydroxy-5 $\beta$ -androstan-3-one;
- (28) drostanolone (17 $\beta$ -hydroxy-2 $\alpha$ -methyl-5 $\alpha$ -androstan-3-one);
- (29) 2 $\alpha$ ,3 $\alpha$ -epithio-17 $\alpha$ -methyl-5 $\alpha$ -androstan-17 $\beta$ -ol;
- (30) estra-4,9,11-triene-3,17-dione;
- (31) 13 $\beta$ -ethyl-17 $\beta$ -hydroxygon-4-en-3-one;
- (32) ethylestrenol (17 $\alpha$ -ethyl-17 $\beta$ -hydroxyestr-4-ene);
- (33) fluoxymesterone (9-fluoro-17 $\alpha$ -methyl-11 $\beta$ ,17 $\beta$ -dihydroxyandrost-4-en-3-one);
- (34) formebolone (2-formyl-17 $\alpha$ -methyl-11 $\alpha$ ,17 $\beta$ -dihydroxyandrost-1,4-dien-3-one);

(35) furazabol (17 $\alpha$ -methyl-17 $\beta$ -hydroxyandrostano[2,3-c]furazan);  
 (36) [3,2-c]furazan-5 $\alpha$ -androst-17 $\beta$ -ol;  
 (37) 18a-homo-3-hydroxy-estra-2,5(10)-dien-17-one;  
 (38) 4-hydroxy-19-nortestosterone (4,17 $\beta$ -dihydroxy-estr-4-en-3-one);  
 (39) 4-hydroxy-androst-4-ene-3,17-dione;  
 (40) 17 $\beta$ -hydroxy-androstano[2,3-d]isoxazole;  
 (41) 17 $\beta$ -hydroxy-androstano[3,2-c]isoxazole;  
 (42) 3 $\beta$ -hydroxy-estra-4,9,11-trien-17-one;  
 (43) 4-hydroxytestosterone (4,17 $\beta$ -dihydroxy-androst-4-en-3-one);  
 (44) mestanolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxy-5 $\alpha$ -androst-3-one);  
 (45) mesterolone (1 $\alpha$ -methyl-17 $\beta$ -hydroxy-5 $\alpha$ -androst-3-one);  
 (46) methandienone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyandrost-1,4-dien-3-one);  
 (47) methandriol (17 $\alpha$ -methyl-3 $\beta$ ,17 $\beta$ -dihydroxyandrost-5-ene);  
 (48) methasterone (2 $\alpha$ ,17 $\alpha$ -dimethyl-5 $\alpha$ -androst-17 $\beta$ -ol-3-one or 2 $\alpha$ ,17 $\alpha$ -dimethyl-17 $\beta$ -hydroxy-5 $\alpha$ -androst-3-one);  
 (49) methenolone (1-methyl-17 $\beta$ -hydroxy-5 $\alpha$ -androst-1-en-3-one);  
 (50) 17 $\alpha$ -methyl-androsta-1,4-diene-3,17 $\beta$ -diol;  
 (51) 17 $\alpha$ -methyl-5 $\alpha$ -androst-17 $\beta$ -ol;  
 (52) 17 $\alpha$ -methyl-androst-3-hydroxyimine-17 $\beta$ -ol;  
 (53) 6 $\alpha$ -methyl-androst-4-ene-3,17-dione;  
 (54) 17 $\alpha$ -methyl-androst-2-ene-3,17 $\beta$ -diol;  
 (55) 17 $\alpha$ -methyl-3 $\beta$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androstane;  
 (56) 17 $\alpha$ -methyl-3 $\alpha$ ,17 $\beta$ -dihydroxy-5 $\alpha$ -androstane;  
 (57) 17 $\alpha$ -methyl-3 $\beta$ ,17 $\beta$ -dihydroxyandrost-4-ene;  
 (58) 17 $\alpha$ -methyl-4-hydroxynandrolone (17 $\alpha$ -methyl-4-hydroxy-17 $\beta$ -hydroxyestr-4-en-3-one);  
 (59) methyldienolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyestra-4,9(10)-dien-3-one);  
 (60) 17 $\alpha$ -methyl- $\Delta$ 1-dihydrotestosterone (17 $\beta$ -hydroxy-17 $\alpha$ -methyl-5 $\alpha$ -androst-1-en-3-one) (a.k.a. "17 $\alpha$ -methyl-1-testosterone");  
 (61) methyltestosterone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyandrost-4-en-3-one);  
 (62) methyltrienolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyestra-4,9,11-trien-3-one);  
 (63) mibolerone (7 $\alpha$ ,17 $\alpha$ -dimethyl-17 $\beta$ -hydroxyestr-4-en-3-one);  
 (64) nandrolone (17 $\beta$ -hydroxyestr-4-en-3-one);  
 (65) 19-nor-4-androstenediol (3 $\beta$ ,17 $\beta$ -dihydroxyestr-4-ene);  
 (66) 19-nor-4-androstenediol (3 $\alpha$ ,17 $\beta$ -dihydroxyestr-4-ene);  
 (67) 19-nor-5-androstenediol (3 $\beta$ ,17 $\beta$ -dihydroxyestr-5-ene);

(68) 19-nor-5-androstenediol (3 $\alpha$ ,17 $\beta$ -dihydroxyestr-5-ene);  
 (69) 19-nor-4,9(10)-androstadienedione (estra-4,9(10)-diene-3,17-dione);  
 (70) 19-nor-4-androstenedione (estr-4-en-3,17-dione);  
 (71) 19-nor-5-androstenedione (estr-5-en-3,17-dione);  
 (72) norbolethone (13 $\beta$ ,17 $\alpha$ -diethyl-17 $\beta$ -hydroxygon-4-en-3-one);  
 (73) norclostebol (4-chloro-17 $\beta$ -hydroxyestr-4-en-3-one);  
 (74) norethandrolone (17 $\alpha$ -ethyl-17 $\beta$ -hydroxyestr-4-en-3-one);  
 (75) normethandrolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxyestr-4-en-3-one);  
 (76) oxandrolone (17 $\alpha$ -methyl-17 $\beta$ -hydroxy-2-oxa-5 $\alpha$ -androst-3-one);  
 (77) oxymesterone (17 $\alpha$ -methyl-4,17 $\beta$ -dihydroxyandrost-4-en-3-one);  
 (78) oxymetholone (17 $\alpha$ -methyl-2-hydroxymethylene-17 $\beta$ -hydroxy-5 $\alpha$ -androst-3-one);  
 (79) prostanazol (17 $\beta$ -hydroxy-5 $\alpha$ -androstano[3,2-c]pyrazole or [3,2-c]pyrazole-5 $\alpha$ -androst-17 $\beta$ -ol);  
 (80) [3,2-c]pyrazole-androst-4-en-17 $\beta$ -ol;  
 (81) stanozolol (17 $\alpha$ -methyl-17 $\beta$ -hydroxy-5 $\alpha$ -androst-2-eno[3,2-c]-pyrazole);  
 (82) stenbolone (17 $\beta$ -hydroxy-2-methyl-5 $\alpha$ -androst-1-en-3-one);  
 (83) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone);  
 (84) testosterone (17 $\beta$ -hydroxyandrost-4-en-3-one);  
 (85) tetrahydrogestrinone (13 $\beta$ ,17 $\alpha$ -diethyl-17 $\beta$ -hydroxygon-4,9,11-trien-3-one); and  
 (86) trenbolone (17 $\beta$ -hydroxyestr-4,9,11-trien-3-one).

\* \* \* \* \*

■ 7. Section 1308.50 is added to read as follows:

**§ 1308.50 Temporary and permanent scheduling of recently emerged anabolic steroids.**

(a) The Administrator may issue a temporary order adding a drug or other substance to the definition of anabolic steroids if the Administrator finds that—

(1) The drug or other substance satisfies the criteria for being considered an anabolic steroid under 21 U.S.C. 802(41) but is not listed in that section or by regulation of the Attorney General as being an anabolic steroid; and

(2) Adding such drug or other substance to the definition of anabolic steroids will assist in preventing abuse or misuse of the drug or other substance.

(b) An order issued under paragraph (a) of this section shall not take effect until 30 days after the date of the

publication by the Administrator of a notice in the **Federal Register** of the intention to issue such order and the grounds upon which such order is to be issued. The order shall expire not later than 24 months after the date it becomes effective, except that the Administrator may, during the pendency of proceedings under paragraph (f) of this section, extend the temporary scheduling order for up to 6 months.

(c) The Administrator shall transmit notice of an order proposed to be issued under paragraph (a) of this section to the Secretary of Health and Human Services. In issuing an order under paragraph (a), the Administrator shall take into consideration any comments submitted by the Secretary in response to a notice transmitted pursuant to this paragraph (c).

(d) A temporary scheduling order issued under paragraph (a) of this section shall be vacated upon the issuance of a permanent scheduling order under paragraph (f) of this section.

(e) An order issued under paragraph (a) of this section is not subject to judicial review.

(f) The Administrator may, by rule, issue a permanent order adding a drug or other substance to the definition of anabolic steroids if such drug or other substance satisfies the criteria for being considered an anabolic steroid under 21 U.S.C. 802(41). Such rulemaking may be commenced simultaneously with the issuance of the temporary order issued under paragraph (a) of this section.

**Scott Brinks,**

*Federal Register Liaison Officer, Drug Enforcement Administration.*

[FR Doc. 2023-15747 Filed 7-31-23; 8:45 am]

BILLING CODE 4410-09-P

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

[TD 9515]

RIN 1545-BH20

**Guidance Under Section 1502; Amendment of Matching Rule for Certain Gains on Member Stock; Correction**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains a correction to Treasury Decision 9515, which was published in the **Federal Register** for Friday, March 4, 2011.

Treasury Decision 9515 issued final and temporary regulations relating to the redetermination of intercompany gain as excluded from gross income in certain transactions involving stock transfers between members of a consolidated group. Treasury Decision 9515 was corrected on March 31, 2011; however, the corrections included an erroneous amendatory instruction that incorrectly removed two paragraphs from the Code of Federal Regulations. This document restores the two removed paragraphs.

**DATES:** This correction is effective on August 1, 2023 and is applicable on March 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Jeremy Aron-Dine at (202) 317-6847 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations (TD 9515) that are the subject of this correction are under section 1502 of the Code. Treasury Decision 9515 was corrected at 76 CFR 17781; however, the correction included an erroneous amendatory instruction. The instruction was intended to revise only the introductory text of § 1.1502-13(c)(6)(ii)(D)(1), but it inadvertently removed § 1.1502-13(c)(6)(ii)(D)(1)(i) and (ii). This correction restores the two deleted paragraphs as they existed prior to the correcting amendment.

**Need for Correction**

As published March 4, 2011 (76 CFR 11956), the final regulations (TD 9515, FR Doc. 2011-4846) contain errors that needed to be corrected. Treasury Decision 9515 was corrected at 76 FR 17781, March 31, 2011; however, the correcting amendment contained an erroneous amendatory instruction, and two paragraphs (26 CFR 1.1502-13(c)(6)(ii)(D)(1)(i) and (ii)) were incorrectly removed from the Code of Federal Regulations.

**Applicability of Correction**

Generally, the amendments to TD 9515 apply with respect to items taken into account on or after March 4, 2011. Section 1.1502-13(c)(6)(ii)(D), the regulatory provision corrected in this amendment, only applies to taxpayers that receive a determination from the Commissioner in the form of a private letter ruling. Taxpayers and the Internal Revenue Service have consistently applied § 1.1502-13(c)(6)(ii)(D) as if the incorrectly deleted paragraphs had not been deleted.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
\* \* \* \* \*

Section 1.1502-13 is also issued under 26 U.S.C. 1502.

\* \* \* \* \*

■ **Par. 2.** Section 1.1502-13 is amended by adding paragraphs (c)(6)(ii)(D)(1)(i) and (ii) to read as follows:

**§ 1.1502-13 Intercompany transactions.**

\* \* \* \* \*

(c) \* \* \*

(6) \* \* \*

(ii) \* \* \*

(D) \* \* \*

(1) \* \* \*

(i) In the case of an intercompany item of income, the corresponding item is permanently disallowed; or

(ii) If the intercompany item constitutes gain, the conditions described in paragraphs (c)(6)(ii)(C)(1)(iv) and (c)(6)(ii)(C)(1)(v) of this section are satisfied.

\* \* \* \* \*

**Oluwafunmilayo A. Taylor,**

*Chief, Publications and Regulations Branch, Associate Chief Counsel (Procedure and Administration).*

[FR Doc. 2023-16225 Filed 7-31-23; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

[Docket No. USCG-2023-0630]

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

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone in the navigable waters of Suisun Bay, off Concord, CA, in support of explosive on-loading to Military Ocean Terminal Concord (MOTCO) on August 1, 2023, through August 2, 2023. This safety zone is

necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The safety zone is open to all persons and vessels for transitory use, but vessel operators desiring to anchor or otherwise loiter within the safety zone must obtain the permission of the Captain of the Port San Francisco (COTP) or a designated representative. All persons and vessels operating within the safety zone must comply with all directions given to them by the Captain of the Port San Francisco or a designated representative.

**DATES:** The regulations in 33 CFR 165.1198 will be enforced from 12:01 a.m. on August 1, 2023, until 11:59 p.m. on August 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call, or email CWO3 Joel B. Henderson, U.S. Coast Guard Sector San Francisco, Waterways Management Division, at 415-399-7442, [SFWaterways@uscg.mil](mailto:SFWaterways@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone in 33 CFR 165.1198 for the Military Ocean Terminal Concord, CA (MOTCO) regulated area from 12:01 a.m. on August 1, 2023, until 11:59 p.m. on August 2, 2023, or as announced via marine local broadcasts. This safety zone is necessary to protect personnel, vessels, and the marine environment from potential explosion within the explosive arc. The regulation for this safety zone, § 165.1198, specifies the location of the safety zone which encompasses the navigable waters in the area between 500 yards of MOTCO Pier in position 38°03'30" N, 122°01'14" W and 3,000 yards of the pier. During the enforcement periods, as reflected in § 165.1198(d), if you are the operator of a vessel in the regulated area you must comply with the instructions of the COTP or the designated on-scene patrol personnel. Vessel operators desiring to anchor or otherwise loiter within the safety zone must contact Sector San Francisco Vessel Traffic Service at 415-556-2760 or VHF Channel 14 to obtain permission.

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

Dated: July 27, 2023.

**Taylor Q. Lam,**

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

[FR Doc. 2023-16447 Filed 7-31-23; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Medicare & Medicaid Services****42 CFR Parts 417, 422, 423, 455, and 460****[CMS-4201-F2]****RIN 0938-AU96****Medicare Program; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly; Correcting Amendment****AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.**ACTION:** Final rule; correcting amendment.

**SUMMARY:** This document corrects a technical error that appeared in the final rule published in the **Federal Register** on April 12, 2023 titled “Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicare Cost Plan Program, and Programs of All-Inclusive Care for the Elderly.”

**DATES:** This correction is effective August 1, 2023.**FOR FURTHER INFORMATION CONTACT:** Kristy Nishimoto, (206) 615-2367.**SUPPLEMENTARY INFORMATION:****I. Background**

In FR Doc. 2023-07115 of April 12, 2023 (88 FR 22120), the final rule titled “Medicare and Medicaid Programs; Contract Year 2024 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All Inclusive Care for the Elderly”, there was a technical error that is identified and corrected in this correcting amendment.

**II. Summary of Errors in the Regulations Text**

On page 22328 in § 422.62, we erroneously retained a proposed amendatory instruction that removed and reserved existing § 422.62(b)(18). To correct this error, we are restoring the language of § 422.62(b)(18).

**III. Waiver of Proposed Rulemaking and Delay in Effective Date**

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a

notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Specifically, 5 U.S.C. 553 requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Further, 5 U.S.C. 553 requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment on a proposed rule. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment for rulemaking to carry out the administration of the Medicare program under title XVIII of the Act. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Social Security Act (the Act) mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements. In cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act, also provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting amendment does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements of the APA or section 1871 of the Act. This correcting amendment corrects technical errors in the regulatory text of the final rule but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting amendment is intended to ensure that the information in the final rule accurately reflects the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date

requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the regulatory text correction in this document into the final rule or delaying the effective date would be unnecessary, as we are not altering our policies or regulatory changes, but rather, we are simply implementing the policies and regulatory changes that we previously proposed, requested comment on, and subsequently finalized.

Specifically, the regulation at § 422.62(b)(18) was adopted in the final rule titled “Medicare Program; Contract Year 2021 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, and Medicare Cost Plan Program,” which appeared in the June 2, 2020 **Federal Register** (85 FR 33902). A proposal to amend § 422.62(b)(18) was included in the proposed rule (with the same title as the subject final being corrected) that appeared in the December 27, 2022 **Federal Register** (87 FR 79710). However, the proposed changes to § 422.62(b)(18) have not been finalized and we have indicated that the changes will be addressed in a subsequent rulemaking document as appropriate (88 FR 22120). We note that no rulemaking has finalized removal of § 422.62(b)(18). This final rule correcting document is intended solely to ensure that the final rule and the text at 42 CFR 422.62(b)(18) accurately reflect policies and regulatory changes that have been adopted through rulemaking. Furthermore, such notice and comment procedures would be contrary to the public interest because it is in the public’s interest to ensure that the final rule accurately reflects our policies and regulatory changes. Therefore, we believe we have good cause to waive the notice and comment and effective date requirements.

**List of Subjects in 42 CFR Part 422**

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

Accordingly, 42 CFR chapter IV is corrected by making the following correcting amendments to part 422:

**PART 422—MEDICARE ADVANTAGE PROGRAM**

■ 1. The authority citation for part 422 continues to read as follows:

**Authority:** 42 U.S.C. 1302 and 1395hh.

■ 2. Section 422.62 is amended by revising paragraph (b)(18) to read as follows:

**§ 422.62 Election of coverage under an MA plan.**

\* \* \* \* \*

(b) \* \* \*

(18) Individuals affected by an emergency or major disaster declared by a Federal, state or local government entity are eligible for a SEP to make a MA enrollment or disenrollment election. The SEP starts as of the date the declaration is made, the incident start date or, if different, the start date identified in the declaration, whichever is earlier, and ends 2 full calendar months following the end date identified in the declaration or, if different, the date the end of the incident is announced, whichever is later. The individual is eligible for this SEP provided the individual—

(i) (A) Resides, or resided at the start of the SEP eligibility period described in this paragraph (b)(18), in an area for which a federal, state or local government entity has declared an emergency or major disaster; or

(B) Does not reside in an affected area but relies on help making healthcare decisions from one or more individuals who reside in an affected area; and

(ii) Was eligible for another election period at the time of the SEP eligibility period described in this paragraph (b)(18); and

(iii) Did not make an election during that other election period due to the emergency or major disaster.

\* \* \* \* \*

**Elizabeth J. Gramling,**

*Executive Secretary to the Department,  
Department of Health and Human Services.*

[FR Doc. 2023–16307 Filed 7–31–23; 8:45 am]

**BILLING CODE 4120–01–P**

**NATIONAL SCIENCE FOUNDATION**

**45 CFR Part 620**

**RIN 3145–AA–64**

**NSF Federal Cyber Scholarship-for-Service Program (CyberCorps® SFS)**

**AGENCY:** National Science Foundation (NSF).

**ACTION:** Final rule.

**SUMMARY:** The rule establishes repayment standards for CyberCorps® SFS scholarship recipients who fail to fulfill program requirements, and the process for requesting deferral or discharge of their service or repayment obligation, in whole or part. The rule

also requires that, during the period that they are performing their service obligation under the program, scholarship recipients must provide annual documentation of their service employment and their current contact information.

**DATES:** This rule is effective August 31, 2023.

**FOR FURTHER INFORMATION CONTACT:**

Victor Piotrowski, Lead Program Director, CyberCorps SFS, NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314, (703) 292–5141, [vp Piotrow@nsf.gov](mailto:vp Piotrow@nsf.gov).

**SUPPLEMENTARY INFORMATION:** On July 15, 2022, NSF published proposed regulations for its CyberCorps® Scholarship for Service (SFS) program, pursuant to the Cybersecurity Enhancement Act of 2014 (Pub. L. 113–274, sec. 302, 15 U.S.C. 7442), as amended. *See* 87 FR 42431 (proposing new 45 CFR part 620). The goal of the program, which is led and managed by NSF in coordination with the U.S. Office of Personnel Management (OPM) and Department of Homeland Security (DHS), is to recruit and train the next generation of information technology professionals, industrial control system security professionals, and security managers to meet the needs of the cybersecurity mission for Federal, State, local, and tribal governments.<sup>1</sup>

Under the program, NSF makes grant awards to qualified institutions of higher education to provide scholarships to students pursuing degrees or specialized program certifications in the cybersecurity field and cybersecurity-related aspects of other related fields as appropriate, including artificial intelligence, quantum computing and aerospace, covering the student's tuition and fees for not more than three years, plus stipend.<sup>2</sup> In return, scholarship recipients must agree that, after receiving their degree, they will work for a period equal to the length of their

<sup>1</sup> *See* 15 U.S.C. 7442(a).

<sup>2</sup> *See id.* at 7442(b) (as amended by the CHIPS and Science Act, Public Law 117–167, sec. 10316 (2022)), (c). The program is also intended to provide summer internship opportunities or other meaningful temporary appointments in the Federal information technology and cybersecurity workforce, to prioritize the placement of scholarship recipients fulfilling their post-award employment obligation with executive agencies and other cybersecurity positions, and to provides award to promote cybersecurity education, such as awards for summer cybersecurity camps or teacher training, in each of the 50 states at the kindergarten through grade 12 level. *Id.* at 7442(b)(2), (4). A detailed summary of the program's activities and achievements can be found in the statement of basis and purpose (preamble) accompanying the proposed rule.

scholarship in the cybersecurity mission of a Federal executive agency or other qualifying entity (*i.e.*, Congress, interstate agency, State, local, or tribal government or affiliated critical infrastructure non-profit, or as a cybersecurity educator in a qualified institution of higher education that provides SFS scholarships to students).<sup>3</sup> Recipients must also agree to provide OPM (in coordination with NSF) and their qualified institution of higher education with “annual verifiable documentation of post-award employment” and “up-to-date contact information” while they are completing their service obligation.<sup>4</sup>

Scholarship recipients who fail to fulfill their service or reporting obligations, or other scholarship conditions required by the Cybersecurity Enhancement Act, become liable to the United States for repayment of the scholarship.<sup>5</sup> In these cases, the Act provides that the recipient's institution shall be responsible for: (1) determining the repayment amount, based on how much of the post-award employment obligation the recipient has completed, if any; (2) notifying the recipient, OPM, and NSF; and (3) collecting repayment within a time period determined by the Director of NSF.<sup>6</sup> The Act provides that such amounts “shall . . . be repaid” by the scholarship recipient “or[,]” if not repaid, the repayment obligation “shall be treated” as a Federal Direct

<sup>3</sup> *Id.* at 7442(d) (post-award employment obligation). The program is required to “prioritize the placement of scholarship recipients fulfilling the post-award employment obligation . . . to ensure that—(A) not less than 70 percent of such recipients are placed in an executive agency . . . ; (B) not more than 10 percent of such recipients are placed as educators in the field of cybersecurity at qualified institutions of higher education that provide scholarships under this section; and (C) not more than 20 percent of such recipients are placed” in other qualifying cybersecurity positions. *See* 15 U.S.C. 7442(b)(3).

<sup>4</sup> *Id.* at 7442(g)(1); *see also id.* at 7442(h) (requiring that SFS institutions monitor their scholarship recipients' compliance with this service obligation, and also provide NSF and OPM with documentation of such service until it is completed).

<sup>5</sup> *See id.* at 7442(g)(2) (imposing liability on a scholarship recipient who “(A) fails to maintain an acceptable level of academic standing at the applicable institution of higher education, as determined by the Director of the National Science Foundation; (B) is dismissed from the applicable institution of higher education for disciplinary reasons; (C) withdraws from the eligible degree program before completing the program; (D) declares that the individual does not intend to fulfill the post-award employment obligation under this section; (E) fails to maintain or fulfill any of the post-graduation or post-award obligations or requirements of the individual; or (F) fails to fulfill the requirements of paragraph (1) (*i.e.*, annual verifiable documentation of post-award employment and up-to-date contact information).”).

<sup>6</sup> *Id.* at 7442(i), (k).

Unsubsidized Loan, “subject to repayment, together with interest thereon accruing from the date of the scholarship award, in accordance with terms and conditions specified by the Director of the National Science Foundation (in consultation with the Secretary of Education) in regulations promulgated to carry out this subsection.”<sup>7</sup>

### Proposed Rule

In support of the above requirements, NSF’s proposed rule set forth repayment standards (terms and conditions) to be applied to recipients who fail to fulfill their service obligation. See proposed § 620.6 (obligation to repay). The proposed rule also set forth procedures by which scholarship recipients may request that the NSF Director defer or discharge their post-award employment or repayment obligation under the Director’s legal authority to suspend or waive such obligations. See proposed § 620.4 (deferral of obligation), § 620.5 (discharge of agreement to serve or pay).<sup>8</sup> In addition, the proposed rule included a provision reflecting the requirement that scholarship recipients provide annual post-award employment documentation and up-to-date contact information while completing their service obligation. See proposed § 620.3 (documenting the service obligation). The remaining provisions of the proposed rule explained the rule’s scope and purpose (proposed § 620.1), defined key terms used in the rule (proposed § 620.2), and included a severability clause (*i.e.*, if one provision of the rule is invalidated, its other provisions will remain in force) (proposed § 620.7).

### Public Comment

In response to the proposed rule, NSF received one anonymous public comment, suggesting that the agency more clearly define the circumstances in which enforcement of a student’s service obligation would be so “impossible,” “unconscionable,” or result in such “extreme hardship” that a partial or complete waiver of the obligation would be justified. The commenter suggested that such a

clarification would provide additional guidance to administrators advising students who might apply for a waiver, would allow agency decisionmakers to stand behind their waiver decisions more strongly, and would give students a level of confidence “that each application for a waiver will be treated [the same] as the last, as much as that is possible.”

The agency has determined that it is unnecessary to clarify these terms further. The rule (*see* §§ 620.4 and 620.5) already sets forth several specific examples that provide meaningful and substantial guidance to students (*i.e.*, scholarship recipients) potentially applying for a deferral (suspension) of the period to fulfill their service obligation or, if appropriate, a waiver (discharge) of the service or repayment obligation (*e.g.*, death, total or permanent disability, financial or economic burden, other medical situations). At the same time, the rule preserves flexibility for students to demonstrate, and for the agency to determine, the circumstances under which a deferral or waiver, in whole or part, may be justified.

Students will submit their waiver or deferral requests, for consideration by the Director (or other designated NSF official), through the program’s official online portal, <https://sfs.opm.gov/>. As explained in the proposed rule, this portal is maintained and used by OPM’s SFS program office to administer the scholarship program under reimbursable agreement with NSF.<sup>9</sup> Students already use the portal to register with the program, to ask questions and obtain information, including about qualifying cybersecurity employment opportunities, to provide and update their current contact information, and to submit documentation of their post-graduation employment.<sup>10</sup> As noted above, when requesting a waiver or deferral, students will have the opportunity to explain the specific reason or basis for their request, and to submit supporting information or documentation to justify the request, including why it would be impossible, unconscionable, or an extreme hardship for them to fulfill their service or repayment obligation.

### Final Rule Technical Amendments

In adopting the proposed rule as final, the agency has made other technical clarifications and corrections.

First, in § 620.2 (definitions), it has removed the definitions of “payment data” and “monitoring phase,” since these terms are not used in the rule and are not needed to interpret or apply it. In addition, the definition of “Scholarship Phase” has been revised to reflect the statutory requirement that the individual be enrolled in a full-time program of study, except individuals in community college, who must be enrolled at least half-time.

Second, in § 620.1 (scope and purpose) and § 620.2 (definitions), the agency has corrected language stating that scholarship recipients shall fulfill their service obligation “in a position related to cybersecurity” for a Federal, state, local, or Tribal government organization. These rule provisions have been revised to conform to the language of the Cybersecurity Enhancement Act, which states that the scholarship recipient shall be employed “in the cybersecurity mission” of a Federal executive agency, Congress (including any agency, entity, office, or commission established in the legislative branch), an interstate agency, a state, local or Tribal government or government-affiliated non-profit considered to be critical infrastructure (as defined in 42 U.S.C. 5195c(e)), or as an educator in the field of cybersecurity at a qualified institution of higher education (as defined in 15 U.S.C. 7442(b)(3)(B)).<sup>11</sup> Additionally, in § 620.2, the agency has revised the definition of “service obligation” by clarifying what employment may be credited towards that obligation,<sup>12</sup> and requiring that scholarship recipients obtain prior approval of their proposed cybersecurity positions from the SFS program office. Such approval is necessary to ensure that the individual will be employed in a position that qualifies under the statute, and to prioritize the placement of certain percentages of scholarship recipients in various positions in Government and other organizations, as discussed earlier. See note 3. The definition of “agreement

<sup>7</sup> *Id.* at 7442(k); *see also id.* at 7442(i), (j) (requiring the repayment obligation to be treated as a Federal Direct Unsubsidized Loan under part D of title IV of the Higher Education Act of 1965 (20 U.S.C. 1087a *et seq.*)).

<sup>8</sup> The Cybersecurity Enhancement Act permits “[t]he Director of the National Science Foundation [to] provide for the partial or total waiver or suspension of any service or payment obligation by an individual under this section whenever compliance by the individual with the obligation is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be unconscionable.” See 15 U.S.C. 4772(f).

<sup>9</sup> See 87 FR at 42432.

<sup>10</sup> Likewise, if a student has retained counsel or is deceased, the student’s authorized legal representative (*e.g.*, an attorney or relative serving as an executor of the student’s estate) may also use the portal to contact the program and seek a waiver or deferral on the student’s behalf. Alternatively, as discussed later in the “Paperwork Reduction Act” section of this document, NSF is also providing an email address where such requests may be directed.

<sup>11</sup> See 15 U.S.C. 7442(d) (defining post-award employment obligation).

<sup>12</sup> In proposed § 620.2, the definition of “service obligation” stated, “All time at the agency that the recipient is considered an employee of the agency counts toward the service obligation.” The final rule instead provides that, with respect to employment in the cybersecurity mission of a Federal executive agency, periods of employment in paid duty status will be credited towards the service obligation, while periods in unpaid nonduty status will not be credited.

to serve or repay” in § 620.2 has also been revised to make clear that a scholarship recipient who fails to fulfill the service obligation must repay the “scholarship or” the amount shall be treated as a Federal direct unsubsidized loan, and that the recipient must also comply with both the recipient’s service agreement “and these rules.” Further, the definition of “Commitment Phase” (*i.e.*, the five-year period within which the scholarship recipient must complete the service obligation and submit verifiable documentation of that service) has been revised to clarify that it begins immediately following the date when the Scholarship Phase ends, and not 18 months later, as the proposed rule might be read to suggest.<sup>13</sup> The revised definition also makes clear that the duration of the Commitment Phase is subject to any deferral (extension) granted by the NSF Director under § 620.4 (deferral of service obligation).

Third, § 620.6 (obligation to repay) has been revised in paragraph (a) to make clear that a scholarship recipient’s obligation to repay may result not only from failure to fulfill the recipient’s service obligation, but also failure to provide annual verifiable post-award employment documentation and up-to-date contact information, or to fulfill any of the other terms and conditions of support imposed by the Cybersecurity Enhancement Act, as discussed earlier.<sup>14</sup>

Fourth, § 620.6 (obligation to repay) has been further revised in paragraph (a) to clarify that the amount of the scholarship for which the recipient shall be liable will be calculated in accordance with the formula set forth in the Cybersecurity Enhancement Act, at 15 U.S.C. 7442(i), which depends on whether the recipient has completed less than one year of service, or one or more years of service.

Fifth, in § 620.4 (deferral of obligation) and § 620.5 (discharge of agreement to serve or repay), the agency has added language permitting a scholarship recipient to seek reconsideration if the NSF Director denies the recipient’s request for a

deferral or discharge under those sections. Although the Cybersecurity Enhancement Act does not provide for a right of appeal or any right to an oral hearing, the rule will provide an opportunity for a scholarship recipient to request reconsideration in written form where there may be new or additional facts or applicable law that the recipient believes should be considered. If reconsideration is requested, the Director’s decision on that request shall be considered final, with no further reconsideration. Furthermore, the agency has revised §§ 620.4 and 620.5 to clarify the deadline for requesting a deferral or discharge. Specifically, a request for a deferral of the service obligation must be received before the period for completing that service has expired (*i.e.*, Commitment Phase). Furthermore, NSF will not consider any request to defer or discharge any scholarship amounts that have already been repaid or referred to the Department of the Treasury for collection. In addition, the heading of § 620.4 is amended to refer to deferral of the “service” obligation, in contrast to § 620.5, which pertains to the partial or total discharge (waiver) of either the service or repayment obligation.

Sixth, in § 620.6 (obligation to repay), the agency has deleted language from paragraph (c) that stated that, when a CyberCorps SFS scholarship is treated for repayment purposes as a Direct Unsubsidized Loan, it “is not counted against the scholarship recipient’s annual or aggregate loan limits under 34 CFR 685.203 [Department of Education loan limits].” This language, which NSF included in consultation with the Department of Education, was intended to allow the full amount of a SFS scholarship to be treated as a Direct Unsubsidized Loan under NSF’s regulations,<sup>15</sup> regardless whether the total amount would exceed the limits normally applicable to such loans under the Department’s loan regulations. To better reflect that intent, the final rule, now in paragraph (b), rather than paragraph (c), of § 620.6, states that an SFS scholarship shall be repaid or treated as a Direct Unsubsidized Loan under NSF’s rule, “without regard to” the annual or aggregate loan limits set forth in the Department of Education’s loan regulations. Whether SFS scholarship amounts treated as a Direct Unsubsidized Loan will be “counted” or not against the Department’s loan limits

(*i.e.*, if and when the individual applies for other Federal student loans) is a separate issue that falls outside the scope of these regulations and NSF’s authority.<sup>16</sup> In addition, paragraphs (b) and (c) have been revised to clarify that the interest rate applicable to SFS scholarship amounts treated as Direct Unsubsidized Loans is determined by the statute governing the terms and conditions of such loans (*i.e.*, 20 U.S.C. 1078e), that such interest accrues from the date of the scholarship award, as specified in the Cybersecurity Enhancement Act (*see supra* note 7), and that, if the loan goes into default, the individual will also be liable for reasonable collection fees and costs (plus court costs and attorney fees, if the Government has to sue the individual to collect).<sup>17</sup>

Seventh, other clarifications have been made to § 620.6 (obligation to repay), aside from those already discussed above. Paragraph (a) no longer contains a sentence stating that SFS scholarships treated as Direct Unsubsidized Loans will be repaid in accordance with terms and conditions prescribed by the Director of NSF. That sentence has been rendered unnecessary in light of paragraphs (b) and (g), which directly address such repayment terms and conditions. Paragraph (b), as proposed, allowed individuals to avoid repayment by submitting documentation showing that they have actually completed their service obligation. Additional language has been added to that paragraph in the final rule, to explain that individuals who have violated other scholarship terms and conditions and become liable for repayment may similarly submit documentation, if any, demonstrating that they have not in fact violated those terms and conditions, to avoid repayment. Paragraph (d) informs scholarship recipients that they will be sent notices during the Commitment Phase, prior to the deadlines for

<sup>16</sup> NSF nonetheless notes that, when the Department of Education converts other Federal grants into Direct Unsubsidized Loans for repayment purposes, it expressly exempts those amounts from the annual and aggregate limits applicable to such loans. *See* 34 CFR 685.203(k) (“Any TEACH Grants that have been converted to Direct Unsubsidized Loans are not counted against any annual or aggregate loan limits under this section.”). NSF believes it would be appropriate, as a matter of consistency and fairness, for the Department to provide the same exemption for any CyberCorps SFS scholarship amounts treated as Direct Unsubsidized Loans under this rule.

<sup>17</sup> *Cf.* <https://fsapartners.ed.gov/sites/default/files/attachments/2020-04/SubUnsubMPN.pdf> (master promissory note for Direct Unsubsidized Loans) at 11 (§ 17) (indicating that the individual will be required to pay reasonable collection fees and costs, plus court costs and attorney fees, if the individual defaults on the loan).

<sup>13</sup> Scholarship recipients will have 18 months to submit documentation that they have begun the required post-award employment, as under current program practice and policy, which will not change and was the intent of the proposed rule language.

<sup>14</sup> *See* 15 U.S.C. 7442(g)(2) (conditions of support), discussed *supra* note 5. In these cases, the NSF Director has the authority to suspend or waive the repayment obligation on the condition that the scholarship recipient complete some or all of the service obligation, even if the individual has not received a degree, as ordinarily contemplated under the program statute. *See id.* at 7442(d) (requiring that a scholarship recipient agree to serve for a period equal to the length of the scholarship “following receipt of the student’s degree”).

<sup>15</sup> The statutory provision governing scholarship repayment contains no dollar limit on the amount that shall be repaid or treated as a Direct Unsubsidized Loan. *See* 15 U.S.C. 7442(i) (amount of repayment).

beginning and completing their service obligation, reminding them that they must timely submit verifiable documentation of such service; the proposed rule mentioned only the latter notice. Paragraph (f) is revised to explicitly warn individuals that failure to receive these notices, or the annual notices described in paragraph (e), will not relieve them from liability for scholarship repayment. Paragraph (g) now emphasizes that all benefits and terms and conditions normally applicable to a borrower under the Direct Unsubsidized Loan program (e.g., interest rate, repayment schedule) will apply when a CyberCorps scholarship is treated as a Direct Unsubsidized Loan for repayment purposes, *i.e.*, not only the initial six-month grace period mentioned in the proposed rule. Finally, paragraph (h) of § 620.6 has been revised to make clear that, when an individual's repayment obligation is treated as a Direct Unsubsidized Loan, NSF cannot convert it back into a scholarship once it has been referred to the Department of the Treasury for debt collection.<sup>18</sup>

Eighth, § 620.3 (documenting the service obligation) and paragraph (e)(2) of § 620.6 (obligation to repay) are revised to clarify that the recipient must provide the required post-award employment documentation and up-to-date contact information annually to both OPM and NSF in a "form and manner" (rather than a "form") approved by the SFS program office, to allow that office flexibility in determining the specific format in which such information shall be provided. For consistency, § 620.3 and § 620.6(e)(2) are revised to state that this documentation is to be provided to OPM and NSF via the "SFS program office," rather than sent directly to the "Director," or the "Director and OPM," as had been stated in the proposed rule.

<sup>18</sup> For example, such a loan may be referred to Treasury's Bureau of Fiscal Service (BFS) Centralized Receivables Service (CRS), which collects current non-delinquent, non-tax accounts receivable on behalf of federal agencies. See <https://www.fiscal.treasury.gov/crs/>. Furthermore, if the loan (debt) becomes delinquent, it normally must be transferred no later than 120 days to Treasury BFS's cross-servicing program, which will also submit the debt to the offset program. See <https://fiscal.treasury.gov/cross-servicing/>; <https://fiscal.treasury.gov/top/how-top-works.html>.

Furthermore, a sentence is added at the end of § 620.3 to reflect the Act's requirement that the recipient also provide this information to the recipient's SFS institution.<sup>19</sup> Additionally, proposed § 620.3 could be read to imply that this documentation must be submitted only "if" the individual is completing the service obligation. In the final rule, § 620.3 states that this documentation must be submitted "[t]o demonstrate" that the individual is completing that obligation.

Ninth, the authority for the rule (following the table of contents) has been revised to include the Cybersecurity Enhancement Act, 15 U.S.C. 7442, as authority and basis for the rule's requirements, in addition to the agency's general rulemaking authority under the NSF Act of 1950, 42 U.S.C. 1870.

Tenth, the final rule has been revised throughout to remove references to SFS scholarships being "converted" into Direct Unsubsidized Loans for repayment purposes. The final rule reverts to the statutory language, which states that, when an individual fails to serve or otherwise violates the SFS scholarship's conditions of support, it must be repaid or "shall be treated as" a Direct Unsubsidized Loan. See 15 U.S.C. 7442(g), (i)–(k). For example, SFS scholarship repayment plans, agreements, or promissory notes shall be "treated [*i.e., the same*] as" a Direct Unsubsidized Loan, and subject to repayment under the same terms and conditions that would apply to such loans, as NSF has stated in § 620.6(g). By using the language expressly prescribed by Congress, the final rule conforms to the statute's requirements, without suggesting that SFS scholarships will be routinely "converted" into Direct Unsubsidized Loans (*i.e.*, payable to the Department of Education). At the same time, the rule does not foreclose SFS institutions from utilizing that option, if it becomes available and feasible to do so.

### Regulatory Analysis

Consistent with requirements applicable to significant regulatory actions within the meaning of Executive

<sup>19</sup> See 15 U.S.C. 7442(g)(1).

Order 12866,<sup>20</sup> the notice of the proposed rule included a regulatory analysis explaining the expected impact of the rule, including its impact on Federal agencies. See 87 FR at 42433. Although no public comments were received on the impact analysis, certain changes have been made to that analysis to reflect more accurately the anticipated impact of the revised rule.

There are three main reasons that the rule is needed. First, under the law, a scholarship recipient's obligation to repay "shall be treated as" a Direct Unsubsidized Loan in accordance with terms and conditions that the Director of the National Science Foundation (in consultation with the Secretary of Education) is required by law to be set forth in regulations promulgated to carry out subsection (j) of 15 U.S.C. 7442. Second, without these regulations, current practice creates limited options for OPM, NSF, and SFS institutions, as well as potential hardship for students. In many cases, the participating CyberCorps® SFS institution is neither able to collect a repayment nor convert it to a loan due to lack of cooperation from a scholarship recipient, closing an NSF award at an institution, or the amounts exceeding annual or aggregate loan limits under 34 CFR 685.203. Thus, if the individual does not submit a one-time payment to the SFS institution or NSF, the matter has typically been referred to Treasury as a delinquent debt for collection purposes. Third, under current practice, students are not afforded the terms and conditions of a Direct Unsubsidized Loan if the scholarship is not treated as such a loan.

Three groups will be affected by the final rule: Students (SFS scholars), universities (SFS institutions), and certain Federal agencies (OPM, NSF, and Treasury). Table 1, Table 2, and Table 3 summarize expected impacts on those three groups.

<sup>20</sup> See section 3(f) of Exec. Order 12866 (defining significant regulatory action to include any regulatory action that is likely to result in a rule that may, among other things, "(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof"). Accordingly, pursuant to that Executive Order, NSF submitted the rule to OMB for its pre-publication review. See 87 FR at 42435 (also citing Executive Order 13563).

TABLE 1—EXPECTED IMPACT OF THE PROPOSED RULE ON STUDENTS

	Number per year	Current practice	Expected impact of proposed rule
Students fulfilling obligation through service.	300	Students report completion to OPM.	None.
Students fulfilling their repayment obligation through lump-sum payment.	5	Repay to SFS institution or NSF.	Participants could pay a lump sum or the amount shall be treated as a Direct Unsubsidized Loan.
Students cooperating with the SFS institution and OPM, but not paying lump sum.	8	Converted to a loan by SFS Institution if possible, but if not possible, transferred to Treasury for collection action.	Student's obligation shall be treated as a Direct Unsubsidized Loan, subject to repayment in accordance with terms and conditions prescribed by the NSF Director in this rule.
Students not cooperating and not paying lump sum.	5	Transferred to Treasury for collection action.	See above. Transferred to Treasury for collection if student defaults on repayment or their request for deferral or discharge is denied. May also be transferred for collection pre-delinquency.

TABLE 2—EXPECTED IMPACT OF THE PROPOSED RULE ON UNIVERSITIES  
[SFS institutions]

	Number per year	Current practice	Expected impact of proposed rule
Universities .....	15	SFS institutions may attempt to convert the scholarship to a loan, which may be impossible due to loan limits, lack of student cooperation.	The scholarship shall be treated as a Direct Unsubsidized Loan, without converting it to such a loan, under repayment terms and conditions established by the NSF Director in the final rule.

TABLE 3—EXPECTED IMPACT OF THE PROPOSED RULE ON FEDERAL AGENCIES

	Number of cases per year	Current practice	Expected impact of proposed rule
NSF .....	18	Work with institutions to find a way to create payments or loan conversion. If impossible, refer to Treasury for collection action.	NSF should see fewer cases and higher likelihood of repayment, because student repayment obligations shall be treated as Direct Unsubsidized Loans under the rule, without the need to convert them to such loans. This should reduce cases in which scholarship recipients seek repayment relief from NSF (e.g., requests to suspend or waive (discharge) their obligation when they are unable to pay in a lump sum).
OPM .....	18	Work with institutions to find a way to create payments or loan conversion. If impossible, work with NSF to transfer to Treasury for collection action.	See above. Scholarship amounts are to be treated as a loan, subject to repayment terms and conditions set forth by the NSF Director in the final rule, resulting in fewer collection issues or requests for relief from repayment.
Treasury .....	5	Handle repayment or collection; appeals; requests for additional evidence, etc.	No automatic transfers to Treasury, and NSF will handle requests for deferral or discharge of the service or repayment obligation, including reconsideration requests.
Education .....	20	Not involved .....	No change. Not involved, since SFS institutions will treat repayment obligations as Direct Unsubsidized Loans without necessarily converting them to such loans, which would require coordination with Education.

**Costs**

The vast majority of students who enroll in the CyberCorps® SFS program will complete their studies and will

move into Federal, state, local, tribal government or other qualifying service, where the vast majority will complete their service obligations. Table 4 below

summarizes the number of students released from obligations (granted a waiver or have a request pending) as of November 1, 2021.

TABLE 4—THE NUMBER OF SFS SCHOLARS RELEASED FROM THE SERVICE OBLIGATIONS FROM 2001–2021

	Scholarships awarded	Full waiver: academic phase	Partial waiver: academic phase	Full waiver: employment phase	Partial waiver: employment phase	Waiver request pending decision	Total waivers
2001 .....	31	0	0	6	0	0	6
2002 .....	115	2	0	16	0	0	18
2003 .....	219	1	0	16	0	0	17
2004 .....	185	0	0	3	0	0	3
2005 .....	182	4	0	2	0	0	6
2006 .....	133	1	0	0	0	0	1
2007 .....	111	1	0	0	0	0	1
2008 .....	94	0	0	0	0	0	0
2009 .....	133	4	0	1	0	0	5
2010 .....	181	2	0	1	0	0	3
2011 .....	195	2	0	1	0	1	4
2012 .....	186	2	0	0	0	0	2
2013 .....	268	1	0	1	0	0	2
2014 .....	277	0	0	2	0	1	3
2015 .....	277	0	0	0	0	0	0
2016 .....	313	0	0	0	0	3	3
2017 .....	357	0	0	0	2	0	2
2018 .....	339	0	0	0	1	1	2
2019 .....	384	1	0	0	0	1	2
2020 .....	375	0	0	0	0	0	0
2021 .....	354	0	0	0	0	0	0
Total .....	4,709	21	0	49	3	7	80

The costs resulting from the rule include one-time costs and recurring costs. The one-time costs consist of time needed for universities and affected students to read and understand the rule and time for students to learn about, decide, and complete paperwork to have the scholarship treated as a Direct Unsubsidized Loan if scholarship repayment is required. The recurring costs consist of the time needed by the university and the student to complete any additional paperwork or tasks associated with the repayment of such a loan.

SFS scholars (students), SFS institutions (universities), and three Federal agencies (NSF, OPM, and Treasury) will benefit from the NPRM. First, SFS institutions will save their time from responding to SFS scholars seeking information about their repayment options when they are not completing the service obligation. This information will be provided in the rule and in the SFS scholarship agreement, which specifically includes the option to repay an SFS scholarship by having it treated as a Direct Unsubsidized Loan. The estimated saving will be 20 hours per year. The total estimated saving will be \$24,000 if the estimated number of cases is 20 per year with \$60 per hour as a wage rate.<sup>21</sup> Second, SFS scholars

who do not fulfill their obligation by service will save time from communicating with SFS institutions and OPM about options before being transferred to Treasury. The estimated time saving is 30 hours per case per year. The SFS scholars who do not fulfill their service obligation will be eligible for benefits available to Direct Unsubsidized Loan borrowers when their repayment obligation is treated as such a loan. The benefits include: (1) Entering a six-month grace period prior to entering repayment, and (2) Eligibility for all the benefits of the Direct Unsubsidized Loan program. These benefits are not currently available to individuals whose debts have been referred to Treasury. Three Federal agencies will save time from handling repayment cases, since the final rule makes clear that SFS institutions will be able to treat and manage an individual's repayment obligation as a Direct Unsubsidized Loan, without referring it to NSF, OPM, or Treasury for collection (or a request for a waiver or discharge) if the individual is unable or unwilling to make a lump-sum payment. The

scholarship and for collecting such payment with a time period specified by NSF. See 15 U.S.C. 7442(k). That existing burden remains unchanged, although the collection burden may be reduced if individuals become more willing to cooperate with the institution on repayment if their scholarship is treated as a Direct Unsubsidized Loan, rather than being referred to Treasury for debt collection as under current practice, when a scholarship cannot be converted to such a loan.

estimated time saving for NSF is 30 hours per case for about 20 cases per year for personnel whose wage rate is estimated at \$84.48<sup>22</sup> per hour, based on OPM 2022 salary and wages. The estimated saving for NSF is \$50,688. The estimated time savings for OPM is 15 hours per case for about 20 cases per year for personnel whose wage rate is estimated at \$56.30 per hour, based on OPM 2022 salary and wages.<sup>23</sup> Treasury will save time for handling at least five cases per year because they will not handle payment agreement or student information, other than cases where the student is liable for repayment and their case is referred to Treasury for collection. There remains no direct benefit for or burden upon the Department of Education.

Alternatives to this rule could be continuing with the current practice of an ad-hoc payment plan between the scholarship recipient and their SFS institutions, or referral of the case to Treasury for collection if the individual is unwilling or unable to pay in a lump sum, without treating the repayment amount as a Direct Unsubsidized Loan. This alternative would not provide the benefits to scholarship recipients, SFS institutions, and agencies that the rule is intended to address. Another alternative is to extend the window for individuals to complete their service

<sup>21</sup> Computer Science Professor Salary (June 2022)—Zippia | Average Computer Science Professor Salaries Hourly And Annual. SFS institutions remain responsible for notifying individuals if they become liable for repaying the

<sup>22</sup> GS–15 Step 10: Pay & Leave: Salaries & Wages—OPM.gov.

<sup>23</sup> GS–13 Step 4: Pay & Leave: Salaries & Wages—OPM.gov.

obligation, which might result in a larger share of SFS scholars fulfilling their service obligations and avoiding repayment. However, this action would not eliminate the need to improve the efficiency and fairness of the process for SFS scholars who do not fulfill their service obligations, and some SFS scholars might use the extra time to delay the start or completion of their service obligation, thereby undercutting the purpose of the program, which was to increase the cybersecurity workforce as quickly as possible. As a result, we believe the chosen proposal, which enables individuals who fail to fulfill their service obligation or who violate other scholarship terms and conditions to have the scholarship treated as a Direct Unsubsidized Loan for repayment purposes, to be the most appropriate approach. In addition, the rule is necessary for NSF to comply with the requirements of the program statute, as the General Accountability Office has noted in previously examining the program.

#### **Executive Order 13132, Federalism**

Executive Order 13132, Federalism, prohibits an agency from publishing any rule that has federalism implications if the rule imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The final rule, like the proposed rule, does not have any federalism implications, as described above.

#### **Congressional Review Act**

A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule is not a major rule under 5 U.S.C. 801.

#### **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 Office of Management and Budget (OMB) Control Number.

As discussed earlier in this document, pursuant to a reimbursable agreement with NSF, OPM operates a Web portal to administer the CyberCorps® SFS program, through which registration and other required information (including the annual contact and employment required by the Cybersecurity

Enhancement Act and this rule) is collected from and maintained on scholarship recipients. See OMB Control No. 3260–0246, Scholarship For Service (SFS) Program internet Site, <https://omb.report/omb/3206-0246>. In addition, NSF also has OMB Control Number 3145–0058, National Science Foundation Proposal and Award Policies and Procedures Guide for information collected from institutions that seek or receive NSF CyberCorps® funding pursuant to a formal NSF solicitation, including information collected by such institutions on behalf of NSF. See <https://omb.report/omb/3145-0058>.

In its proposed rule, NSF had indicated that it was seeking PRA clearance for additional information collection activities contained in the rule. For example, clearance would be required for NSF to use a standardized form, questionnaire, or other set of identical questions to collect relevant information from scholarship recipients requesting the deferral or discharge of their service or repayment obligations under § 620.4 and § 620.5 of the rule, respectively. Instead, at this time, scholarship recipients who fail to fulfill the terms of their scholarship regarding scholarship repayment or conversion, may elect to submit at request to NSF by sending an email to [sfs@nsf.gov](mailto:sfs@nsf.gov). No specific form or format is required. Upon receipt of the request, NSF may request additional information related to the discharge or deferral of the obligation, including supporting documentation. As discussed earlier (*see note 10*), an authorized representative may make a request on your behalf if you are deceased or incapacitated. NSF will acknowledge receipt of your request via the contact information provided in your request. If you have an attorney, you need to include in your request an affidavit confirming that you have authorized the attorney to represent you. If NSF or the SFS program office, in the future, develops and intends as part of the deferral or discharge process to use an information collection instrument that is subject to PRA requirements, additional public comment shall be solicited and OMB clearance shall be requested, as required by the PRA.

#### **Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), to the extent, if any, that it applies to this rulemaking (see “Administrative Procedure Act” below), NSF certifies that this final rule is not expected to have a significant economic impact on a substantial number of small entities.

The rule applies to individual scholarship recipients who, by definition, do not constitute “small entities” (*e.g.*, businesses).

#### **Unfunded Mandates**

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any Federal mandate that may result in increased expenditures in either Federal, state, local, or tribal governments in the aggregate, or impose an annual burden exceeding \$100 million on the private sector.

#### **Administrative Procedure Act**

As noted earlier, the amendments reflected in the final rule are technical, in the nature of clarifications and corrections, to conform the rule to the language and authority of Cybersecurity Enhancement Act, as needed, or to further explain the meaning or effect of the rule. They do not alter the proposed intent or operation of the rule. Furthermore, to the extent that this rule involves a matter relating to loans, grants, benefits, or contracts, it is exempt from notice-and-comment requirements. See Administrative Procedure Act (APA), 5 U.S.C. 553(a)(2). In accordance with the APA, this rule shall be final and effective 30 days following its publication in the **Federal Register**. See 5 U.S.C. 553(d) (publication of a substantive rule shall not be less than 30 days before its effective date).

#### **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). See “Regulatory Analysis” section earlier in this document. In accordance with the provisions of Executive Order 12866, this rule was reviewed by the Office of Management and Budget as a significant rule. See *supra* note 20.

#### **List of Subjects in 45 CFR Part 620**

Administrative practice and procedure; Colleges and universities; Grant programs; Reporting and recordkeeping; Scholarships and fellowships.

■ For the reasons stated above, NSF adds part 620 to 45 CFR chapter VI, to read as follows:

**PART 620—CYBERCORPS®  
SCHOLARSHIP FOR SERVICE (SFS)  
PROGRAM**

Sec.

- 620.1 Scope and purpose.
- 620.2 Definitions.
- 620.3 Documenting the service obligation.
- 620.4 Deferral of service obligation.
- 620.5 Discharge of agreement to serve or repay.
- 620.6 Obligation to repay the CyberCorps SFS scholarship.
- 620.7 Severability.

**Authority:** 15 U.S.C. 7442; 42 U.S.C. 1870.

**§ 620.1 Scope and purpose.**

The CyberCorps SFS Scholarship for Service (SFS) program provides funds to institutions of higher education that award scholarships to students who agree to work after graduation in the cybersecurity mission of a Federal executive agency, Congress (including any agency, entity, office, or commission established in the legislative branch), an interstate agency, a state, local or Tribal government or government-affiliated non-profit considered to be critical infrastructure, or as an educator in the field of cybersecurity at a qualified institution of higher education, as defined in 15 U.S.C. 7442(b)(3)(B). The employment will be for a period equal to the duration of the scholarship and to be started within 18 months and to be completed within five years of entering the Commitment Phase of the SFS program. Failure to satisfy the academic requirements of the program or to complete the service obligation results in forfeiture of the scholarship award, which must either be repaid or shall be treated as a Direct Unsubsidized Loan subject to repayment under the terms and conditions described in § 620.6 of this part.

**§ 620.2 Definitions.**

*Agreement to serve or repay* means an agreement under which the individual receiving a CyberCorps SFS scholarship commits to meet the service requirement or to repay the scholarship or the loan as described in § 620.6, and to comply with notification and other provisions of the agreement and these rules.

*Commitment Phase* means the period, immediately following the date on which the Scholarship Phase ends, within which SFS recipients must complete their service obligation (employment). The SFS recipient must begin such employment within 18 months and it must be completed, including submission of all required verifiable employment documentation, within 5 years from the date that the

Commitment Phase begins. The Commitment Phase is limited to a maximum of five years, unless extended by the Director under § 620.4 of this part.

*CyberCorps SFS scholarship recipient (scholarship recipient)* means a student who is selected by an SFS institution for a CyberCorps SFS scholarship and agrees to work after graduation in the cybersecurity mission of a Federal executive agency, Congress (including any agency, entity, office, or commission established in the legislative branch), an interstate agency, a state, local or Tribal government or government-affiliated non-profit considered to be critical infrastructure (as defined in 42 U.S.C. 5195c(e)), or as an educator in the field of cybersecurity at a qualified institution of higher education (as defined in 15 U.S.C. 7442(b)(3)(B)).

*Deferral* means an approved extension of the Commitment Phase.

*Director* means the Director of the National Science Foundation (NSF) or an NSF official or employee acting for the Director under a delegation of authority.

*Scholarship Phase* means a period when scholarship recipients are enrolled full-time (or, if enrolled in community college, at least half-time) in an approved SFS academic program in cybersecurity.

*Service obligation* means the time period the recipient is required to work in the cybersecurity mission of a Federal executive agency, Congress (including any agency, entity, office, or commission established in the legislative branch), an interstate agency, a state, local or Tribal government or government-affiliated non-profit considered to be critical infrastructure (as defined in 42 U.S.C. 5195c(e)), or as an educator in the field of cybersecurity at a qualified institution of higher education (as defined in 15 U.S.C. 7442(b)(3)(B)). The recipient must also obtain prior approval of such employment from the SFS program office. Under this definition, as applied to employment in the cybersecurity mission of a Federal executive agency, creditable service includes periods of employment in paid duty status and excludes periods in unpaid nonduty status.

*SFS institution* means a higher education institution that receives an SFS grant from NSF to recruit, train, and graduate scholarship recipients.

*SFS program office* means an office managing the SFS program through partnership between NSF and the Office of Personnel Management (OPM).

**§ 620.3 Documenting the service obligation.**

To demonstrate that a scholarship recipient is performing service in accordance with the agreement to serve or repay, the scholarship recipient must, within 30 days of the beginning of the service and upon completion of each year of such service, provide to the SFS program office documentation of that service in a form and manner approved by the SFS program office with all required information, including up-to-date contact information, and certifications. The scholarship recipient must also provide the recipient's SFS institution with this annual verifiable documentation of post-award employment and up-to-date contact information.

**§ 620.4 Deferral of service obligation.**

(a) A scholarship recipient whose CyberCorps SFS Scholarship Phase has ended may request, from the Director, a deferral of the five-year Commitment Phase for completion of the service obligation based on—

(1) Enrollment in a program of study or engagement in approved professional activity that would contribute to further professional development and/or cybersecurity workforce readiness for the scholarship recipient;

(2) A condition that is a qualifying reason for leave under the Family and Medical Leave Act (FMLA);

(3) A call to order to Federal or state active duty or active service as a member of a Reserve Component of the Armed Forces named in 10 U.S.C. 10101, or service as a member of the National Guard on full-time National Guard duty, as defined in 10 U.S.C. 101(d)(5); or

(4) Other exceptional circumstances significantly affecting the scholarship recipient's ability to serve as determined by the Director.

(b) A scholarship recipient must apply for a deferral, by submitting a written request via the SFS program office, before the scholarship recipient's Commitment Phase has expired.

(c) A scholarship recipient who applies for deferral must provide documentation supporting the request as well as current contact information including home address, email address, and telephone number.

(d) The Director, or other official designated by the Director, will notify the scholarship recipient on the outcome of the application for deferral. If the deferral is denied, the scholarship recipient may submit a written request for reconsideration to the SFS program office. The request must be received no later than 30 calendar days after NSF

sent notice of the denial to the recipient. The request must explain why the recipient believes the denial is based on an error or mistake of fact or law, or if there are any new facts or law that should be considered. The Director's determination on the request shall be final, with no further reconsideration.

**§ 620.5 Discharge of agreement to serve or repay.**

(a) *Discharge conditions.* The Director may provide for the partial or total waiver or suspension of any service or repayment obligation by a scholarship recipient under the SFS program, including but not limited to the following circumstances:

(1) *Death.* If a scholarship recipient dies, the Director discharges the obligation to complete the agreement to serve or repay based on a certified copy of the death certificate or verification of the scholarship recipient's death through an authoritative Federal or state electronic database approved for use by the Director.

(2) *Total and permanent disability.* A scholarship recipient's agreement to serve or repay is discharged if the scholarship recipient becomes totally and permanently disabled. This is the condition of an individual who:

(i) Is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment that—

(A) Can be expected to result in death;

(B) Has lasted for a continuous period of not less than 60 months; or

(C) Can be expected to last for a continuous period of not less than 60 months; or

(ii) Has been determined by the Secretary of Veterans Affairs to be unemployable due to a service-connected disability.

(3) *Extreme hardship.* Whenever compliance by the scholarship recipient with the obligation is impossible or would involve extreme hardship to the scholarship recipient, or if enforcement of such obligation with respect to the scholarship recipient would be unconscionable. Extreme hardship could include but is not limited to financial or economic burden, medical situations, or other situations as determined by the Director of NSF.

(b) *Written request.* (1) A scholarship recipient must submit a written application to the SFS program office, requesting a discharge from the Director of NSF in accordance with this section. Requests to discharge and refund amounts already repaid or referred to Treasury will not be considered or granted.

(2) A scholarship recipient who applies for discharge must provide the Director with documentation supporting the request as well as current contact information including home address, email address, and telephone number.

(3) The Director, or other official designated by the Director, will notify the scholarship recipient on the outcome of the application for discharge. If the discharge is denied, the scholarship recipient may submit a written request for reconsideration to the SFS program office. The request must be received no later than 30 calendar days after NSF sent notice of the denial to the recipient. The request must explain why the recipient believes the denial is based on an error or mistake of fact or law, or if there are any new facts or law that should be considered. The Director's determination on the request shall be final, with no further reconsideration.

**§ 620.6 Obligation to repay the CyberCorps SFS scholarship.**

(a) A scholarship recipient who fails to complete the service obligation, as evidenced by documentation of that service with all required information and certifications, or fails to comply with any other conditions of support set forth in 15 U.S.C. 7442(g), must repay the scholarship to the United States in an amount calculated in accordance with 15 U.S.C. 7442(i).

(b) If not repaid, the CyberCorps SFS scholarship amounts paid to the scholarship recipient, together with interest accruing from the date of the scholarship award, at the interest rate determined under 20 U.S.C. 1087e, shall be treated as a Direct Unsubsidized Loan, without regard to any annual or aggregate loan limits under 34 CFR 685.203, and subject to the repayment terms and conditions set forth in paragraph (g) of this section, unless the scholarship recipient submits required documentation to prove the qualified employment within the timeframe required by the agreement to serve or repay (or, if the recipient has violated any other conditions of support, verifiable documentation demonstrating that the recipient has not violated such conditions).

(c) The scholarship recipient remains liable for any amounts calculated in accordance with paragraph (a) that are not repaid, including any amounts treated a Direct Unsubsidized Loan as described in paragraph (b) of this section. Such amounts, if not repaid, shall be referred to the United States Department of the Treasury for collection, and, if the individual defaults on the loan, shall also include

reasonable collection fees and costs (plus court costs and attorney fees, if any).

(d) During the Commitment Phase, approximately 90 days before the date that the scholarship recipient must begin performing the service obligation (employment) and approximately 90 days before the Commitment Phase is scheduled to expire, the scholarship recipient will be notified of the date by which they must submit verifiable documentation showing that they are satisfying the service obligation.

(e) At least annually during the service obligation period, the scholarship recipient shall be notified of—

(1) The terms and conditions that the scholarship recipient must meet to satisfy the service obligation;

(2) The requirement for the scholarship recipient to provide to the SFS program office, upon completion of each of the required service year, verifiable documentation of that service in a form and manner approved by that office and the need for scholarship recipients to keep copies of this information and copies of their own employment documentation; and

(3) The conditions under which the scholarship recipient may request a deferral of the period for completing the service obligation or the discharge of the service obligation.

(f) A scholarship recipient remains obligated to meet all requirements of the service obligation, even if the recipient does not receive the notices described in paragraphs (d) and (e) of this section.

(g) A scholarship recipient whose CyberCorps SFS scholarship is treated as a Direct Unsubsidized Loan—

(1) Enters a six-month grace period prior to entering repayment, and

(2) Is eligible for all other benefits of and subject to all other terms and conditions of the Direct Unsubsidized Loan Program.

(h) If a scholarship recipient's repayment obligation is treated as a Direct Unsubsidized Loan under this part, the loan may not be converted back to a CyberCorps SFS scholarship if it has been referred to the United States Department of the Treasury for collection.

**§ 620.7 Severability.**

If any provision of this part or its application to any person, act, or practice is held invalid, the remainder of the part or the application of its provisions to any person, act, or practice shall not be affected thereby.

Dated: July 24, 2023.

**Suzanne H. Plimpton,**

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2023-16009 Filed 7-31-23; 8:45 am]

BILLING CODE 7555-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 14

[CG Docket Nos. 23-161, 10-213, 03-123; FCC 23-50; FR ID 156546]

### Access to Video Conferencing

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC or Commission) revisits the interpretation of a statutory term, *interoperable video conferencing service (IVCS)*. Finding no persuasive reason to modify or limit the scope of the statutory definition of this term, the Commission declines to revise its definition of IVCS, and concludes that its accessibility rules for advanced communications services and equipment apply to all services and equipment that meet the statutory definition of IVCS.

**DATES:**

*Effective date:* This ruling is effective August 31, 2023.

*Compliance date:* The Commission sets the date for compliance with IVCS rules in part 14 of the Commission's rules as initially adopted at 76 FR 82354 (Dec. 30, 2011) and 77 FR 24632 (April 25, 2012) as September 3, 2024.

**FOR FURTHER INFORMATION CONTACT:** Ike Ofobike, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202-418-1028, or [Ike.Ofobike@fcc.gov](mailto:Ike.Ofobike@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, document FCC 23-50, adopted on June 8, 2023, released on June 12, 2023, in CG Docket Nos. 23-161, 10-213, and 03-123. The Commission previously sought comment on the issue in a Further Notice of Proposed Rulemaking, published at 76 FR 82240, December 30, 2011, and a Public Notice, published at 87 FR 30442, May 19, 2022. The full text of document FCC 23-50 is available for public inspection and copying via the Commission's Electronic Comment Filing System (ECFS). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format),

send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer and Governmental Affairs Bureau at (202) 418-0530.

### Synopsis

#### Background

1. Since the March 2020 outbreak of the COVID-19 pandemic in the United States, video conferencing has grown from a niche product to a central pillar of our communications infrastructure. The new social interaction paradigm occasioned by the pandemic appears to have permanently altered the norms of modern communication in the workplace, healthcare, education, social interaction, civic life, and more. For millions of Americans, video conferencing has become a mainstay of their business and personal lives. With the growing use of video conferencing has come heightened concern about accessibility. In recent years, various accessibility features have been introduced by a number of video conferencing providers. However, the accessibility of video conferencing services remains limited for many users.

2. Under the Twenty-First Century Communications and Video Accessibility Act (CVAA), enacted in 2010, providers of advanced communications services (ACS) and manufacturers of equipment used for ACS must make such services and equipment accessible to and usable by people with disabilities, unless these requirements are not achievable. 47 U.S.C. 617(a)(1), (b)(1). Service providers and manufacturers may comply with section 716 of the Act either by building accessibility features into their services and equipment or by using third-party applications, peripheral devices, software, hardware, or customer premises equipment (CPE) that are available to individuals with disabilities at nominal cost. 47 U.S.C. 617(a)(2), (b)(2). If accessibility is not achievable through either of these means, then manufacturers and service providers must make their products and services compatible with existing peripheral devices or specialized CPE commonly used by people with disabilities to achieve access, subject to the achievability standard. 47 U.S.C. 617(c).

3. The Act defines *advanced communications services* as: (1) interconnected VoIP service; (2) non-interconnected VoIP service; (3) electronic messaging service; (4) interoperable video conferencing service; and (5) any audio or video communications service used by inmates for the purpose of communicating with individuals

outside the correctional institution where the inmate is held, regardless of technology used. 47 U.S.C. 153(1). *Interoperable video conferencing service*, in turn, is defined as a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing. 47 U.S.C. 153(27).

4. In adopting rules to implement section 716 of the Act, the Commission incorporated without change the statutory definitions of ACS and the four then-existing types of ACS, including interoperable video conferencing service. 47 CFR 14.10(m). However, in that 2011 rulemaking a question was raised as to what Congress meant by including the word *interoperable* as part of the term *interoperable video conferencing service*. Agreeing with some commenters that the word "cannot be read out of the statute," the Commission found that the record before it was insufficient to decide the correct interpretation, and sought further comment on the issue. *Implementing the Provisions of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, Final Rule, published at 76 FR 82353, 82358, December 30, 2011; Proposed Rule, published at 76 FR 82240, 82245-46, December 30, 2011.

5. Based on the record at that time, the Commission specifically invited comment on the following three possible definitions of the word *interoperable* as used in this context: able to function inter-platform, inter-network, and inter-provider; having published or otherwise agreed-upon standards that allow for manufacturers or service providers to develop products or services that operate with other equipment or services operating pursuant to the standards; or able to connect users among different video conferencing services, including video relay service (VRS). Commenters did not reach consensus on any of the three suggested alternatives.

6. Recently, the Commission refreshed the record on this matter. First, in April 2021, the Consumer and Governmental Affairs, Media, and Wireless Telecommunications Bureaus issued a joint Public Notice seeking comment generally on whether any updates were needed to the Commission's rules implementing the CVAA and inviting stakeholders to provide input on aspects of the Commission's CVAA implementation that are working well, on specific areas in which commenters believe improvements are needed, and on requirements that may not be serving

their intended purpose or have been overtaken by new technologies. Some of the comments responding to the 2021 Public Notice specifically addressed the interpretation of the term *interoperable video conferencing service*. The Accessibility Advocacy and Research Organizations (AARO), for example, urged the Commission to simply clarify that the statutory definition of *interoperable video conferencing service*, as a service that uses real-time video communications, including audio, to enable users to share information of the user's choosing, is an exhaustive articulation of what Congress intended to be covered.

7. Next, on April 27, 2022, the Commission's Consumer and Governmental Affairs Bureau (CGB or Bureau) released a Public Notice specifically inviting additional comment on the questions originally posed in 2011 as to the meaning of *interoperable video conferencing service*. *Interoperable Video Conferencing Service*, published at 87 FR 30442, May 19, 2022. The Bureau also invited commenters to submit additional relevant information about what types of services are currently available in the video conferencing marketplace, the kinds of interoperability they currently offer, and how such developments may assist in reaching an interpretation of *interoperable video conferencing service* that is consistent with the intent of Congress in enacting the CVAA. The Commission also sought comment on how consumers access video conferencing services, whether various components of such services are accessible and usable, and any other developments that the Commission should consider in resolving this issue. Eight entities filed comments in response to the 2022 Public Notice; seven filed reply comments.

#### **Definition of Interoperable Video Conferencing Service**

8. The rapid growth of video conferencing underscores the need to resolve lingering uncertainty as to the application of the Commission's accessibility rules in this area. The social shift born of the pandemic has altered the norms of modern communication. The record, other relevant FCC documents, and public sources indicate that substantial barriers to effective communication remain for many people with disabilities. As video conferencing becomes further entrenched as an essential means of communication, it is of critical importance to resolve the extent to which these services are covered by

section 716 of the Act and the Commission's accessibility rules. In the absence of clarity, service providers are left uncertain as to their obligations, and consumers face an inconsistent patchwork of accessibility features that limit their ability to reliably achieve effective communication.

9. In light of these changed circumstances, and taking into account comments in the record, the Commission revisits its previously stated views regarding the interpretation of the statutory term *interoperable video conferencing service*. The Act defines *interoperable video conferencing service* as a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing. 47 U.S.C. 153(27). The Commission finds no persuasive reason to modify or limit the scope of the statutory definition of this term. Therefore, it declines to revise part 14 of the Commission's rules, which incorporates the statutory definition, and concludes that part 14 applies to all services and equipment that provide real-time video communications, including audio, to enable users to share information of the user's choosing.

10. By its terms, the statutory definition of *interoperable video conferencing service* encompasses a variety of video communication services that are commonly used today, or that may be used in the future, to enable two or more users to share information with one another. In 2011, the Commission interpreted a qualifying phrase in the definition—"to enable users to share information of the user's choosing"—to mean that services "providing real-time video communications, including audio, between two or more users" would be included, "even if they can also be used for video broadcasting purposes (*only from one user*)." 76 FR 82354, December 30, 2011 (emphasis in original). However, a service that provides real-time video and audio communications "*only from one user*" (i.e., "video broadcasting") would not meet the definition of *interoperable video conferencing service*. (Emphasis in original.)

11. Nothing in the definition suggests that it is limited to services that are only suitable for particular kinds of users—e.g., professional users who need a wide selection of features and tools to conduct online meetings, or casual users who want to have spontaneous video conversations with friends. The definition also does not indicate an intention to exclude any service based on whether it is used primarily for point-to-point or multi-point conversations, or based on the type of

device used to access the service. Similarly, based on the wording of this definition, its application does not depend on the options offered to users for connecting to a video conference (e.g., through a dial-up telephone connection or by broadband, through a downloadable app or a web browser), what operating systems or browsers their devices may use, whether the service works with more than one operating system, or whether the service may be classified as offered to the public or to a private group of users (such as a telehealth platform). What matters is that two or more people can use the service to share information with one another in real-time, via video.

12. Narrowing the scope of the part 14 rules to a more limited class of services by importing the Commission's own definition of *interoperable* would bring those rules into conflict with the definition mandated by Congress. In terms of the Commission's codified rules, this conclusion maintains the status quo, as the statutory definition of *interoperable video conferencing service* has been incorporated in the Commission's rules for more than a decade.

13. While the Commission stated in 2011 that it must determine the meaning of *interoperable* in the context of the statute, in light of the further comments received the Commission concludes that, as the Supreme Court has repeatedly held, when a statute includes an explicit definition, that definition must be followed, even if it varies from a term's ordinary meaning. Here the interpretation of the statutory term has already been given by the statutory definition: IVCS is a service that provides real-time video communications, including audio, to enable users to share information of the user's choosing. Because that definition does not include the word *interoperable*, it is unnecessary to construe that word separately in this context. In cases of circularity—where the statutory term and the statutory definition of that term include a common word—it might be appropriate for an agency to interpret the common word. That is not the case here because *interoperable* does not appear in the statutory definition.

14. The legislative history of the CVAA also supports the conclusion that the Commission may rely on the statutory definition of *interoperable video conferencing service* without further elaboration on the word *interoperable*. As the Commission noted in 2011, early versions of the legislation used the term *video conferencing service*, without the word *interoperable*.

The term was left unchanged in the House of Representatives committee report on H.R. 3101, released in July 2010. However, in the Senate report on S. 3304, released in December 2010, the Senate Committee on Commerce, Science, and Transportation added the word *interoperable* to *video conferencing service*. The Commission has found nothing in the legislative history of the CVAA to explain why the word was added, or what that change was meant to communicate, if anything. The interpretation of statutes cannot safely be made to rest upon mute intermediate legislative maneuvers. *Trailmobile Co. v. Whirls*, 331 U.S. 40, 61 (1947).

15. Additionally, nothing in the legislative history suggests that Congress intended for the insertion of *interoperable* in the defined term to change the draft bill's existing definition of *video conferencing service*. The definition remained the same in all versions, even when the term it was defining metamorphosed without explanation. This compels the Commission to conclude that, whatever reason the Senate Committee may have had for altering the term used to describe the service, there was no intent to alter the definition of that term or to require separate interpretation of any word within that defined term. As the D.C. Circuit noted in 1982, courts must:

exercise caution before drawing inferences regarding legislative intent from changes made in committee without explanation. . . . amendments to a bill's language are frequently latent with ambiguity; they may either evidence a substantive change in legislative design or simply a better means for expressing a provision in the original bill.

*Western Coal Traffic League v. U.S.*, 677 F.2d 915, 924 (D.C. Cir. 1982).

16. Some commenters also stress that the Commission should not use this proceeding to mandate that video conferencing services be interoperable. That is a different question, which the Commission settled in 2011: There is no language in the CVAA supporting the view that interoperability is required or should be required as a subset of accessibility, usability, or compatibility. 76 FR 82354, December 30, 2011. The Commission sees no need to revisit that question.

17. *Alternative Suggested Definitions*. The Commission finds unpersuasive the alternative definitions of *interoperable video conferencing service* that various commenters proffer in lieu of the statutory definition. The Consumer Technology Association (CTA) continues to advocate a proposal advanced in 2011: that covered services

be limited to those that have the ability to operate among different platforms, networks and providers without special effort or modification by the end user. At that time, the Commission expressed concern that this proposed definition would exclude virtually all existing video conferencing services and equipment from the accessibility requirements of section 716 of the Act, which it believes would be contrary to congressional intent. 76 FR 82240, December 30, 2011. In its 2022 comments, citing the development of standards that improve interoperability, CTA suggested that its proposed definition would include a number of commonly used video services such as Webex, Google Meet, and BlueJeans by Verizon. However, CTA emphasizes that its approach will ensure that only the subset of video conferencing services that are genuinely interoperable is covered under section 716.

18. CTIA suggests a modified version of this formulation that would limit covered services to those that can function inter-platform and inter-network. By contrast with CTA's proposed definition, CTIA's proposal would define *interoperable video conferencing services* to include services that are interoperable inter-platform and inter-network but that are *not* interoperable between different providers. Under CTIA's proposal, *inter-platform* refers to the ability of a user to access a video conferencing service on multiple software platforms and operating systems, such as Google Android, Apple iOS, and Microsoft Windows, and *inter-network* refers to the ability of a user to access a video conferencing service via the internet and on data networks, such as through a broadband connection like 4G LTE or 5G. According to CTIA, this definition reflects the video conferencing market today, which likely means the most widely used services today would be covered by the Commission's ACS rules. Nonetheless, like CTA, CTIA acknowledges that its interpretation would narrow covered services to a smaller group than those fitting under the statutory definition. The American Council of the Blind (ACB) and American Foundation for the Blind (AFB) state that vertically integrated services such as Apple Facetime would likely not meet CTIA's narrow definition of IVCS.

19. The fundamental defect of these proposed alternatives is that they substantially alter the definition of *interoperable video conferencing service* provided by Congress. Supporters of alternative definitions fail to show how their proposed approaches, which they

acknowledge are less inclusive than the statutory definition, could be harmonized with Congress's definition. Instead, CTA and CTIA argue that relying on the statutory definition would render the word *interoperable* superfluous, effectively reading the word out of the statute.

20. The Commission rejects CTA and CTIA's argument because it is far from clear that *interoperable* is superfluous. For instance, information sharing cannot take place at all without some degree of interoperability between the devices or software that each sharing user operates. The inclusion of the word *interoperable* in the term *interoperable video conferencing service* may simply reflect the fact that any video service satisfying that definition—*i.e.*, any real-time video communication service that enable[s] users to share information of the user's choosing—necessarily involves some level of interoperability among the particular devices and software employed by users of that service.

21. In any event, while the Commission should construe statutes, *where possible*, so as to avoid rendering superfluous any parts thereof, *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 112 (1991), it is not always possible to do so, given the imperfections of the legislative process. Further, the Commission must also read the text harmoniously. Accordingly, interpretations that result in irreconcilable internal discord must be rejected. In this instance, as the proponents agree, their interpretive attempts to give independent meaning to the word *interoperable* are inconsistent with the statutory definition. Therefore, the Commission must conclude that it is not possible to interpret *interoperable* in the way that these commenters request.

22. *Administrative Procedure Act Notice*. The Commission also concludes that it has provided adequate notice in this proceeding that it could arrive at the decision it reaches today. The 2022 Public Notice, which was published in the **Federal Register**, invited the public to file additional comments on the questions posed in 2011 regarding the meaning of the term *interoperable* in the context of video conferencing services and equipment. In the very next sentence, the 2022 Public Notice made direct reference to a recent filing by AARO proposing that the Commission apply the statutory definition. The 2022 Public Notice also specifically invited commenters to suggest additional alternatives or other types of input on how to interpret the word *interoperable* beyond the three approaches suggested

by the Commission in 2011. 87 FR 30444, May 19, 2022. The 2022 Public Notice thus provided ample indication that the interpretive question could have a broader range of outcomes than those specifically suggested in 2011.

23. Even assuming, *arguendo*, that notice was lacking, the Commission finds no conflict with the Administrative Procedure Act. Contrary to the arguments of several commenters, it is procedurally proper for the Commission to conclude that *interoperable video conferencing service* has the meaning given by the statutory definition. The Commission is not adopting or amending any substantive rule. Therefore, the notice-and-comment requirements of the Administrative Procedure Act (APA) are not implicated by any action taken here. The Commission is simply revisiting its 2011 assertion of a perceived need to resolve, through further interpretation, the correct interpretation of the word *interoperable*. At most that assertion was an interpretive rule, and hence prior notice was not required to revisit that interpretation. The Supreme Court has confirmed that the adoption or modification of interpretive rules occurs outside the APA's notice-and-comment requirements. *Perez v. Mortgage Bankers Ass'n*, 575 U.S. 92, 96 (2015).

24. Given the extended pendency of questions regarding the application of these requirements to video conferencing, the Commission recognizes that some service providers may need additional time to fully comply with the Report and Order. For that reason, the Commission extends the date for compliance with the part 14 video conferencing service rules until September 3, 2024. The Commission directs the Consumer and Governmental Affairs Bureau to announce the compliance date by subsequent Public Notice.

#### Final Regulatory Flexibility Analysis

25. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603, 605(b). In document FCC 23–50, the Commission declines to adopt rule changes and therefore a Final Regulatory Flexibility Analysis has not been performed.

#### Ordering Clauses

26. Pursuant to sections 1, 2, 3, and 716 of the Communications Act of 1934,

as amended, 47 U.S.C. 151, 152, 153, 617, the foregoing Report and Order *is adopted*.

#### Congressional Review Act

27. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission sent a copy of the Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

#### Final Paperwork Reduction Act of 1995 Analysis

28. The *Report and Order* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2023–15686 Filed 7–31–23; 8:45 am]

**BILLING CODE 6712-01-P**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

#### 49 CFR Parts 192 and 195

[Docket No. PHMSA–2013–0255; Amdt. Nos. 192–134, 195–106]

RIN 2137–AF06

#### Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards: Technical Corrections

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

**ACTION:** Correcting amendments.

**SUMMARY:** PHMSA is issuing editorial and technical corrections clarifying the regulations promulgated in its April 8, 2022, final rule titled “Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards” for certain gas, hazardous liquid, and carbon dioxide pipelines. The final rule also codifies the results of judicial review of that final rule.

**DATES:** These corrections are effective as of August 1, 2023.

#### FOR FURTHER INFORMATION CONTACT:

*Technical questions:* Steve Nanney, Senior Technical Advisor, by telephone at 713–272–2855.

*General information:* Robert Jagger, Senior Transportation Specialist, by email at [robert.jagger@dot.gov](mailto:robert.jagger@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Corrections

On April 8, 2022, PHMSA published a final rule titled “Pipeline Safety: Requirement of Valve Installation and Minimum Rupture Detection Standards”<sup>1</sup> (final rule) amending the Federal Pipeline Safety Regulations (49 CFR parts 190 through 199) to, among other provisions, require the installation of rupture-mitigation valves (RMV) or alternative equivalent technologies and establish minimum performance standards for the operation of those valves to mitigate the public safety and environmental consequences of pipeline ruptures. The final rule became effective on October 5, 2022. This document identifies several editorial and technical corrections clarifying those regulations, as set forth below.

The final rule added a new § 192.179(e) requiring the installation of rupture-mitigation valves (RMV) on certain onshore gas pipeline segments 6 inches or greater in diameter. The paragraph included an exemption for those pipelines in Class 1 or Class 2 locations where the potential impact radius (PIR) of the pipeline is 150 feet or less. However, a comma was inadvertently left in between “Class 1” and “or Class 2 locations,” which led some readers to interpret that all pipelines in Class 1 locations were exempt from the RMV installation requirements, in addition to those pipelines in Class 2 locations with a PIR of 150 feet or less. As the preamble of the final rule explains (see, e.g., 87 FR 20942, 20972), the exemption was meant to apply to pipelines with a PIR of 150 feet or less in either Class 1 locations or Class 2 locations. Therefore, PHMSA is correcting that regulatory text in this document by removing the comma, restructuring the sentence for clarity, and adding “either” before the reference to Class 1 and Class 2. PHMSA is also making a conforming change to § 192.179(f), which contained similar language and will reflect the same regulatory intent.

Additionally, PHMSA is also correcting § 192.179(e) and (f) by removing a potentially confusing cross-

<sup>1</sup> 87 FR 20940 (Apr. 8, 2022).

reference. At both § 192.179(e) and (f), the regulatory text states that, for applicable pipelines, “all RMVs and alternative equivalent technologies installed pursuant to [these] paragraphs must meet the requirements of §§ 192.634 and 192.636.” The requirement for valve installation under paragraphs (e) and (f) of § 192.179 was intended to apply to pipelines in all class locations and regardless of a pipeline’s high-consequence area (HCA) status, as applicable. However, paragraph (a) of § 192.634 states that section is only applicable to certain pipelines located in HCAs or in Class 3 or Class 4 locations. Therefore, with the cross-reference to § 192.634 in § 192.179, it may be unclear as to what installation requirements pipelines in non-HCA Class 1 or Class 2 locations must follow. Accordingly, in this document, PHMSA is deleting the cross-references to § 192.634 from the valve installation requirements at § 192.179(e) and (f) so that it is clear that all new pipelines, regardless of HCA status or class location, must install RMVs in accordance with § 192.179. This change does not otherwise impact the additional requirements at § 192.634 specific to certain pipelines located in HCAs or in Class 3 or Class 4 locations.

The final rule also added a new § 192.610 that established the valve spacing requirements certain gas pipeline operators must follow when a class location change occurs. Paragraph (a) of § 192.610, by its reference to “transmission,” provides these requirements apply to class location changes on onshore gas transmission pipelines. In contrast, paragraph (b), as written, did not include the reference to “transmission” that would limit application of that paragraph in the same manner as paragraph (a). As a result, some readers were confused regarding whether the provisions in paragraph (b) were intended to apply to different pipelines than those subject to paragraph (a). PHMSA did not intend for paragraphs (a) and (b) to apply to different pipelines. Therefore, PHMSA is amending paragraph (b) to add a reference to “transmission” mirroring that in paragraph (a), thereby clarifying those provisions will have the same scope of application.

In § 192.634, PHMSA notes that there was an “and” omitted from paragraph (b)(3) that could potentially cause confusion. In this document, PHMSA is correcting this error by inserting the word “and” following the comma after the references to §§ 192.18 and 192.179 and the word “develop.”

When drafting the final rule, PHMSA created a new § 192.636 that contained

the operational requirements for RMVs. The notice of proposed rulemaking<sup>2</sup> (NPRM) had proposed these requirements in § 192.634, which also contained design and installation requirements for pipelines in Class 3 locations, Class 4 locations, and HCAs specifically. In the final rule, PHMSA moved the majority of the operational requirements, including those for rupture identification, valve shut-off time, and flow modeling for automatic shut-off valves (ASVs), into the new § 192.636, so that it was clear that these operational requirements applied to all RMVs. However, in the final rule, PHMSA inadvertently neglected to relocate from § 192.634 into the new § 192.636 one operational requirement it had proposed in the NPRM for the manual operation of valves upon identification of a rupture. Therefore, PHMSA is correcting that oversight in this correction document by moving § 192.634(c) into § 192.636 at a new paragraph (h). The requirements at § 192.634 are otherwise unchanged. PHMSA is also adding to that relocated language each of (1) in the first sentence, a cross-reference to the RMV installation requirement and valve shut-off requirement at § 192.634, and (2) in the last sentence, a reference to § 192.636(c) (governing RMV operation beyond the 30-minute default timeline set forth in § 192.636(b)) that had been inadvertently omitted from the final rule.

PHMSA also in § 195.258(e) mistakenly provided that operators could use a “manual compressor station valve” at a continuously manned station as an alternative equivalent technology. As hazardous liquid pipelines have pump stations, and not compressor stations, this phrasing could cause confusion. Accordingly, in this document, PHMSA is correcting this at § 195.258(e) by revising the phrase “manual compressor station valve” to read “manual pump station valve.”

At § 195.402(c)(5)(ii) of the final rule, PHMSA uses the term “incident” when discussing the identification and implementation of preventive and mitigative measures following the analyses of ruptures and RMV valve closures on hazardous liquid pipelines. As “incident” is a defined term in part 192 and not part 195, PHMSA believes there could be some potential confusion regarding the requirements of that paragraph. Accordingly, in this document, PHMSA is revising the term “incident” at § 195.402(c)(5)(ii) to read “accident” to be consistent with part 195 terminology.

PHMSA established a new § 195.417 in the final rule to describe a “notification of potential rupture” for hazardous liquid and carbon dioxide pipelines. The introductory text of paragraph (a) of that section contains an error that “a notification of a potential rupture “means refers” to the notification to [ . . .].” In this document, PHMSA is correcting that typographical error to read “a notification of potential rupture means the notification to [ . . .].” Additionally, PHMSA noted that the regulatory text in that section lacked an explicit reference to the uncontrolled release of carbon dioxide in addition to hazardous liquids. PHMSA explained in the final rule that, in the interest of convenience, it understood references to “hazardous liquid” within the preamble discussion of the final rule’s regulatory amendments to refer to both carbon dioxide and hazardous liquids. See 87 FR 20940 at n. 1. Consistent with that approach, most of the regulatory language amended by the final rule explicitly extended the final rule’s RMV installation and operation requirements to both hazardous liquid pipelines and carbon dioxide pipelines; however, PHMSA inadvertently omitted including explicit reference to carbon dioxide within § 195.417’s elaboration on the “notification of potential rupture.” Therefore, PHMSA has revised both the introductory text of paragraph (a) and paragraph (a)(3), where appropriate, to clarify that a “notification of potential rupture” can be triggered by one or more of the indicia of a potential unintentional or uncontrolled release of either hazardous liquids or carbon dioxide.

Similarly, in § 195.418, paragraph (a) states that the requirements of the section apply to both hazardous liquid and carbon dioxide pipelines. After publication of the final rule, PHMSA noticed that paragraph (b)(3) of the section, “laterals,” did not specifically mention “carbon dioxide” when discussing the commodity volumes that factor into the shut-off segment volume. Therefore, to clarify the fact that carbon dioxide laterals are also applicable to the requirements of paragraph (b)(3), PHMSA has inserted the term “carbon dioxide” where appropriate.

Prior to the final rule publishing, § 195.420(b) stated that “each operator shall, at intervals not exceeding 7½ months, but at least twice each calendar year, inspect each mainline valve to determine that it is functioning properly.” In the NPRM<sup>3</sup> for the final

<sup>2</sup> 85 FR 7162 (Feb. 6, 2020).

<sup>3</sup> 85 FR 7162 (Feb. 6, 2020).

rule, PHMSA essentially retained this requirement and added that operators must partially operate valves installed in accordance with § 195.258(c) and RMVs, as they were defined under proposed § 195.418. However, in the final rule, the word “mainline” was removed from paragraph (b), which then caused the paragraph to require that “each operator must, at least twice each calendar year but at intervals not exceeding 7½ months, inspect each valve to determine that it is functioning properly.” PHMSA understands that removing the word “mainline” from those requirements could be interpreted to mean that PHMSA expects all valves to be inspected and maintained at the intervals specified within that paragraph, even valves such as those within pump stations. It was never PHMSA’s intent to expand the valve maintenance requirement to all valves, and this is reflected throughout both the discussion in the preamble of the final rule and in the Liquid Pipeline Advisory Committee (LPAC) discussion and voting, where such an expansion is not contemplated. Therefore, in this document, PHMSA is correcting this omission by reinserting the word “mainline” in the requirements of § 195.420(b).

PHMSA also revised the valve maintenance requirements at § 195.420(b) to include specific provisions for RMVs. More specifically, PHMSA added RMV-specific requirements where operators are required to partially operate each RMV or alternative equivalent technology as a part of the requirement for operators to inspect each valve at least twice per calendar year. The requirement continues to state that “operators are not required to close the valve fully during the drill [ . . . ].” PHMSA notes that, as distinguishable response time drills requirements for manually or locally operated alternative equivalent technology are set out in § 195.420(e), there could be some confusion as to what the reference to “drill” means in the context of paragraph (b). Therefore, in this document, PHMSA is replacing the term “drill” used in paragraph (b) with “inspection” to more closely align with the language used earlier within the same paragraph and better distinguish between the “inspections” required under § 195.420(b) and the “drills” conducted pursuant to § 195.420(e).

## II. D.C. Circuit Review of the Final Rule

On May 16, 2023, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the final rule as it applies to gas and hazardous

liquid gathering pipelines.<sup>4</sup> Therefore, in this document, PHMSA is removing gathering line-specific amendments introduced in the final rule and revising the regulatory text throughout parts 192 and 195 to clarify that the final rule amendments do not apply to gas or hazardous liquid gathering lines. These corrections include revisions to §§ 192.3, 192.9(b), (c), and (e)(1)(iv), 195.2, 195.11(b)(2), 195.258, 195.260, 195.402, 195.417, 195.418, 195.419, 195.420, and 195.452. Specific amendments are discussed below:

- Sections 192.3 and 195.2 are being revised to exempt gathering lines from the new definitions introduced in the final rule (“entirely replaced onshore transmission segments,” “entirely replaced onshore hazardous liquid or carbon dioxide segments,” “notification of potential rupture,” and “rupture-mitigation valve”). While some of those definitions may not have been used within provisions applicable to gas or hazardous liquid gathering lines, the term “notification of potential rupture” was used in sections of parts 192 and 195 that had been applicable to gathering lines. Nevertheless, to minimize confusion for operators, PHMSA is now revising all of the final rule’s new definitions to incorporate explicit exceptions for gathering lines so as to ensure that operators are not subject to those terms.

- Section 192.9 is being revised to ensure that this section accurately lists the provisions of part 192 applicable to part 192-regulated gas gathering lines by: (1) excluding §§ 192.615 (to the extent modified by the final rule<sup>5</sup>), 192.617(b) through (d), and 192.635 from applying to offshore gas gathering lines; (2) excluding §§ 192.179(e) through (g), 192.610, 192.615 (to the extent modified by the final rule), 192.617(b) through (d), 192.634, 192.635, 192.636, and 192.745(c) through (f) from applying to Type A regulated onshore gas gathering lines; and (3) excluding § 192.615 (to the extent modified by the final rule) from

<sup>4</sup> *GPA Midstream Ass’n v. U.S. Dep’t of Transp.*, 67 F.4th 1188 (D.C. Cir. 2023). The D.C. Circuit’s vacatur remedy is self-executing: PHMSA’s memorialization in this notice of the court’s vacatur as to gas and hazardous liquid gathering lines is not legally required but is intended to assist affected pipeline operators and other stakeholders in understanding precisely what requirements remain effective following the D.C. Circuit’s decision.

<sup>5</sup> PHMSA notes that, where the regulatory text of a provision requires compliance with the language in effect on October 4, 2022 (immediately before the October 5, 2022 effective date of the final rule), that historical regulatory text can be found by using the “view historical versions” link on the National Archives’ web page for the current version of parts 192 and 195 of the Code of Federal Regulations. See <https://www.ecfr.gov/current/title-49>.

applying to Type C regulated onshore gas gathering lines. While the language of § 192.617(a) (formerly § 192.617) was modified slightly in the final rule, the preamble of the final rule explains that these non-substantive changes simply provided “additional specificity to the existing regulation at § 192.617,” and that “the underlying requirement remained unchanged,”<sup>6</sup> and therefore PHMSA is not exempting gas gathering lines from § 192.617(a) in this document. No revisions were required to exempt Types B and C gas gathering lines from § 192.610, § 192.617(b) through (d), § 192.634, § 192.635, § 192.636, or § 192.745(c) through (f), nor to exempt Type B gas gathering lines from the revised requirements of § 192.615, because those sections are already non-applicable to those types of pipelines pursuant to § 192.9(d) and (e). Similarly, no revisions were required to exempt offshore gas gathering lines from §§ 192.179(e) through (g), 192.610, 192.634, 192.636, and 192.745(c) through (f), since those sections are limited to onshore gas pipelines.

- Finally, PHMSA is revising §§ 195.258, 195.260, 195.402, 195.417, 195.418, 195.419, 195.420, and 195.452 to expressly exempt hazardous liquid gathering lines from the requirements in those sections that were introduced in the final rule. For clarity, PHMSA is also revising § 195.11(b)(2) to remove cross-references to any of those requirements.

PHMSA revised § 195.11(b)(2) in the final rule to establish the regulated rural gathering lines on which operators are required to install RMVs (at § 195.11(b)(2)(ii)). While the RMV installation requirement at § 195.11(b)(2)(ii) has been vacated by the D.C. Circuit and is therefore being removed in this document, PHMSA is also correcting a typographical error introduced in § 195.11(b)(2) when the word “constructed” was mistakenly written as “contracted” during transcription of the original paragraph in the final rule.

## III. Regulatory Analyses and Notices

### A. Statutory/Legal Authority

Statutory authority for this document’s corrections to the final rule, as with the final rule itself, whose discussion of statutory authority at section VI.A., 87 FR 20978, is incorporated herein by reference, is provided by the Federal Pipeline Safety Act (49 U.S.C. 60101 *et seq.*). The Secretary delegated his authority under the Federal Pipeline Safety Act to the

<sup>6</sup> 87 FR 20969.

PHMSA Administrator under 49 CFR 1.97.

PHMSA finds it has good cause to make these corrections without notice and comment pursuant to section 553(b) of the Administrative Procedure Act (APA, 5 U.S.C. 551 *et seq.*). Section 553(b)(B) of the APA provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. As explained above, the textual alterations herein consist of editorial and technical corrections, including revisions to or codification of regulatory language (1) inadvertently deleted or omitted by the final rule, consistent with statements in the administrative record (including the preamble and amendatory text to the final rule and that make no substantive changes to the final rule but merely facilitate its implementation by aligning the regulatory text with the explanatory material in the final rule's preamble, amendatory text, and administrative record; or (2) consistent with judicial review of the final rule.<sup>7</sup> Because the final rule is the product of an extensive administrative record with numerous opportunities for public comment, including through written comments and the Pipeline Advisory Committees, and because any requirements of the final rule vacated by the D.C. Circuit must be removed and “commentators could not have said anything during a notice and comment period that would have changed that fact,”<sup>8</sup> PHMSA finds that additional comment on the corrections herein is unnecessary.

The immediate effective date of the corrections contained in this document is authorized under 5 U.S.C. 553(d)(3) of the APA. Section 553(d)(3) provides that a rule should take effect “not less than 30 days” after publication in the **Federal Register**, except for when good cause is found by the agency and published within the rule, thus allowing for earlier effectiveness. 5 U.S.C. 553(d)(3). “[T]he purpose of the thirty-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. F.C.C.*, 78

F.3d 620, 630 (D.C. Cir. 1996). PHMSA finds that good cause under section 553(d)(3) of the APA supports making the revisions effective upon publication in the **Federal Register** because the editorial and technical corrections at §§ 192.179(e) and (f), 192.610(b), 192.634, 192.636, 195.11(b)(2), 195.258(e), 195.402(c)(5)(ii), 195.417(a) introductory text and (a)(3), 195.418(b)(3), and 195.420(b) provide regulatory clarity for gas and hazardous liquid pipeline operators, and the correction to § 195.420 returning the word “mainline” to the regulations is consistent with the preamble of the final rule and the LPAC discussions on the subject.

#### B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This document has been evaluated in accordance with existing policies and procedures, and is considered not significant under Executive Order 12866 (“Regulatory Planning and Review”),<sup>9</sup> as amended by Executive Order 14094 (“Modernizing Regulatory Review”),<sup>10</sup> and DOT Order 2100.6A (“Rulemaking and Guidance Procedures”); therefore, this document has not been reviewed by the Office of Management and Budget (OMB). PHMSA finds that the editorial and technical corrections herein, in all respects consistent with the final rule (as modified by judicial review), impose no incremental compliance costs nor adversely affect safety, as they either (1) merely correct non-substantive typographical errors made during the drafting of the final rule and restore the intent of the final rule as discussed in its preamble and supporting documentation, or (2) codify the results of judicial review limiting the scope of application of the final rule.

#### C. Regulatory Flexibility Act

The Regulatory Flexibility Act, as amended by the Small Business Regulatory Flexibility Fairness Act of 1996 (5 U.S.C. 601 *et seq.*), generally requires Federal regulatory agencies to prepare a Final Regulatory Flexibility Analysis (FRFA) for a final rule subject to notice-and-comment rulemaking under the APA. 5 U.S.C. 604(a).<sup>11</sup> The Small Business Administration’s implementing guidance explains that “[i]f an NPRM is not required, the RFA

does not apply.”<sup>12</sup> Because PHMSA has “good cause” under the APA to forego comment on the corrections herein, no FRFA is required. Moreover, PHMSA prepared a FRFA for the final rule, which is available in the docket for this rulemaking;<sup>13</sup> because the corrections herein will impose no new incremental compliance costs, the analysis in that FRFA remains unchanged.

#### D. Paperwork Reduction Act

The corrections in this document impose no new or revised information collection requirements beyond those discussed in the final rule. As explained above, the changes being made in this document are non-substantive, and they will require no change to the current incident and annual reporting forms and their respective instructions.

#### E. Unfunded Mandates Reform Act of 1995

PHMSA analyzed the corrections in this document under the factors in the Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. 1501 *et seq.*) and determined that the corrections to the final rule herein do not impose enforceable duties of \$100 million or more, adjusted for inflation, in any one year, on state, local, or tribal governments, or on the private sector. PHMSA prepared an analysis of the UMRA considerations in the Final Regulatory Impact Analysis for the final rule, which is available in the docket for the rulemaking. Because the corrections herein will impose no new incremental compliance costs, the analysis in that UMRA discussion for the final rule need not be changed.

#### F. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*) requires Federal agencies to prepare a detailed statement on major Federal actions significantly affecting the quality of the human environment. PHMSA analyzed the final rule in accordance with NEPA, implementing Council on Environmental Quality regulations (40 CFR parts 1500 through 1508) and DOT implementing policies (DOT Order 5610.1C, “Procedures for Considering Environmental Impacts”), and determined the final rule would not significantly affect the quality of the human environment.<sup>14</sup> The corrections to the final rule in this document either (1) have no effect on PHMSA’s earlier

<sup>7</sup> *GPA Midstream Ass’n v. U.S. Dep’t of Transp.*, 67 F.4th at 1201–1202. The D.C. Circuit has held that use of the APA’s good cause exception is appropriate “when rulemaking without notice and comment is ‘a reasonable and perhaps inevitable response to’ a ‘court order.’” *EME Homer City Generation, LP v. EPA*, 795 F.3d 118, 134–35 (D.C. Cir. 2015).

<sup>8</sup> *EME Homer City Generation, LP v. EPA*, 795 F.3d at 134.

<sup>9</sup> 58 FR 51735 (Oct. 4, 1993).

<sup>10</sup> 88 FR 21879 (Apr. 11, 2023).

<sup>11</sup> This requirement is subject to exceptions— which are not in any event applicable here because PHMSA has good cause to forego comment in adopting the corrections herein.

<sup>12</sup> Small Business Administration, “A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act” 55 (2017).

<sup>13</sup> Doc. No. PHMSA–2013–0255–0046.

<sup>14</sup> Final Environmental Assessment, Doc. No. PHMSA–2013–0255–0045.

NEPA analysis, as they are consistent with, and facilitate compliance with, the final rule, or (2) merely codify the results of judicial review of the final rule.

#### G. Privacy Act Statement

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

#### H. Executive Order 13132 (Federalism)

PHMSA has analyzed this document in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”).<sup>15</sup> The corrections herein are consistent with, and facilitate compliance with, the final rule, and they do not have any substantial direct effect on the states, the relationship between the Federal Government and the states, or the distribution of power and responsibilities among the various levels of government beyond what was accounted for in the final rule. This document does not contain any provision that imposes any substantial direct compliance costs on state or local governments, nor any new provision that preempts state law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.<sup>16</sup>

#### I. Executive Order 13211

PHMSA analyzed the final rule and determined that the requirements of Executive Order 13211 (“Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use”)<sup>17</sup> did not apply. The corrections to the final rule herein are not a “significant energy action” under Executive Order 13211 either, as they are not likely to have a significant adverse effect on supply, distribution, or energy use. Further, OMB has not designated the corrections herein as a significant energy action.

#### J. Executive Order 13175

This document was analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”)<sup>18</sup>

and DOT Order 5301.1 (“Department of Transportation Policies, Programs, and Procedures Affecting American Indians, Alaska Natives, and Tribes”). Because none of the corrections herein have tribal implications or impose substantial direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

#### K. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609 (“Promoting International Regulatory Cooperation”),<sup>19</sup> agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The corrections to the final rule in this document do not impact international trade.

#### L. Regulation Identifier Number (RIN)

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### M. Severability

The purpose of these editorial and technical corrections is to facilitate operator compliance with, and codify the results of judicial review of, the final rule. However, PHMSA recognizes that certain provisions focus on unique topics. Therefore, PHMSA finds that each of the editorial and technical corrections in this rule are severable and able to function independently if severed from each other. In the event a court were to invalidate one or more of the unique provisions of this rule, the remaining provisions should stand, thus allowing their continued effect.

#### List of Subjects

##### 49 CFR Part 192

Gas, Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

##### 49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, PHMSA makes the following correcting amendments to 49 CFR parts 192 and 195:

#### PART 192—TRANSPORTATION OF NATURAL GAS AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

■ 1. The authority citation for part 192 continues to read as follows:

**Authority:** 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et. seq.*, and 49 CFR 1.97.

■ 2. Amend § 192.3 by revising the definitions for “Entirely replaced onshore transmission pipeline segments,” “Notification of potential rupture,” and “Rupture-mitigation valve” to read as follows:

##### § 192.3 Definitions.

\* \* \* \* \*

*Entirely replaced onshore transmission pipeline segments* means, for the purposes of §§ 192.179 and 192.634, where 2 or more miles, in the aggregate, of onshore transmission pipeline have been replaced within any 5 contiguous miles of pipeline within any 24-month period. This definition does not apply to any gathering line.

\* \* \* \* \*

*Notification of potential rupture* means the notification to, or observation by, an operator of indicia identified in § 192.635 of a potential unintentional or uncontrolled release of a large volume of gas from a pipeline. This definition does not apply to any gathering line.

\* \* \* \* \*

*Rupture-mitigation valve (RMV)* means an automatic shut-off valve (ASV) or a remote-control valve (RCV) that a pipeline operator uses to minimize the volume of gas released from the pipeline and to mitigate the consequences of a rupture. This definition does not apply to any gathering line.

\* \* \* \* \*

■ 3. Amend § 192.9 by revising paragraphs (b), (c), and (e)(1)(iv) to read as follows:

##### § 192.9 What requirements apply to gathering lines?

\* \* \* \* \*

<sup>15</sup> 64 FR 43255 (Aug. 10, 1999).

<sup>16</sup> Moreover, PHMSA determined that the final rule did not impose substantial direct compliance costs on state and local governments.

<sup>17</sup> 66 FR 28355 (May 22, 2001).

<sup>18</sup> 65 FR 67249 (Nov. 6, 2000).

<sup>19</sup> 77 FR 26413 (May 4, 2012).

(b) *Offshore lines.* An operator of an offshore gathering line must comply with requirements of this part applicable to transmission lines, except the requirements in §§ 192.13(d), 192.150, 192.285(e), 192.319(d) through (g), 192.461(f) through (i), 192.465(d) and (f), 192.473(c), 192.478, 192.485(c), 192.493, 192.506, 192.607, 192.613(c), 192.619(e), 192.624, 192.710, 192.712, and 192.714, and in subpart O of this part. Further, operators of offshore gathering lines are exempt from the requirements of §§ 192.617(b) through (d) and 192.635. Lastly, operators of offshore gathering lines are exempt from the requirements of § 192.615 (but an operator of an offshore gathering line must comply with the requirements of 49 CFR 192.615, effective as of October 4, 2022).

(c) *Type A lines.* An operator of a Type A regulated onshore gathering line must comply with the requirements of this part applicable to transmission lines, except the requirements in §§ 192.13(d), 192.150, 192.285(e), 192.319(d) through (g), 192.461(f) through (i), 192.465(d) and (f), 192.473(c), 192.478, 192.485(c) 192.493, 192.506, 192.607, 192.613(c), 192.619(e), 192.624, 192.710, 192.712, and 192.714, and in subpart O of this part. However, an operator of a Type A regulated onshore gathering line in a Class 2 location may demonstrate compliance with subpart N of this part by describing the processes it uses to determine the qualification of persons performing operations and maintenance tasks. Further, operators of Type A regulated onshore gathering lines are exempt from the requirements of §§ 192.179(e) through (g), 192.610, 192.617(b) through (d), 192.634, 192.635, 192.636, and 192.745(c) through (f). Lastly, operators of Type A regulated onshore gathering lines are exempt from the requirements of § 192.615 (but an operator of a Type A regulated onshore gathering line must comply with the requirements of 49 CFR 192.615, effective as of October 4, 2022).

\* \* \* \* \*

(e) \* \* \*

(1) \* \* \*

(iv) Develop and implement procedures for emergency plans in accordance with the requirements of 49 CFR 192.615, effective as of October 4, 2022;

\* \* \* \* \*

■ 4. Amend § 192.179 by revising paragraphs (e) and (f) to read as follows:

**§ 192.179 Transmission line valves.**

\* \* \* \* \*

(e) For onshore transmission pipeline segments with diameters greater than or equal to 6 inches that are constructed after April 10, 2023, the operator must install rupture-mitigation valves (RMV) or an alternative equivalent technology whenever a valve must be installed to meet the appropriate valve spacing requirements of this section. An operator seeking to use alternative equivalent technology must notify PHMSA in accordance with the procedures set forth in paragraph (g) of this section. All RMVs and alternative equivalent technologies installed pursuant to this paragraph (e) must meet the requirements of § 192.636. The installation requirements in this paragraph (e) do not apply to pipe segments with a potential impact radius (PIR), as defined in § 192.903, that is less than or equal to 150 feet in either Class 1 or Class 2 locations. An operator may request an extension of the installation compliance deadline requirements of this paragraph (e) if it can demonstrate to PHMSA, in accordance with the notification procedures in § 192.18, that those installation compliance deadlines would be economically, technically, or operationally infeasible for a particular new pipeline.

(f) For entirely replaced onshore transmission pipeline segments, as defined in § 192.3, with diameters greater than or equal to 6 inches and that are installed after April 10, 2023, the operator must install RMVs or an alternative equivalent technology whenever a valve must be installed to meet the appropriate valve spacing requirements of this section. An operator seeking to use alternative equivalent technology must notify PHMSA in accordance with the procedures set forth in paragraph (g) of this section. All RMVs and alternative equivalent technologies installed pursuant to this paragraph (f) must meet the requirements of § 192.636. The requirements of this paragraph (f) apply when the applicable pipeline replacement project involves a valve, either through addition, replacement, or removal. The installation requirements in this paragraph (f) do not apply to pipe segments with a PIR, as defined in § 192.903, that is less than or equal to 150 feet in either Class 1 or Class 2 locations. An operator may request an extension of the installation compliance deadline requirements of this paragraph (f) if it can demonstrate to PHMSA, in accordance with the notification procedures in § 192.18, that those installation compliance deadlines would be economically, technically, or

operationally infeasible for a particular pipeline replacement project.

\* \* \* \* \*

■ 5. Amend § 192.610 by revising paragraph (b) introductory text to read as follows:

**§ 192.610 Change in class location: Change in valve spacing.**

\* \* \* \* \*

(b) If a class location change on a gas transmission pipeline occurs after October 5, 2022, and results in pipe replacement of less than 2 miles within 5 contiguous miles during a 24-month period, to meet the MAOP requirements in § 192.611, § 192.619, or § 192.620, then within 24 months of the class location change, in accordance with § 192.611(d), the operator must either:

\* \* \* \* \*

■ 6. Amend § 192.634 by:

■ a. Revising paragraph (b)(3); and

■ b. Removing paragraph (c).

The revision reads as follows:

**§ 192.634 Transmission lines: Onshore valve shut-off for rupture mitigation.**

\* \* \* \* \*

(b) \* \* \*

(3) *Laterals.* Laterals extending from shut-off segments that contribute less than 5 percent of the total shut-off segment volume may have RMVs or alternative equivalent technologies that meet the actuation requirements of this section at locations other than mainline receipt/delivery points, as long as all of the laterals contributing gas volumes to the shut-off segment do not contribute more than 5 percent of the total shut-off segment gas volume based upon maximum flow volume at the operating pressure. For laterals that are 12 inches in diameter or less, a check valve that allows gas to flow freely in one direction and contains a mechanism to automatically prevent flow in the other direction may be used as an alternative equivalent technology where it is positioned to stop flow into the shut-off segment. Such check valves that are used as an alternative equivalent technology in accordance with this paragraph (b)(3) are not subject to § 192.636, but they must be inspected, operated, and remediated in accordance with § 192.745, including for closure and leakage to ensure operational reliability. An operator using such a check valve as an alternative equivalent technology must notify PHMSA in accordance with §§ 192.18 and 192.179 and develop and implement maintenance procedures for such equipment that meet § 192.745.

\* \* \* \* \*

■ 7. Amend § 192.636 by adding paragraph (h) to read as follows:

**§ 192.636 Transmission lines: Response to a rupture; capabilities of rupture-mitigation valves (RMVs) or alternative equivalent technologies.**

(h) *Manual operation upon identification of a rupture.* Operators using a manual valve as an alternative equivalent technology as authorized pursuant to §§ 192.18, 192.179, and 192.634 and this section must develop and implement operating procedures that appropriately designate and locate nearby personnel to ensure valve shutoff in accordance with this section and § 192.634. Manual operation of valves must include time for the assembly of necessary operating personnel, the acquisition of necessary tools and equipment, driving time under heavy traffic conditions and at the posted speed limit, walking time to access the valve, and time to shut off all valves manually, not to exceed the maximum response time allowed under paragraph (b) or (c) of this section.

**PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE**

■ 8. The authority citation for part 195 continues to read as follows:

**Authority:** 30 U.S.C. 185(w)(3), 49 U.S.C. 5103, 60101 *et seq.*, and 49 CFR 1.97.

■ 9. Amend § 195.2 by:

- a. Revising the definition for “Entirely replaced onshore hazardous liquid or carbon dioxide pipeline segments”;
- b. Removing the definition “Notification of Potential Rupture” and adding the definition “Notification of potential rupture” in its place; and
- c. Revising the definition for “Rupture-mitigation valve”.

The revisions and addition read as follows:

**§ 195.2 Definitions.**

*Entirely replaced onshore hazardous liquid or carbon dioxide pipeline segments*, for the purposes of §§ 195.258, 195.260, and 195.418, means where 2 or more miles of pipe, in the aggregate, have been replaced within any 5 contiguous miles within any 24-month period. This definition does not apply to any gathering line.

*Notification of potential rupture* means the notification to, or observation by, an operator of indicia identified in § 195.417 of a potential unintentional or uncontrolled release of a large volume of commodity from a pipeline. This

definition does not apply to any gathering line.

*Rupture-mitigation valve (RMV)* means an automatic shut-off valve (ASV) or a remote-control valve (RCV) that a pipeline operator uses to minimize the volume of hazardous liquid or carbon dioxide released from the pipeline and to mitigate the consequences of a rupture. This definition does not apply to any gathering line.

■ 10. Amend § 195.11 by revising paragraph (b)(2) to read as follows:

**§ 195.11 What is a regulated rural gathering line and what requirements apply?**

- (2) For steel pipelines constructed, replaced, relocated, or otherwise changed after July 3, 2009:
  - (i) Design, install, construct, initially inspect, and initially test the pipeline in compliance with this part, unless the pipeline is converted under § 195.5.
  - (ii) [Reserved]

■ 11. Amend § 195.258 by revising paragraph (e) and adding paragraph (f) to read as follows:

**§ 195.258 Valves: General.**

(e) If an operator elects to use alternative equivalent technology in accordance with paragraph (c) or (d) of this section, the operator must notify PHMSA in accordance with § 195.18. The operator must include a technical and safety evaluation in its notice to PHMSA. Valves that are installed as alternative equivalent technology must comply with §§ 195.418, 195.419, and 195.420. An operator requesting use of manual valves as an alternative equivalent technology must also include within the notification submitted to PHMSA a demonstration that installation of an RMV as otherwise required would be economically, technically, or operationally infeasible. An operator may use a manual pump station valve at a continuously manned station as an alternative equivalent technology. Such a valve used as an alternative equivalent technology would not require a notification to PHMSA in accordance with § 195.18, but it must comply with §§ 195.419 and 195.420.

(f) The requirements of paragraphs (c) through (e) of this section do not apply to gathering lines.

■ 12. Amend § 195.260 by adding paragraph (i) to read as follows:

**§ 195.260 Valves: Location.**

(i) An operator of a gathering line must only comply with the requirements of 49 CFR 195.260 effective as of October 4, 2022, and need not comply with the other requirements of this section.

■ 13. Amend § 195.402 by revising paragraph (c)(5)(ii) introductory text and adding paragraph (g) to read as follows:

**§ 195.402 Procedural manual for operations, maintenance, and emergencies.**

(c) (5) (ii) *Analysis of rupture and valve shut-offs; preventive and mitigative measures.* If a failure or accident on an onshore hazardous liquid or carbon dioxide pipeline involves the closure of a rupture-mitigation valve (RMV), as defined in § 195.2, or the closure of an alternative equivalent technology, the operator of the pipeline must also conduct a post-failure or post-accident analysis of all the factors that may have impacted the release volume and the consequences of the release, and identify and implement operations and maintenance measures to minimize the consequences of a future failure or accident. The analysis must include all relevant factors impacting the release volume and the consequences, including, but not limited to, the following:

(g) *Exception.* An operator of a gathering line must only comply with the requirements of 49 CFR 195.402 effective as of October 4, 2022, and need not comply with the other requirements of this section.

■ 14. Amend § 195.417 by revising paragraphs (a) introductory text and (a)(3) and adding paragraph (c) to read as follows:

**§ 195.417 Notification of potential rupture.**

(a) As used in this part, a notification of potential rupture means the notification to, or observation by, an operator (e.g., by or to its controller(s) in a control room, field personnel, nearby pipeline or utility personnel, the public, local responders, or public authorities) of one or more of the below indicia of a potential unintentional or uncontrolled release of a large volume of hazardous liquids or carbon dioxide from a pipeline:

- (3) Any unanticipated or unexplained rapid release of a large volume of hazardous liquid or carbon dioxide, a

fire, or an explosion, in the immediate vicinity of the pipeline.

\* \* \* \* \*

(c) The requirements of this section do not apply to gathering lines.

■ 15. Amend § 195.418 by revising paragraph (b)(3) and adding paragraph (d) to read as follows:

**§ 195.418 Valves: Onshore valve shut-off for rupture mitigation.**

\* \* \* \* \*

(b) \* \* \*

(3) *Laterals*. Laterals extending from shut-off segments that contribute less than 5 percent of the total shut-off segment volume may have RMVs or alternative equivalent technologies that meet the actuation requirements of this section at locations other than mainline receipt/delivery points, as long as all of these laterals contributing hazardous liquid or carbon dioxide volumes to the shut-off segment do not contribute more than 5 percent of the total shut-off segment volume, based upon maximum flow volume at the operating pressure. A check valve may be used as an alternative equivalent technology where it is positioned to stop flow into the lateral. Check valves used as an alternative equivalent technology in accordance with this paragraph (b)(3) are not subject to § 195.419 but must be inspected, operated, and remediated in accordance with § 195.420, including for closure and leakage, to ensure operational reliability. An operator using such a valve as an alternative equivalent technology must submit a request to PHMSA in accordance with § 195.18.

\* \* \* \* \*

(d) *Exception*. The requirements of this section do not apply to gathering lines.

■ 16. Amend § 195.419 by adding paragraph (h) to read as follows:

**§ 195.419 Valve capabilities.**

\* \* \* \* \*

(h) *Exception*. The requirements of this section do not apply to gathering lines.

■ 17. Amend § 195.420 by revising paragraph (b) and adding paragraph (h) to read as follows:

**§ 195.420 Valve maintenance.**

\* \* \* \* \*

(b) Each operator must, at least twice each calendar year, but at intervals not exceeding 7½ months, inspect each mainline valve to determine that it is functioning properly. Each rupture-mitigation valve (RMV), as defined in § 195.2 and not contained in a gathering line, or alternative equivalent

technology that is installed under § 195.258(c) or § 195.418, must also be partially operated. Operators are not required to close the valve fully during the inspection; a minimum 25 percent valve closure is sufficient to demonstrate compliance, unless the operator has operational information that requires an additional closure percentage for maintaining reliability.

\* \* \* \* \*

(h) The requirements of paragraphs (d) through (g) of this section do not apply to gathering lines.

■ 18. Amend § 195.452 by revising paragraph (i)(4) introductory text and adding paragraph (i)(4)(iv) to read as follows:

**§ 195.452 Pipeline integrity management in high consequence areas.**

\* \* \* \* \*

(i) \* \* \*

(4) *Emergency Flow Restricting Devices (EFRD)*. If an operator determines that an EFRD is needed on a pipeline segment that is located in, or which could affect, a high-consequence area (HCA) in the event of a hazardous liquid pipeline release, an operator must install the EFRD. In making this determination, an operator must, at least, evaluate the following factors—the swiftness of leak detection and pipeline shutdown capabilities, the type of commodity carried, the rate of potential leakage, the volume that can be released, topography or pipeline profile, the potential for ignition, proximity to power sources, location of nearest response personnel, specific terrain within the HCA or between the pipeline segment and the HCA it could affect, and benefits expected by reducing the spill size. An RMV installed under this paragraph (i)(4) must meet all of the other applicable requirements in this part, provided that the requirement of this sentence does not apply to gathering lines.

\* \* \* \* \*

(iv) The requirements of paragraphs (i)(4)(i) through (iii) of this section do not apply to gathering lines.

\* \* \* \* \*

Issued in Washington, DC, on July 21, 2023, under authority delegated in 49 CFR 1.97.

**Tristan H. Brown,**

*Deputy Administrator.*

[FR Doc. 2023-15904 Filed 7-31-23; 8:45 am]

**BILLING CODE 4910-60-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

[Docket No. 230726-0175]

RIN 0648-BM13

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Commercial Trip Limit for Gray Triggerfish**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements a management measure through this final rule as described in a framework action under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico. This final rule increases the commercial trip limit for gray triggerfish in the Gulf of Mexico from 16 fish to 25 fish. The purpose of this action is to increase the commercial trip limit to allow commercial fishermen the opportunity to harvest the commercial annual catch target of gray triggerfish.

**DATES:** This final rule is effective on September 11, 2023.

**ADDRESSES:** An electronic copy of the framework document that contains an environmental assessment and a Regulatory Flexibility Act (RFA) analysis, and provides the rationale for this final rule, is available from the Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/modification-gray-triggerfish-commercial-trip-limits>. The proposed rule for this action is available from the same Southeast Regional Office website or from [www.regulations.gov](http://www.regulations.gov) by searching “NOAA-NMFS-2023-0044.”

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, email: [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico Fishery Management Council (Council) manages reef fish in Federal waters of the Gulf of Mexico (Gulf) under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP or FMP). The Gulf Council prepared the Reef Fish FMP, and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*).

On May 5, 2023, NMFS published a proposed rule in the **Federal Register** for the framework action and requested public comment (88 FR 29048). The proposed rule and the framework action outline the rationale for the action contained in this final rule. A summary of the management measure described in the framework action and implemented by this final rule is provided below.

### Background

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

Gray triggerfish are managed under the Reef Fish FMP, and are harvested by commercial and recreational fishermen in the Gulf. The stock was determined to be undergoing overfishing according to the results of the 2006 Southeast Data, Assessment, and Review (SEDAR) 9 stock assessment. Based on the criteria selected by the Council in Amendment 30A to the FMP, the gray triggerfish stock was also considered overfished. Therefore, NMFS implemented a gray triggerfish rebuilding plan through Amendment 30A, as well as annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (73 FR 38139, July 3, 2008). Amendment 30A also established the current allocation of the stock ACL as 21 percent for the commercial sector and 79 percent for the recreational sector. The 2011 SEDAR 9 Update Assessment found that gray triggerfish were still overfished and undergoing overfishing. NMFS published a final temporary rule (77 FR 28308, May 14, 2012) that reduced the commercial and recreational ACLs and ACTs to end overfishing while the Council developed Amendment 37 to the FMP. Amendment 37 established a plan for gray triggerfish to rebuild the stock in 5 years and the implementing final rule reduced the ACLs and ACTs for gray triggerfish (78 FR 27084, May 9, 2013). Amendment 37 also established the first commercial trip limit of 12 gray triggerfish to reduce commercial landings. The commercial trip limit is the amount of the applicable species that may be possessed on the vessel, or landed, purchased, or sold from a vessel per day (50 CFR 622.43). The Council decided to establish the commercial trip

limit in numbers of fish instead of weight based on recommendations made by the Council's Law Enforcement Advisory Panel, who advised it would be difficult to enforce a low poundage limit of fish per trip, *e.g.*, if a commercial trip limit was set at less than 75 lb (34 kg). All weights in this final rule are given in round weight.

In 2017, the Council developed Amendment 46 to the Reef Fish FMP in response to the 2015 SEDAR 43 stock assessment. The assessment indicated the gray triggerfish stock was not experiencing overfishing, but was not rebuilt and remained overfished. Amendment 46 specified a new rebuilding timeline, and revised ACLs and ACTs. Commercial landings per trip were analyzed to determine the impact of changing the trip limit because the commercial sector was often harvesting gray triggerfish below its ACT since the implementation of the 12-fish commercial trip limit. The analyses supported an increase of the commercial trip limit to 16 fish to provide a better opportunity for the commercial sector to catch its ACT while the gray triggerfish stock continued to rebuild (82 FR 59523, December 15, 2017).

In 2017, the Council also developed Amendment 44 to the Reef Fish FMP. Amendment 44 reduced the overfished thresholds for gray triggerfish and six other reef fish species to reduce the likelihood that stock status changes between overfished and not overfished would occur frequently as a result of scientific uncertainty or natural fluctuations in biomass levels (82 FR 61487, December 28, 2017). Although this action resulted in the determination that gray triggerfish was no longer overfished, the rebuilding plan remained in place because the rebuilding target, which is the biomass that produces maximum sustainable yield, had not been achieved.

In 2020, the Council's Scientific and Statistical Committee (SSC) reviewed an interim analysis of the gray triggerfish stock conducted by the NMFS Southeast Fisheries Science Center. The analysis suggested an increasing biomass trend of the gray triggerfish stock could support a greater harvest. The Council's SSC determined the interim analysis was suitable for providing sufficient catch advice to update the acceptable biological catch (ABC), and the SSC recommended an increase in the ABC. As a result, the Council increased the ACLs and ACTs consistent with the ABC increase through a framework action under the Reef Fish FMP. The final rule, implemented on July 29, 2021, increased the commercial ACL for gray triggerfish from 64,100 lb (29,075

kg) to 95,949 lb (43,522 kg) and the commercial ACT increased from 60,900 lb (27,624 kg) to 88,273 lb (40,040 kg) based on the current sector allocations (86 FR 34159, June 29, 2021).

Since implementation of the 16-fish trip limit in 2018, commercial landings have been below the commercial ACL and ACT, with the exception of 2018 when landings reached 100.9 percent of the ACL. Additionally, since the most recent ACL and ACT increase in 2021, commercial landings in 2021 and preliminary 2022 commercial landings were 45 and 47 percent, respectively, of the sector's ACL, and 49 and 51 percent, respectively, of the sector's ACT.

During public testimony at meetings of the Council and the Council's Reef Fish Advisory Panel, commercial industry stakeholders indicated that the 16-fish trip limit is still limiting commercial landings and gray triggerfish are only landed incidentally when targeting other species. As a result, the commercial industry stakeholders requested the Council increase the trip limit to reduce discards when encountering gray triggerfish and allow for increased harvest of these fish to make it worthwhile to retain them when they are encountered. Analyses of alternatives increasing the trip limit to 20, 25, and 30 fish indicated that increasing the trip limit is not expected to result in an early closure of the commercial harvest of gray triggerfish. The Council selected the 25-fish commercial trip limit based on the advice of its Reef Fish Advisory Panel, which advocated for a conservative approach that allows for an increased trip limit but reduces the likelihood of an in-season closure that may occur with a higher trip limit.

### Management Measure Contained in This Final Rule

This final rule will increase the Gulf gray triggerfish commercial trip limit from 16 fish to 25 fish. Although projections developed for the framework action indicated that this trip limit would increase annual commercial landings of gray triggerfish by 33 percent, the same projections estimated the commercial season would stay open through each fishing year, with the exception of the existing seasonal closure from June 1 through July 31.

### Comments and Responses

NMFS received comments from 13 individuals, fishing organizations, and a seafood dealer on the proposed rule for the framework action. Nine comments were in support of the proposed rule, three comments were opposed to the proposed rule, and one comment that

neither supported or opposed the proposed rule.

A summary of the public comments in opposition to the action follows, along with NMFS' responses. NMFS made no changes to the action based on public comment.

*Comment 1:* The commenter supported this action but also felt that a commercial trip limit of 28 to 32 gray triggerfish could also work and still not result in a commercial ACL overage.

*Response:* The Council considered alternatives to increase the commercial trip limit to 30 and 40 gray triggerfish during the development of the framework action, and heard public testimony that the trip limit should be increased as high as 40 fish. However, the Council was concerned that if the commercial trip limit was increased too much from the limit of 16 fish, more commercial fishermen would begin to harvest gray triggerfish. If enough additional harvest occurred, the commercial sector would be at an increased risk of an early season closure, which the Council wanted to avoid. Therefore, the Council removed the alternative for a 40-fish commercial trip limit from the framework action and selected a more conservative approach as its preferred alternative for revising the trip limit. The Council indicated that an increase to a 25-fish trip limit would allow more opportunity for the commercial sector to harvest its ACT, but not exceed its ACL, and maintain the gray triggerfish stock rebuilding timeline.

*Comment 2:* Three commenters expressed opposition to an increase in the commercial "limit" or "commercial harvest" because there is no proposed increase for the recreational sector. One commenter asked if an increase in the commercial trip limit meant there would also be an increase in the recreational limit.

*Response:* This final rule is not changing the commercial ACL or ACT for gray triggerfish. This rule is only increasing the maximum number of gray triggerfish that commercial fishermen can harvest per trip, because commercial landings have been below the established commercial catch limits since 2019. Regarding the request for an increase in the recreational limit, the problem addressed in this framework action and proposed rule occurs only in the commercial sector, and the Council did not address recreational management of gray triggerfish in this action. Therefore, any adjustment to recreational management measures for gray triggerfish is outside the scope of this final rule.

### Classification

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

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

The Magnuson-Stevens Act provides the legal basis for this rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being implemented, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

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

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

### List of Subjects in 50 CFR Part 622

Fish, Fisheries, Gray triggerfish, Gulf of Mexico.

Dated: July 26, 2023.

**Samuel D. Rauch, III,**

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

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

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

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

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

■ 2. In § 622.43, revise paragraph (b) to read as follows:

#### **§ 622.43 Commercial trip limits.**

\* \* \* \* \*

(b) *Gray triggerfish*—25 fish. The commercial trip limit applies until the commercial quota specified in § 622.39(a)(1)(vi) is reached, which is equal to the commercial ACT. See

§ 622.39(b) for the limitations regarding gray triggerfish after the commercial quota is reached.

\* \* \* \* \*

[FR Doc. 2023-16229 Filed 7-31-23; 8:45 am]

**BILLING CODE 3510-22-P**

### **DEPARTMENT OF COMMERCE**

#### **National Oceanic and Atmospheric Administration**

#### **50 CFR Part 648**

[Docket No. 220711-0151; RTID 0648-XD202]

#### **Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Gulf of Maine Cod Trimester Total Allowable Catch Area Closure for the Common Pool Fishery**

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

**ACTION:** Temporary rule; area closure.

**SUMMARY:** This action closes the Gulf of Maine Cod Trimester Total Allowable Catch Area to Northeast multispecies common pool vessels fishing with trawl gear, sink gillnet gear, and longline/hook gear, through August 31, 2023. The closure is required because the common pool fishery is projected to have caught over 90 percent of its Trimester 1 quota for Gulf of Maine cod. This closure is intended to prevent an overage of the common pool's quota for this stock.

**DATES:** This action is effective July 27, 2023, through August 31, 2023.

**FOR FURTHER INFORMATION CONTACT:** Spencer Talmage, Fishery Policy Analyst, (978) 281-9232.

**SUPPLEMENTARY INFORMATION:** Federal regulations at § 648.82(n)(2)(ii) require the Regional Administrator to close a common pool Trimester Total Allowable Catch (TAC) Area for a stock when 90 percent of the Trimester TAC is projected to be caught. The closure applies to all common pool vessels fishing with gear capable of catching that stock, and remains in effect for the remainder of the trimester. During the closure, affected common pool vessels may not fish for, harvest, possess, or land regulated multispecies or ocean pout in or from the Trimester TAC Area for the stock.

The Trimester 1 TAC for Gulf of Maine (GOM) cod is 9,480 lb (pounds) (4.3 metric tons (mt)). Catch data (including landings and discards) indicate that the common pool fishery caught 9,066 lb (4.1 mt) of GOM cod, or

95.6 percent of the Trimester 1 TAC, through July 18, 2023. Based on best available data, we estimate that the common pool has achieved over 90 percent of the Trimester 1 TAC.

Effective July 27, 2023, the GOM Cod Trimester TAC Area is closed for the remainder of Trimester 1, through August 31, 2023. The GOM Cod Trimester TAC Area consists of statistical areas, 513 and 514. During the closure, common pool vessels fishing with trawl gear, sink gillnet gear, and longline/hook gear, may not fish for, harvest, possess, or land regulated multispecies or ocean pout in or from this area. The area reopens at the beginning of Trimester 1 of fishing year 2023 on September 1, 2023.

If a vessel declared its trip through the Vessel Monitoring System (VMS) or the interactive voice response system, and crossed the VMS demarcation line prior to July 27, 2023, it may complete its trip within the GOM Cod Trimester TAC Area. A vessel that has set gillnet gear prior to July 27, 2023, may complete its trip by hauling such gear.

If the common pool fishery exceeds its annual sub-Allowable Catch Limit (sub-ACL) for a stock in the 2023 fishing year, the overage must be deducted from the common pool's sub-ACL for that stock for fishing year 2024.

Weekly quota monitoring reports for the common pool fishery are on our website at: <https://www.greateratlantic.fisheries.noaa.gov/ro/fso/reports/h/nemultispecies.html>. We will continue to monitor common pool catch through vessel trip reports, dealer-reported landings, VMS catch reports, and other available information and, if necessary, will make additional adjustments to common pool management measures.

#### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866. The Assistant Administrator for Fisheries, NOAA, finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the 30-day delayed effectiveness period because it would be impracticable and contrary to the public interest.

The regulations require the Regional Administrator to close a trimester TAC area to the common pool fishery when 90 percent of the Trimester TAC for a stock has been caught. Updated catch information through July 18, 2023, only recently became available indicating that the common pool fishery is projected to have caught 90 percent of its Trimester 1 TAC for GOM cod. The time necessary to provide for prior

notice and comment, and a 30-day delay in effectiveness, would prevent the immediate closure of the GOM Cod Trimester TAC Area. This would be contrary to the regulatory requirement and would increase the likelihood that the common pool fishery would exceed its annual quota of GOM cod. Any overage of the Trimester 1 TAC is deducted from the Trimester 3 TAC, and any overage of the annual quota would be deducted from common pool's quota for the next fishing year, to the detriment of this stock. This could undermine conservation and management objectives of the Northeast Multispecies Fishery Management Plan. Fishermen expect these closures to occur in a timely way to prevent overages and their payback requirements. Overages of the trimester or annual common pool quota could cause negative economic impacts to the common pool fishery as a result of overage paybacks deducted from a future trimester or fishing year.

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

Dated: July 26, 2023.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2023-16231 Filed 7-27-23; 4:15 pm]

**BILLING CODE 3510-22-P**

# Proposed Rules

Federal Register

Vol. 88, No. 146

Tuesday, August 1, 2023

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2023-1645; Project Identifier MCAI-2022-01296-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 supersede Airworthiness Directive (AD) 2019-12-07, which applies to all Airbus SAS Model A318-111, -112, -121, and -122 airplanes; Model A319-111, -112, -113, -114, -115, -131, -132, and -133 airplanes; Model A320-211, -212, -214, -216, -231, -232, and -233 airplanes; and Model A321-111, -112, -131, -211, -212, -213, -231, and -232 airplanes. AD 2019-12-07 requires replacement of both main landing gear (MLG) shock absorbers, an identification of affected MLG sliding tubes; inspection of affected chromium plates and sliding tube axles for damage; and replacement of the sliding tube if necessary. AD 2019-12-07 also requires repetitive inspections of affected MLG sliding tubes for cracking, replacement of cracked MLG sliding tubes, and eventual replacement of each affected MLG sliding tube. Since the FAA issued AD 2019-12-07, the FAA has determined that additional MLG sliding tubes are affected by the unsafe condition and that the repetitive inspection interval may be extended. This proposed AD would continue to require the actions specified in AD 2019-12-07 and would require repetitive inspections of additional MLG sliding tubes, replacement if necessary, and eventual replacement of the additional MLG sliding tubes. This proposed AD would also extend the repetitive inspection interval. This

proposed AD would also prohibit the installation of affected parts under certain conditions. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by September 15, 2023.

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

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

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of

Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA-2023-1645; 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 Airbus service information identified in this NPRM, contact Airbus SAS, Airworthiness Office—EIAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com*; website *airbus.com*.

- For Safran and Messier-Dowty service information identified in this NPRM, contact Safran Landing Systems, One Carbon Way, Walton, KY 41094; telephone 859-525-8583; fax 859-485-8827; website *www.safran-landing-systems.com*.

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

**FOR FURTHER INFORMATION CONTACT:**

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 **ADDRESSES**. Include “Docket No. FAA-2023-1645; Project Identifier MCAI-2022-01296-T” at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to 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

The FAA issued AD 2019–12–07, Amendment 39–19662 (84 FR 30579, June 27, 2019) (AD 2019–12–07), for all Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. AD 2019–12–07 was prompted by an MCAI originated by the European Union Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2018–0135, dated June 26, 2018 (EASA AD 2018–0135), to correct an unsafe condition.

AD 2019–12–07 requires replacement of both MLG shock absorbers, an identification of the part number and serial number of the MLG sliding tubes, inspection of affected chromium plates and sliding tube axles for damage, and replacement of the sliding tube if necessary. AD 2019–12–07 also requires repetitive inspections of affected MLG sliding tubes for cracking, replacement of cracked MLG sliding tubes, and eventual replacement of each affected MLG sliding tube. The FAA issued AD 2019–12–07 to address cracking in an MLG sliding tube, which could lead to failure of an MLG sliding tube resulting in MLG collapse, damage to the airplane, and injury to passengers.

### Actions Since AD 2019–12–07 Was Issued

Since the FAA issued AD 2019–12–07, EASA superseded EASA AD 2018–0135 and issued EASA AD 2022–0204R1, dated February 15, 2023; corrected February 17, 2023; (referred to after this as the MCAI) to correct an unsafe condition on all Airbus SAS Model A318–111, –112, –121, and –122 airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes; Model A320–211, –212, –214, –215, –216, –231, –232, and –233 airplanes; and Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this proposed AD therefore does not include those airplanes in the applicability. The MCAI states that since EASA AD 2018–0135 was issued, two

additional cases have been reported of cracking at the same location of MLG sliding tubes not affected by the inspection requirements and that service information was issued to include additional actions for the newly affected MLG sliding tubes. In addition, further investigation determined the repetitive inspection interval may be extended from 5,000 flight cycles to 10,000 flight cycles.

The FAA has determined that additional MLG sliding tubes are affected by the unsafe condition and that the repetitive inspection interval may be extended. The FAA is proposing this AD to address cracking in an MLG sliding tube, which could lead to failure of an MLG sliding tube resulting in MLG collapse, damage to the airplane, and injury to passengers.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1645.

### Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Service Bulletin A320–32–1441, Revision 02, dated August 23, 2022. This service information specifies procedures for inspections of the MLG sliding tubes for cracking and corrective actions (which includes replacing the MLG sliding tubes).

The FAA also reviewed Safran Service Bulletin 200–32–321, Revision 4, dated November 3, 2021; and Safran Service Bulletin 201–32–68, Revision 4, dated November 3, 2021. These documents specify the part numbers and serial numbers of the affected MLG sliding tubes. These documents are distinct since they apply to different airplane models.

This proposed AD would also require the following service information, which the Director of the Federal Register approved for incorporation by reference as of August 1, 2019 (84 FR 30579, June 27, 2019).

- Airbus Service Bulletin A320–32–1441, Revision 01, dated December 14, 2017.
- Messier-Dowty Service Bulletin 200–32–286, Revision 3, dated October 3, 2008.
- Messier-Dowty Service Bulletin 201–32–43, Revision 3, dated October 3, 2008.
- Safran Service Bulletin 200–32–321, Revision 2, dated October 3, 2017.
- Safran Service Bulletin 201–32–68, Revision 2, dated October 3, 2017.

This proposed AD would also require Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014, which the Director of the Federal Register approved for incorporation by reference as of February 22, 2017 (82 FR 5362, January 18, 2017).

This proposed AD would also require Airbus Service Bulletin A320–32A1273, Revision 02, including Appendix 01, dated May 26, 2005, which the Director of the Federal Register approved for incorporation by reference as of June 29, 2007 (72 FR 29241, May 25, 2007).

This proposed AD would also require Airbus All Operators Telex A320–32A1273, Revision 01, dated May 6, 2004, which the Director of the Federal Register approved for incorporation by reference as of June 23, 2004 (69 FR 31867, June 8, 2004).

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

### FAA's Determination

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

### Proposed AD Requirements in This NPRM

This proposed AD would retain all of the requirements of AD 2019–12–07, except the repetitive inspection interval is extended. This proposed AD would also require repetitive inspections of additional MLG sliding tubes, replacement if necessary, and eventual replacement of the additional MLG sliding tubes. This proposed AD would also prohibit the installation of affected parts under certain conditions.

### Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 1,525 airplanes of U.S. registry.

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

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from paragraph (g) of AD 2019–12–07 (297 airplanes *).	8 work-hours × \$85 per hour = \$680	Up to \$45,310 .....	Up to \$45,990 .....	Up to \$13,659,030.*
Retained actions from paragraphs (h) and (j) of AD 2019–12–07.	18 work-hours × \$85 per hour = \$1,530.	\$0 .....	\$1,530 .....	\$2,333,250.
Retained actions from paragraphs (o), (p), and (q) of AD 2019–12–07.	13 work-hours × \$85 per hour = \$1,105.	Up to \$3,920 .....	Up to \$5,025 .....	Up to \$7,663,125.
New proposed actions (in paragraphs (o), (p), and (q) of this proposed AD).	9 work-hours × \$85 per hour = \$765	Up to \$3,920 .....	Up to \$4,685 .....	Up to \$7,144,625.

\* Operators should note that, although all U.S.-registered airplanes are subject to the retained requirements of paragraph (g) of this proposed AD, there are only 297 possible affected MLG sliding tubes in the worldwide fleet. The FAA has no way of knowing how many affected MLG sliding tubes, if any, are installed in U.S.-registered airplanes.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
7 work-hours × \$85 per hour = \$595 .....	\$1,960	\$2,555

**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 has 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) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

**PART 39—AIRWORTHINESS DIRECTIVES**

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

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

**§ 39.13 [Amended]**

- 2. The FAA amends § 39.13 by:
  - a. Removing Airworthiness Directive (AD) 2019–12–07, Amendment 39–19662 (84 FR 30579, June 27, 2019); and
  - b. Adding the following new AD:

**Airbus SAS:** Docket No. FAA–2023–1645; Project Identifier MCAI–2022–01296–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by September 15, 2023.

**(b) Affected ADs**

This AD replaces AD 2019–12–07, Amendment 39–19662 (84 FR 30579, June 27, 2019) (AD 2019–12–07).

**(c) Applicability**

This AD applies to Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, all manufacturer serial numbers (MSNs).

(1) Model A318–111, –112, –121, and –122 airplanes.

(2) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(3) Model A320–211, –212, –214, –216, –231, –232, and –233 airplanes.

(4) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

**(d) Subject**

Air Transport Association (ATA) of America Code 32, Landing gear.

**(e) Reason**

This AD was prompted by a determination that cracks were found in the main landing gear (MLG) sliding tubes due to certain manufacturing defects that might not be identified using the current on-wing scheduled inspections. In addition, since AD 2019–12–07 was issued, the FAA has determined that additional MLG sliding tubes are affected by the unsafe condition. The FAA is issuing this AD to address cracking in an MLG sliding tube, which could lead to failure of an MLG sliding tube resulting in MLG collapse, damage to the airplane, and injury to passengers.

**(f) Compliance**

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

**(g) Retained Replacement, With No Changes**

This paragraph restates the requirements of paragraph (g) of AD 2019–12–07, with no changes. Within 41 months after June 29, 2007 (the effective date of AD 2007–11–11, Amendment 39–15068 (72 FR 29241, May 25, 2007) (AD 2007–11–11)), replace all MLG shock absorbers equipped with MLG sliding tubes having serial numbers listed in Airbus All Operators Telex (AOT) A320–32A1273, Revision 01, dated May 6, 2004; or the Accomplishment Instructions of Airbus Service Bulletin A320–32A1273, Revision 02, including Appendix 01, dated May 26, 2005; with new or serviceable MLG shock absorbers equipped with MLG sliding tubes having serial numbers not listed in Airbus AOT A320–32A1273, Revision 01, dated May 6, 2004; or the Accomplishment Instructions of Airbus Service Bulletin A320–32A1273, Revision 02, including Appendix 01, dated May 26, 2005; using a method approved by the Manager, International Section, Transport Standards Branch, FAA; or the European

Aviation Safety Agency (EASA); or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature. As of June 29, 2007, only Airbus Service Bulletin A320–32A1273, Revision 02, including Appendix 01, dated May 26, 2005, may be used to determine the affected MLG sliding tubes.

**Note 1 to paragraph (g):** Guidance on the replacement specified in paragraph (g) of this AD can be found in Airbus A318/A319/A320/A321 Aircraft Maintenance Manual Chapter 32–11–13, page block 401.

**(h) Retained MLG Sliding Tube Part Number and Serial Number Identification, With No Changes**

This paragraph restates the requirements of paragraph (h) of AD 2019–12–07, with no changes. Within three months after February 22, 2017 (the effective date of AD 2017–01–11, Amendment 39–18778 (82 FR 5362, January 18, 2017) (AD 2017–01–11)): Do an inspection to identify the part number and

serial number of the MLG sliding tubes installed on the airplane. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the MLG sliding tubes can be conclusively determined from that review.

**(i) Retained Identification of Airplanes, With an Updated Reference**

This paragraph restates the requirements of paragraph (i) of AD 2019–12–07, with an updated reference. An airplane with a MSN not listed in figure 1 to paragraph (i) of this AD is not affected by the requirements of paragraph (j) of this AD, provided it can be determined that no MLG sliding tube having a part number and serial number listed in figure 2 to paragraph (i) of this AD has been installed on that airplane since first flight of the airplane.

**BILLING CODE 4910–13–P**

**Figure 1 to Paragraph (i)—Affected Airplanes Listed by MSN**

Affected Airplanes Listed by MSN					
0179	0214	0296	0412	0558	0604
0607	0668	0704	0720	0726	0731
0754	0771	0799	0828	0841	0855
0909	0914	0925	0939	0986	1028
1030	1041	1070	1083	1093	1098
1108	1148	1294	1356	2713	2831

Figure 2 to Paragraph (i)—Affected MLG  
Sliding Tubes

<b>Part Number</b>	<b>Serial Number</b>
201160302	78B
201160302	1016B11
201160302	1144B
201371302	B4493
201371302	B4513
201371302	SS4359
201371302	B4530
201371302	B4517
201371302	B4568
201371302	B4498
201371302	4490B
201371302	B202-4598
201371302	B165-4623
201371302	B244-4766
201371302	B267-4794
201371302	B272-4813
201160302	1108B
201371304	B041-4871
201371304	B045-4869
201371304	B001-4781
201371304	B051-4892
201371304	B110-1952
201371304	B054-4891
201371304	B063-4921
201371304	B071-4911
201371304	B071-4917
201371304	B080-1933
201371304	B117-5010
201371304	B120-4989

<b>Part Number</b>	<b>Serial Number</b>
201371304	B132-2023
201371304	B114-1956
201371304	B208-2009
201371304	B133-1947
201371304	B154-5037
201371304	B89 4952
201371304	B129-1964
201371304	B227-2010
201371304	B170-5031
201371304	B182-5047
201371304	B239-2053
201371304	B1401-2856
201371304	B1813-3142
201371304	B116-5004
201522353	B011-149
201522350	B014-25
201522350	B019-56
201522350	B019-57
201522350	B021-69
201522350	B022-60
201522353	B03-111
201522353	B03-110
201522353	B112-317
201522353	B174-351
201522353	B179-392
201383350	4377B
201383350	4393B
201383350	B1831
201383350	B1832
201383350	SS4355B
201383350	SS4400B

**(j) Retained Inspections, With an Updated Reference**

This paragraph restates the inspections required by paragraph (j) of AD 2019–12–07, with an updated reference. For each MLG sliding tube identified as required by paragraph (h) of this AD, having a part number and serial number listed in figure 2 to paragraph (i) of this AD: Within 3 months after February 22, 2017 (the effective date of AD 2017–01–11) inspect affected MLG axles and brake flanges by doing a detailed visual inspection of the chromium plates for damage, and a Barkhausen noise inspection of the MLG sliding tube axles for damage, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014. For Model A318 series airplanes, use the procedures specified for Model A319 series airplanes in Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014.

**(k) Retained Corrective Action for Paragraph (j) of This AD, With No Changes**

This paragraph restates the requirements of paragraph (k) of 2019–12–07, with no changes. If, during any inspection required by paragraph (j) of this AD, any damage is detected: Before further flight, replace the MLG sliding tube with a serviceable MLG sliding tube, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014. For Model A318 series airplanes, use the procedures specified for Model A319 series airplanes in Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014.

**(l) Retained Definition for Serviceable MLG Sliding Tube, With Updated References**

This paragraph restates the definition for serviceable MLG sliding tube specified in paragraph (l) of AD 2019–12–07, with updated references. For the purpose of paragraph (k) of this AD, a serviceable MLG sliding tube is defined as an MLG sliding tube that meets the criterion in either paragraph (l)(1) or (2) of this AD.

(1) An MLG sliding tube having a part number and serial number not listed in figure 2 to paragraph (i) of this AD.

(2) An MLG sliding tube having a part number and serial number listed in figure 2 to paragraph (i) of this AD that has passed the inspections required by paragraph (j) of this AD.

**(m) Retained Parts Installation Prohibition, With Updated References**

This paragraph restates the parts installation prohibition specified in paragraph (m) of AD 2019–12–07, with updated references.

(1) For airplanes that have an MLG sliding tube installed that has a part number and serial number listed in figure 2 to paragraph (i) of this AD: After an airplane is returned to service following accomplishment of the actions required by paragraphs (h), (i), and (j) of this AD, no person may install on any airplane an MLG sliding tube having a part number and serial number listed in figure 2 to paragraph (i) of this AD, unless that MLG sliding tube has passed the inspection required by paragraph (j) of this AD.

(2) For airplanes that, as of February 22, 2017 (the effective date of AD 2017–01–11), do not have an MLG sliding tube installed that has a part number and serial number listed in figure 2 to paragraph (i) of this AD: No person may install, on any airplane, an MLG sliding tube having a part number and serial number listed in figure 2 to paragraph (i) of this AD unless that MLG sliding tube has passed the inspection required by paragraph (j) of this AD.

**(n) Retained Definitions, With No Changes**

This paragraph restates the definitions specified in paragraph (n) of AD 2019–12–07, with no changes. For the purpose of paragraphs (o), (p), (q), (r), and (s) of this AD, the following definitions apply.

(1) Affected MLG shock absorber: An MLG shock absorber having a part number and serial number as identified in Messier-Dowty Service Bulletin 200–32–286, Revision 3, dated October 3, 2008, for Model A318, A319, and A320 series airplanes; and Messier-Dowty Service Bulletin 201–32–43, Revision 3, dated October 3, 2008, for Model A321 series airplanes.

(2) Affected MLG sliding tube: An MLG sliding tube having a part number and serial number as identified in Appendix B of Safran Service Bulletin 200–32–321, Revision 2, dated October 3, 2017, for Model A318,

A319, and A320 series airplanes, or Safran Service Bulletin 201–32–68, Revision 2, dated October 3, 2017, for Model A321 series airplanes; except those parts that passed an inspection as specified in Safran Service Bulletin 200–32–321 or Safran Service Bulletin 201–32–68, as applicable; and those parts that, after that inspection, have been repaired, using instructions approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

**Note 2 to paragraph (n)(2) of this AD:** The affected MLG sliding tubes identified in paragraph (n)(2) of this AD are referred to as affected "Batch 1" MLG sliding tubes in EASA AD 2022–0204R1, dated February 15, 2023; corrected February 17, 2023.

(3) Serviceable MLG sliding tube: An MLG sliding tube that is not affected, or an affected MLG sliding tube, that has not exceeded 10,000 flight cycles since first installation on an airplane, or an affected MLG sliding tube that, within the last 5,000 flight cycles before installation on an airplane, passed an inspection specified in Airbus Service Bulletin A320–32–1441.

**(o) Retained Repetitive Inspections, With New Service Information and Extended Inspection Interval**

This paragraph restates the repetitive inspections required by paragraph (o) of AD 2019–12–07, with new service information and extended inspection interval. At the compliance time specified in figure 3 to paragraph (o) of this AD, and thereafter at intervals not to exceed 10,000 flight cycles: Do a detailed inspection of each affected MLG sliding tube, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–32–1441, Revision 01, dated December 14, 2017; or Airbus Service Bulletin A320–32–1441, Revision 02, dated August 23, 2022. As of the effective date of this AD, only use Airbus Service Bulletin A320–32–1441, Revision 02, dated August 23, 2022, for the actions required by this paragraph.

**Figure 3 to Paragraph (o)—Initial Compliance Time for MLG Sliding Tube Inspection**

<b>Initial Compliance Time for MLG Sliding Tube Inspection (whichever occurs later, A B, or C)</b>	
<b>A</b>	Prior to exceeding 10,000 flight cycles since first installation of an affected MLG sliding tube on an airplane.
<b>B</b>	Before exceeding 10,000 flight cycles since last MLG sliding tube overhaul.
<b>C</b>	Within 5,000 flight cycles or 25 months, whichever occurs first after August 1, 2019 (the effective date of AD 2019-12-07).

**Note 3 to paragraph (o):** If no reliable data regarding the number of flight cycles accumulated by the MLG sliding tube are available, operators may refer to the guidance specified in Chapter 5.2, "Traceability," of Section 1, of Part 1 of the Airbus A318/A319/A320/A321 Airworthiness Limitations Section.

**(p) Retained Corrective Actions for Certain Inspections Required by Paragraph (o) of This AD, With New Service Information**

This paragraph restates the corrective actions required by paragraph (p) of AD 2019-12-07 for certain inspections required by paragraph (o) of this AD, with new service information. For airplanes on which any inspection required by paragraph (o) of this AD has been done before the effective date of this AD, comply with paragraph (p)(1) or (2) of this AD, as applicable. For airplanes on which any inspection required by paragraph (o) of this AD has been done on or after the effective date of this AD, comply with paragraph (y)(1) or (3) of this AD, as applicable.

(1) If any crack is detected on an MLG sliding tube, before further flight, replace that MLG sliding tube with a serviceable MLG sliding tube, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-32-1441, Revision 01, dated December 14, 2017; or Airbus Service Bulletin A320-32-1441, Revision 02, dated August 23, 2022.

(2) Replacement of an MLG on an airplane with an MLG having a serviceable MLG sliding tube installed is an acceptable method to comply with the requirements of paragraph (p)(1) of this AD for that airplane.

**(q) Retained Part Replacement, With New Reference to New Parts Installation Limitation**

This paragraph restates the parts replacement required by paragraph (q) of AD 2019-12-07, with new reference to new parts installation limitation.

(1) Within 10 years after August 1, 2019 (the effective date of AD 2019-12-07), replace each affected MLG sliding tube with an MLG sliding tube that is not affected. Installation of an MLG sliding tube that is not affected on an airplane constitutes terminating action for the repetitive inspections required by paragraph (o) of this AD for that airplane. As of the effective date of this AD, operators also must comply with the parts installation limitation specified in paragraph (aa) of this AD.

(2) Replacement of an MLG on an airplane with an MLG that does not have an affected MLG sliding tube installed is an acceptable method to comply with the requirements of paragraph (q)(1) of this AD for that airplane. As of the effective date of this AD, operators also must comply with the parts installation limitation specified in paragraph (aa) of this AD.

**(r) Retained Parts Installation Limitation, With a New Exception to Paragraph (r)(1) of This AD**

This paragraph restates the parts installation limitation specified in paragraph

(r) of AD 2019-12-07, with a new exception to paragraph (r)(1) of this AD.

(1) As of August 1, 2019 (the effective date of AD 2019-12-07) and before the effective date of this AD, no person may install on any airplane an affected MLG shock absorber assembly containing a discrepant MLG sliding tube part number. As of the effective date of this AD, comply with the parts installation limitation specified in paragraph (aa)(1) of this AD.

(2) Do not install an affected MLG sliding tube on any airplane as specified in paragraph (r)(2)(i) or (ii) of this AD, as applicable.

(i) For an airplane with an affected MLG sliding tube installed as of August 1, 2019 (the effective date of AD 2019-12-07): After replacement of each affected MLG sliding tube as required by paragraph (q) of this AD.

(ii) For an airplane that does not have an affected MLG sliding tube installed as of August 1, 2019 (the effective date of AD 2019-12-07): As of August 1, 2019.

**(s) Retained Identification of Airplanes Not Affected by Certain Requirements of This AD, With No Changes**

This paragraph restates the airplanes not affected provision specified in paragraph (s) of AD 2019-12-07, with no changes. An airplane on which Airbus Modification 161202 or Modification 161346 has been installed in production is not affected by the requirements of paragraphs (g), (h), (j), (o), and (q) of this AD, provided it has been verified that no affected MLG sliding tube is installed on that airplane.

**(t) Retained Credit for Previous Actions, With No Changes**

This paragraph restates the credit for previous actions specified in paragraph (t) of AD 2019-12-07, with no changes.

(1) This paragraph provides credit for the actions required by paragraph (g) of this AD, if those actions were performed before June 29, 2007 (the effective date of AD 2007-11-11), using Airbus AOT A320-32A1273, Revision 01, dated May 6, 2004. This document was incorporated by reference in AD 2004-11-13, Amendment 39-13659 (69 FR 31867, June 8, 2004).

(2) This paragraph provides credit for the initial inspection and applicable corrective actions required by paragraphs (o) and (p) of this AD if those actions were performed before August 1, 2019 (the effective date of AD 2019-12-07), using the Accomplishment Instructions in Airbus Service Bulletin A320-32-1441, dated December 28, 2016.

**(u) Retained Service Information Exception, With No Changes**

This paragraph restates the service information exception specified in paragraph (u) of AD 2019-12-07, with no changes. The service information specified in paragraph (g) of this AD has instructions to send any cracked part to Messier-Dowty. This AD does not include such a requirement.

**(v) Retained No Reporting Requirement, With New Service Information**

This paragraph restates the no reporting requirement provision specified in paragraph

(v) of AD 2019-12-07, with new service information. Although Airbus Service Bulletin A320-32-1441, Revision 01, dated December 14, 2017; and Airbus Service Bulletin A320-32-1441, Revision 02, dated August 23, 2022; specify to submit certain information to the manufacturer, and specify that action as "RC" (required for compliance), this AD does not include that requirement.

**(w) New Definitions for New Requirements of This AD**

For the purpose of paragraphs (x), (y), (z), (aa), and (bb) of this AD, the following definitions apply.

(1) Affected MLG sliding tube: An MLG sliding tube having a part number identified in Safran Service Bulletin 200-32-321, Revision 4, dated November 3, 2021, for Model A318, A319, and A320 series airplanes, or Safran Service Bulletin 201-32-68, Revision 4, dated November 3, 2021, for Model A321 series airplanes; except those having a serial number identified in Appendix B of Safran Service Bulletin 200-32-321, Revision 2, dated October 3, 2017, for Model A318, A319, and A320 series airplanes, or Safran Service Bulletin 201-32-68, Revision 2, dated October 3, 2017, for Model A321 series airplanes; and except those parts that passed an inspection as specified in Safran Service Bulletin 200-32-321 or Safran Service Bulletin 201-32-68, as applicable; and those parts that, after that inspection, have been repaired, using instructions approved by the Manager, International Section, Transport Standards Branch, FAA; or EASA; or Airbus SAS's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

**Note 4 to paragraph (w)(1) of this AD:** The affected MLG sliding tubes identified in paragraph (w)(1) of this AD are referred to as affected "Batch 2" MLG sliding tubes in EASA AD 2022-0204R1, dated February 15, 2023; corrected February 17, 2023.

(2) Serviceable MLG sliding tube: Any MLG sliding tube other than those identified in paragraphs (w)(2)(i) thru (iii) of this AD.

(i) Any MLG sliding tube having a part number and serial number listed in figure 2 to paragraph (i) of this AD.

(ii) Any affected MLG sliding tube identified in paragraph (n)(2) of this AD.

(iii) Any affected MLG sliding tube identified in paragraph (w)(1) of this AD.

**(x) New Inspections for Additional Affected MLG Sliding Tubes**

At the compliance time specified in figure 4 to paragraph (x) of this AD, and thereafter at intervals not to exceed 10,000 flight cycles: Do a detailed inspection of each affected MLG sliding tube, as defined in paragraph (w)(1) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-32-1441, Revision 02, dated August 23, 2022.

**Figure 4 to Paragraph (x)—Initial Compliance Time for MLG Sliding Tube Inspection**

<b>Initial Compliance Time for MLG Sliding Tube Inspection (whichever occurs later, A B, or C)</b>	
<b>A</b>	Prior to exceeding 10,000 flight cycles since first installation of an affected MLG sliding tube on an airplane.
<b>B</b>	Before exceeding 10,000 flight cycles since last MLG sliding tube overhaul.
<b>C</b>	For affected MLG sliding tubes: Within 2,000 flight cycles after the effective date of this AD.

**Note 5 to paragraph (x):** If no reliable data regarding the number of flight cycles accumulated by the MLG sliding tube are available, operators may refer to the guidance specified in Chapter 5.2, "Traceability," of Section 1, of Part 1 of the Airbus A318/A319/A320/A321 Airworthiness Limitations Section.

**(y) New Corrective Actions**

(1) For airplanes on which any inspection required by paragraph (o) of this AD has been done on or after the effective date of this AD: If any crack is detected on an MLG sliding tube, before further flight, replace that MLG sliding tube with a serviceable MLG sliding tube, as defined in paragraph (w)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-32-1441, Revision 02, dated August 23, 2022.

(2) If, during any inspection required by paragraph (x) of this AD, any crack is detected on an MLG sliding tube: Before further flight, replace that MLG sliding tube with a serviceable MLG sliding tube, as defined in paragraph (w)(2) of this AD, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320-32-1441, Revision 02, dated August 23, 2022.

(3) Replacement of an MLG on an airplane with an MLG having a serviceable MLG sliding tube, as defined in paragraph (w)(2) of this AD, installed is an acceptable method to comply with the requirements of paragraph (y)(1) or (2) of this AD for that airplane.

**(z) New Replacement for Additional Affected Parts**

(1) Within 10 years after the effective date of this AD, replace each affected MLG sliding tube, as defined in paragraph (w)(1) of this AD, with a serviceable MLG sliding tube, as defined in paragraph (w)(2) of this AD. Replacement on an airplane of all affected MLG sliding tubes constitutes terminating action for the repetitive inspections required by paragraph (x) of this AD for that airplane.

(2) Replacement of an MLG on an airplane with an MLG that has a serviceable MLG sliding tube, as defined in paragraph (w)(2) of this AD, installed is an acceptable method to comply with the requirement of paragraph (z)(1) of this AD for that airplane.

**(aa) New Parts Installation Limitation**

(1) As of the effective date of this AD, no person may install on any airplane an MLG shock absorber assembly that contains any MLG sliding tube identified in paragraphs (aa)(i) through (iii) of this AD.

(i) Any MLG sliding tube having a part number and serial number listed in figure 2 to paragraph (i) of this AD.

(ii) Any affected MLG sliding tube identified in paragraph (n)(2) of this AD.

(iii) Any affected MLG sliding tube identified in paragraph (w)(1) of this AD.

(2) Do not install an affected MLG sliding tube identified in paragraph (w)(1) of this AD on any airplane as specified in paragraph (aa)(2)(i) or (ii) of this AD, as applicable.

(i) For an airplane with an affected MLG sliding tube installed as of the effective date of this AD: After replacement of each affected MLG sliding tube as required by paragraph (z) of this AD.

(ii) For an airplane that does not have an affected MLG sliding tube installed as of the effective date of this AD: As of the effective date of this AD.

**(bb) New Identification of Airplanes Not Affected by Certain Requirements of This AD**

An airplane on which Airbus Modification 161202 or Modification 161346 has been installed in production is not affected by the requirements for affected MLG sliding tubes in paragraph (x) of this AD and the requirement of paragraph (z) of this AD, provided it has been verified that no affected MLG sliding tube, as defined in paragraph (w)(2) of this AD, is installed on that airplane.

**(cc) No Reporting Requirement for New Actions**

Although Airbus Service Bulletin A320-32-1441, Revision 01, dated December 14, 2017; and Airbus Service Bulletin A320-32-1441, Revision 02, dated August 23, 2022; specify to submit certain information to the manufacturer, and specify that action as "RC" (required for compliance), this AD does not include that requirement.

**(dd) Additional AD Provisions**

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (ee)(2) of this AD or email to: 9-AVS-AIR-730-AMOC@faa.gov. If mailing information, also submit information by email.

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

(ii) AMOCs approved for AD 2019-12-07 are approved as AMOCs for the corresponding provisions of this AD.

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

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

**(ee) Additional Information**

(1) Refer to EASA AD 2022-0204R1, dated February 15, 2023; corrected February 17, 2023; for related information. This EASA AD may be found in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2023-1645.

(2) 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](mailto:Timothy.P.Dowling@faa.gov).

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (ff)(8) and (10) of this AD.

**(ff) Material Incorporated by Reference**

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

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

(3) The following service information was approved for IBR on [DATE 35 DAYS AFTER PUBLICATION OF THE FINAL RULE].

(i) Airbus Service Bulletin A320–32–1441, Revision 02, dated August 23, 2022.

(ii) Safran Service Bulletin 200–32–321, Revision 4, dated November 3, 2021.

(iii) Safran Service Bulletin 201–32–68, Revision 4, dated November 3, 2021.

(4) The following service information was approved for IBR on August 1, 2019 (84 FR 30579, June 27, 2019).

(i) Airbus Service Bulletin A320–32–1441, Revision 01, dated December 14, 2017.

(ii) Messier-Dowty Service Bulletin 200–32–286, Revision 3, dated October 3, 2008.

(iii) Messier-Dowty Service Bulletin 201–32–43, Revision 3, dated October 3, 2008.

(iv) Safran Service Bulletin 200–32–321, Revision 2, dated October 3, 2017.

(v) Safran Service Bulletin 201–32–68, Revision 2, dated October 3, 2017.

(5) The following service information was approved for IBR on February 22, 2017 (82 FR 5362, January 18, 2017).

(i) Airbus Service Bulletin A320–32–1416, including Appendix 01, dated March 10, 2014.

(ii) [Reserved]

(6) The following service information was approved for IBR on June 29, 2007 (72 FR 29241, May 25, 2007).

(i) Airbus Service Bulletin A320–32A1273, Revision 02, including Appendix 01, dated May 26, 2005.

(ii) [Reserved]

(7) The following service information was approved for IBR on June 23, 2004 (69 FR 31867, June 8, 2004).

(i) Airbus All Operators Telex A320–32A1273, Revision 01, dated May 6, 2004.

(ii) [Reserved]

(8) For Airbus service information identified in this AD, contact Airbus SAS, Airworthiness Office—ELAS, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email [account.airworth-eas@airbus.com](mailto:account.airworth-eas@airbus.com); website [airbus.com](http://airbus.com).

(9) For Safran and Messier-Dowty service information identified in this AD, contact Safran Landing Systems, One Carbon Way, Walton, KY 41094; telephone (859) 525–8583; fax (859) 485–8827; internet [www.safran-landing-systems.com](http://www.safran-landing-systems.com).

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

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

Issued on July 25, 2023.

#### Victor Wicklund,

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

[FR Doc. 2023–16189 Filed 7–31–23; 8:45 am]

BILLING CODE 4910–13–P

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 275 and 279

[Release No. IA–6354; File No. S7–13–23]

RIN 3235–AN31

### Exemption for Certain Investment Advisers Operating Through the Internet

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission (“SEC” or “Commission”) is proposing amendments to the rule under the Investment Advisers Act of 1940 that exempts certain investment advisers that provide advisory services through the internet (“internet investment advisers”) from the prohibition on Commission registration, as well as related amendments to Form ADV. The proposed amendments are designed to modernize the rule’s conditions to account for the evolution in technology and the investment advisory industry since the adoption of the rule.

**DATES:** Comments should be received on or before October 2, 2023.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/proposed.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7–13–23 on the subject line.

#### Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–13–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission’s Website (<https://www.sec.gov/rules/proposed.shtml>). Comments are also available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission’s Public Reference Room.

Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission’s website. To ensure direct electronic receipt of such notifications, sign up through the “Stay Connected” option at [www.sec.gov](http://www.sec.gov) to receive notifications by email.

#### FOR FURTHER INFORMATION CONTACT:

Blair B. Burnett, Senior Counsel, Investment Company Rulemaking Office; Michael Schrader, Senior Counsel, Chief Counsel’s Office; or Sirimal R. Mukerjee, Senior Special Counsel, or Melissa Roverts Harke, Assistant Director, Investment Adviser Rulemaking Office, Division of Investment Management, at (202) 551–6787 or [IArules@sec.gov](mailto:IArules@sec.gov), Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing for public comment amendments to 17 CFR 275.203A–2(e) (“rule 203A–2(e)”) under the Investment Advisers Act of 1940 (“Advisers Act” or “Act”) [15 U.S.C. 80b–1 *et seq.*] and corresponding amendments to 17 CFR 279.1 (Form ADV) under the Advisers Act.<sup>1</sup>

#### Table of Contents

- I. Background
  - A. Current Rule 203A–2(e)
  - B. Need for Reform and Overview of Rule Proposal
- II. Discussion
  - A. Proposed Amendments to Rule 203A–2(e)
    1. Operational Interactive Website
    2. Elimination of De Minimis Non-Internet Client Exception
- III. Economic Analysis
  - A. Introduction
  - B. Baseline and Affected Parties
    1. Regulatory Baseline
    2. Current Use of the Internet Adviser Exemption
    3. Increased Reliance on the Internet Adviser Exemption

<sup>1</sup> 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any section of the Advisers Act, we are referring to 15 U.S.C. 80b, at which the Advisers Act is codified, and when we refer to rules under the Advisers Act, or any section of these rules, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR part 275], in which these rules are published.

- C. Benefits and Costs and Effects on Efficiency, Competition, and Capital Formation
  - 1. Benefits
  - 2. Costs
  - 3. Effects on Efficiency, Competition, and Capital Formation
- D. Reasonable Alternatives
  - 1. Allowing Fewer Non-internet Clients
  - 2. Alternative Definitions of “Interactive website”
  - 3. Eliminating the Internet Adviser Exemption
- IV. Paperwork Reduction Act
  - A. Introduction
  - B. Rule 203A–2(e) Recordkeeping Requirement
  - C. Form ADV
  - D. Total Hour Burden Associated With Proposed Amendments to Rule 203A–2(e)
  - E. Request for Comments
- V. Initial Regulatory Flexibility Analysis
  - A. Reason for and Objectives of the Proposed Action
    - 1. Proposed Amendments to Rule 203A–2(e)
    - 2. Proposed Amendments to Form ADV
  - B. Legal Basis
  - C. Small Entities Subject to the Rule and Rule Amendments
    - 1. Small Entities Subject to Amendments to the Internet Adviser Rule
    - D. Projected Reporting, Recordkeeping and Other Compliance Requirements
      - 1. Proposed Amendments to Rule 203A–2(e)
      - 2. Proposed Amendments to Form ADV
  - E. Duplicative, Overlapping, or Conflicting Federal Rules
  - F. Significant Alternatives
  - G. Solicitation of Comments
- VI. Consideration of Impact on the Economy Statutory Authority

## I. Background

We are proposing amendments to rule 203A–2(e) (“Internet Adviser Exemption”) under the Advisers Act. The Internet Adviser Exemption provides an exemption from the prohibition on registration with the Commission that may otherwise affect certain advisers seeking to register with us. The proposed amendments are designed to modernize the Internet Adviser Exemption’s conditions to account for the evolution in technology and the investment advisory industry since the adoption of the rule over twenty years ago. The proposal would also amend Form ADV to conform certain instructions and definitions to the amended rule and would also require additional representations regarding an internet investment adviser’s reliance on the rule.

On January 1, 1997, the National Securities Markets Improvement Act of 1996 (“NSMIA”) amended the Advisers Act to divide the responsibility for regulating investment advisers between the Commission and state securities

authorities.<sup>2</sup> Congress allocated to state securities authorities the primary responsibility for regulating smaller advisory firms and allocated to the Commission the primary responsibility for regulating larger advisers.<sup>3</sup> Section 303 of NSMIA amended the Advisers Act to include section 203A<sup>4</sup> to effect this division of responsibility by generally prohibiting advisers from registering with the Commission unless they either have assets under management of not less than \$25 million or advise a registered investment company,<sup>5</sup> and preempt state adviser statutes regarding registration, licensing, or qualification as to advisers registered with the Commission.<sup>6</sup> Advisers prohibited from registering with the Commission remain subject to the regulation of state securities authorities.<sup>7</sup> The “\$25 million assets under management” test was designed by Congress to distinguish investment advisers with a national presence from those that are essentially local businesses.<sup>8</sup> Congress expressed that its goal in enacting the statute was to more efficiently allocate the Commission’s limited resources by allowing the Commission to concentrate its regulatory responsibilities on larger advisers with national businesses, and to reduce the burden to investment advisers of the overlapping and duplicative regulation between Federal and State regulators.<sup>9</sup> Congress furthered this objective on July 21, 2010 with the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-

Frank Act”),<sup>10</sup> which amended certain provisions of the Advisers Act, including section 203A, to, among other things, reallocate primary responsibility for oversight of investment advisers by delegating generally to the states responsibility over certain mid-sized advisers—*i.e.*, subject to certain exceptions, those that have between \$25 million and \$100 million of assets under management.<sup>11</sup>

Congress has recognized, however, that it would be more efficient to regulate some advisers at the Federal level despite managing less than the minimum thresholds in assets under management and gave the Commission authority to enable advisers to register with us if the prohibition would be “unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [section 203A].”<sup>12</sup> In exercising this authority, the Commission in 2002 adopted the Internet Adviser Exemption, which relieves certain advisers that provide advisory services primarily through the internet from the burdens of multiple state regulation and allows them to register with the Commission.<sup>13</sup>

### A. Current Rule 203A–2(e)

The Internet Adviser Exemption was designed to create a narrow exemption from the prohibition on registration for certain advisers (“internet investment advisers”), which typically do not manage the assets of their clients or advise a registered investment company, and thus do not meet the statutory thresholds for registration with the Commission.<sup>14</sup> These advisers,

<sup>2</sup> National Securities Markets Improvement Act of 1996, Public Law 104–290, 110 Stat. 3416 (1996) (codified in various sections of 15 U.S.C.).

<sup>3</sup> See S. Rep. No. 293, 104th Cong., 2d Sess. 3–4 (1996) (“Senate Report”), at 4.

<sup>4</sup> Public Law 104–290, Sec. 303; see also section 203A of the Advisers Act [15 U.S.C. 80b–3a].

<sup>5</sup> Section 203A(a)(1) of the Advisers Act [15 U.S.C. 80b–3a(a)(1)].

<sup>6</sup> Section 203A(b) of the Advisers Act [15 U.S.C. 80b–3a(b)].

<sup>7</sup> Section 222 of the Advisers Act [15 U.S.C. 80b–18a]. The prohibition in section 203A against registration with the Commission applies to advisers whose principal office and place of business is in a United States jurisdiction that has enacted an investment adviser statute. See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)], at text accompanying n.83.

<sup>8</sup> See Senate Report, *supra* note 3, at 4–5 (“The states should play an important and logical role in regulating small investment advisers whose activities are likely to be concentrated in their home state.”).

<sup>9</sup> See Senate Report, *supra* note 3, at 2–4 (stating “[r]ecognizing the limited resources of both the Commission and the states, the Committee believes that eliminating overlapping regulatory responsibilities will allow the regulators to make the best use of their scarce resources to protect clients of investment advisers.”).

<sup>10</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law No. 111–203, 124 Stat. 1376 (2010).

<sup>11</sup> Unlike a small adviser, a mid-sized adviser is not prohibited from registering with the Commission: (i) if the adviser is not required to be registered as an investment adviser with the securities commissioner (or any agency or office performing like functions) of the state in which it maintains its principal office and place of business; (ii) if registered, the adviser would not be subject to examination as an investment adviser by that securities commissioner; or (iii) if the adviser is required to register in 15 or more states. See section 410 of the Dodd-Frank Act; section 203A of the Advisers Act.

<sup>12</sup> Section 203A(c) of the Advisers Act [15 U.S.C. 80b–3a(c)]. See also Senate Report, *supra* note 3, at 5 and 15.

<sup>13</sup> See Exemption for Certain Investment Advisers Operating Through the Internet, Investment Advisers Act Release No. 2028 (Dec. 12, 2002) [67 FR 19500 (Dec. 18, 2002)], at section I (“2002 Adopting Release”). The exercise of our exemptive authority enables registration with the Commission and preempts most state law with respect to the exempted advisers that register with us. See rule 203A–2.

<sup>14</sup> See 2002 Adopting Release, *supra* note 13. The Commission originally adopted the Internet Adviser

therefore, “do not fall neatly into the model assumed by Congress when it added [s]ection 203A to the Act to divide regulatory authority over advisers.”<sup>15</sup> The Commission concluded that, “as applied to these advisers, the application of the prohibition on Commission registration would be “unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [section 203A].”<sup>16</sup> Under the current Internet Adviser Exemption, an adviser is exempt from the prohibition on Commission registration if the adviser:

- Provides investment advice to all of its clients exclusively through an interactive website, except it may provide investment advice to fewer than 15 clients through other means during the preceding 12 months;
- Maintains a record demonstrating that it provides investment advice to its clients exclusively through an interactive website in accordance with the limits described in the bullet point above; and
- Does not control, is not controlled by, and is not under common control with, another investment adviser registered with the Commission solely in reliance on an adviser registered under the Internet Adviser Exemption.

As the 2002 Adopting Release explained, absent the Internet Adviser Exemption, Internet investment advisers would likely incur the burden of temporarily registering in multiple states and later withdrawing. State investment adviser registration statutes generally obligate advisers to register in every state in which the adviser obtains more than a *de minimis* number of clients. The 2002 Adopting Release reasoned that because internet investment advisers provide investment advice to their clients through an interactive website, they are likely to have no physical local presence in a community or state, with little or no in-person contact with advisory clients. Accordingly, the adviser’s clients can come from any state, at any time. As a result, an internet investment adviser would have to, as a practical matter, register in multiple states to ensure that its registration will be in place when or if it obtains the requisite number of clients from any particular state. Further, an internet investment adviser

Exemption as rule 203A–2(f) and redesignated it as rule 203A–2(e) effective Sept. 19, 2011. See Rules Implementing Amendments to the Investment Advisers Act of 1940, Investment Advisers Act Release No. 3221 (June 22, 2011) [76 FR 42949 (July 19, 2011)] (“2011 Redesignation”).

<sup>15</sup> 2002 Adopting Release, *supra* note 13, at section II (citing Section 203A(c)).

<sup>16</sup> *Id.*

may subsequently become eligible for an existing exemption under 17 CFR 275.203A–2(d) (“rule 203A–2(d)”), permitting Commission registration for advisers otherwise obligated to register in at least 15 states, but typically not before the adviser had already incurred the burden of registering, and potentially deregistering, in multiple states.<sup>17</sup>

From the adoption of the Internet Adviser Exemption through December 31, 2022, approximately 845 advisers have relied on the exemption as a basis for registration with the Commission.<sup>18</sup> Of these advisers, 718 initially registered exclusively in reliance on the Internet Adviser Exemption. As of December 31, 2022, approximately 256 advisers were relying exclusively on the Internet Adviser Exemption. The exemption has been used with increasing frequency recently, with 149 of the 256 advisers relying exclusively on the exemption registering after 2015.

#### B. Need for Reform and Overview of Rule Proposal

The asset management industry has experienced substantial growth and change since the rule was adopted over twenty years ago. Assets under management have more than quadrupled since the adoption of the rule.<sup>19</sup> Similarly, since the adoption of the rule advisers are increasingly using technology to interact with clients, including through email, websites, mobile applications, investor portals, text messages, chatbots and other similar means.<sup>20</sup> The use of technology

<sup>17</sup> 17 CFR 275.203A–2(d). An investment adviser relying on the multi-state exemption would not be eligible for that exemption until the adviser had obtained the requisite number of clients in 15 states to trigger its registration obligations in those states. Under the rule, an investment adviser relying on this exemption must represent that it has reviewed its obligations under state and Federal law and has concluded that it is required to register as an investment adviser with the securities authorities of at least 15 states. At the time the Internet Adviser Exemption was adopted, the “multi-state adviser exemption” enabled an investment adviser who was required to register as an investment adviser with 30 or more states to register with the Commission. See 2002 Adopting Release, *supra* note 13, at section II.A. Effective September 19, 2011, the Commission amended the multi-state exemption to enable Commission registration for advisers otherwise obligated to register in at least 15 states, rather than 30 states, and renumbered the multi-state exemption rule 203A–2(e) as rule 203A–2(d). See 2011 Redesignation, *supra* note 14, at section II.A.5.c and n.118.

<sup>18</sup> Based on analysis of Form ADV data.

<sup>19</sup> There were approximately \$23.6 trillion regulatory assets under management among registered investment advisers as of Dec. 2003 and approximately \$115 trillion assets under management as of Dec. 2022. Based on analysis of Form ADV data.

<sup>20</sup> See, e.g., Andrew Osterland, *Technology is redefining that client-financial advisor relationship*

is now central to how many investment advisers provide their products and services to clients.<sup>21</sup> For example, the growth of services available on digital platforms, such as those offered by online brokerage firms and robo-advisers, has multiplied the opportunities for retail investors, in particular, to invest in and trade securities. This increased accessibility has been one of the many factors associated with the increase of retail investor participation in U.S. securities markets in recent years.<sup>22</sup> Concomitant with the growth in assets under management and the broader evolution and adoption of technology in the investment advisory industry, we have seen an uptick in the number of advisers seeking to rely on the Internet Adviser Exemption.<sup>23</sup> We recognize that investment advisers are increasingly utilizing a wide range of technologies in their businesses. The Internet Adviser Exemption, however, was intended as a narrow exemption for entities that are in the business of *exclusively* providing

(Oct. 14, 2019), <https://www.cnn.com/2019/10/14/technology-is-redefining-that-client-financial-advisor-relationship.html> (“Easy-to-use client portals have become essential to provide investors with the ability to see their accounts, exchange secure emails with their advisor and share documents.”).

<sup>21</sup> We note that the Commission is also proposing rules requiring broker-dealers and investment advisers to eliminate or neutralize certain conflicts of interest associated with their use of technologies that optimize for, predict, guide, forecast, or direct investment-related behaviors or outcomes, directly or indirectly. These proposed rules derive, in part, from the Commission’s recognition that investment advisers in their interactions with investors are increasingly using, among other technologies, predictive data analytics, artificial intelligence, including machine learning, deep learning, neural networks, natural language processing, and large language models, as well as other technologies that make use of historical or real-time data, lookup tables, or correlation matrices. See Conflicts of Interest Associated with the Use of Predictive Data Analytics by Broker-Dealers and Investment Advisers, Investment Advisers Act Release No. 6353 (July 26, 2023).

<sup>22</sup> See, e.g., Maggie Fitzgerald, *Retail Investors Continue to Jump Into the Stock Market After GameStop Mania*, CNBC (Mar. 10, 2021), <https://www.cnn.com/2021/03/10/retail-investor-ranks-in-the-stock-market-continue-to-surge.html> (providing year-over-year app download statistics for Robinhood, Webull, Sofi, Coinbase, TD Ameritrade, Charles Schwab, E-Trade, and Fidelity from 2018–2020, and monthly figures for Jan. and Feb. 2021); John Gittelsohn, *Schwab Boosts New Trading Accounts 31% After Fees Go to Zero*, Bloomberg (Nov. 14, 2019), <https://www.bloomberg.com/news/articles/2019-11-14/schwab-boosts-brokerage-accounts-by-31-after-fees-cut-to-zero> (noting that Charles Schwab opened 142,000 new trading accounts in Oct., a 31% jump over Sept.’s pace).

<sup>23</sup> Based on Form ADV data, the number of advisers relying exclusively on the exemption has grown from approximately 107 advisers as of Dec. 2015 to 256 advisers as of Dec. 2022.

investment advice through an interactive website.<sup>24</sup>

Our examination staff has observed numerous compliance deficiencies by advisers relying on the rule.<sup>25</sup> For example, in 2021 the staff noted that, “[n]early half of the [examined] advisers claiming reliance on the Internet Adviser Exemption were ineligible to rely on the exemption, and many were not otherwise eligible for SEC-registration.”<sup>26</sup> As part of the examinations described in the Risk Alert, the staff observed advisers relying on this exemption that did not have an interactive website. In addition, the staff observed advisers relying on this exemption that provided advisory personnel who could expand upon the investment advice provided by the adviser’s interactive website or otherwise provide investment advice to clients, such as financial planning, outside of the adviser’s interactive website.<sup>27</sup> Advisers registered under rule 203A–2(e) providing advice to 15 or more clients other than through the adviser’s interactive website during the preceding twelve months may not rely on this exemption.<sup>28</sup>

<sup>24</sup> See 2002 Adopting Release, *supra* note 13, at section II.A.

<sup>25</sup> See Observations from Examinations of Advisers that Provide Electronic Investment Advice (Nov. 9, 2021), <https://www.sec.gov/files/exams-eia-risk-alert.pdf> (“Risk Alert”). Staff documents (including those cited herein) 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 or amend applicable law, and create no new or additional obligations for any person.

<sup>26</sup> *Id.* at 8. The Risk Alert noted that this has been a common finding for many years. *Id.* at n.28. The Commission has cancelled the registration of advisers claiming reliance on the Internet Adviser Exemption for not satisfying the requisite conditions and also brought actions against them. See, e.g., Ajenifuja Investments, LLC; Order Cancelling Registration Pursuant to Section 203(h) of the Investment Advisers Act of 1940, Investment Advisers Act Release No. 5110 (Feb. 12, 2019) (“Ajenifuja”) (finding that the adviser was registered as an internet investment adviser for over three years and in that time period did not have an interactive website and did not demonstrate any other basis for registration eligibility); Strategic Options, LLC; Order Denying a Request for Hearing and Cancelling Registration Pursuant to Section 203(h) of the Investment Advisers Act of 1940, Investment Advisers Act Release No. 5689 (Feb. 24, 2021) (finding that since its registration in 2015, the registrant has not had, and does not have, any clients for which it provides investment advice through an interactive website). See also *In re. RetireHub, Inc.*, Investment Advisers Act Release No. 3337 (Dec. 15, 2011) (settled) (“RetireHub”) (alleging that the adviser was never an internet investment adviser because, over the course of its registration, it did not provide investment advice exclusively through an interactive website, advised more clients than permitted through personal contact, or both).

<sup>27</sup> Risk Alert, *supra* note 25, at 8.

<sup>28</sup> See rule 203A–2(e)(1)(i).

Moreover, the Internet Adviser Exemption is unavailable to an internet investment adviser if another adviser in a control relationship with the internet investment adviser relies on the Internet investment adviser’s registration under the rule as the basis for its own registration.<sup>29</sup> The staff observed that some advisers’ affiliates were operating as unregistered investment advisers, because the affiliates were operationally integrated with the registered advisers, and the Internet Adviser Exemption prohibited those affiliates from relying on the internet investment adviser’s registration as a basis for their own registration.<sup>30</sup>

As discussed above, the exemption has been used with increasing frequency recently.<sup>31</sup> At the same time, the frequency of registration withdrawals and cancellations of internet investment advisers also has increased since the rule’s adoption, which has affected the cumulative growth in the number of advisers relying on the Internet Adviser Exemption.<sup>32</sup> For example, approximately 64 percent of the advisers withdrawing their registration under the rule have done so since 2017, while only approximately 36 percent of the withdrawing advisers did so from the rule’s adoption in 2002 through 2016.<sup>33</sup>

Given that internet investment advisers may have characteristics that distinguish them from other types of investment advisers contemplated by Congress when it added section 203A to the Act, the Commission established a “narrow exemption,” allowing certain investment advisers to register with the Commission despite managing less than the minimum threshold in assets under

<sup>29</sup> See rule 203A–2(e)(1)(iii); see also 2002 Adopting Release, *supra* note 13 (discussing that this provision is meant to address the concern that an internet investment adviser intent on evading the restrictions on non-internet clients under the rule might attempt to organize a subsidiary firm to serve its non-internet clients, and assert rule 203A–2(b) as a basis to register the subsidiary with the Commission, even though the subsidiary does not manage the minimum amount of client assets required for registration with the Commission).

<sup>30</sup> See Risk Alert, *supra* note 25, at 8.

<sup>31</sup> See *supra* note 23.

<sup>32</sup> As an example, the Commission has cancelled the registration of internet investment advisers after finding the firms are no longer in existence, not engaged in business as an investment adviser, or prohibited from registering as an investment adviser under section 203A of the Act (and related rules). See *supra* note 26. The Commission also has revoked the registration of an internet investment adviser on the basis that it was ineligible to rely on the exemption. See *In re. Boveda Asset Management, Inc.*, Investment Advisers Act Release No. 6016 (May 6, 2022) (referencing *SEC v. Boveda Asset Management, Inc. and George Kenneth Witherspoon, Jr.*, 1:21-cv-05321–SCJ (N. D. GA) (Apr. 27, 2022) (“Boveda”)).

<sup>33</sup> Based on analysis of Form ADV data.

management.<sup>34</sup> This narrow exemption was intended to divide regulatory authority over advisers that, unlike state-registered advisers, have no local presence and whose advisory activities are not limited to one or a few states.<sup>35</sup> While some advisers have used the exemption as intended, others have used this exemption by registering with the Commission while failing to satisfy the conditions of the exemption. As discussed above, some of these advisers have not provided investment advice to any clients through an interactive website, in some cases for three or four years.<sup>36</sup> Advisers with very limited or zero clients are more akin to local businesses that can be effectively regulated by one or a few states, consistent with Congress’s intent in NSMIA’s amendments to the Advisers Act.<sup>37</sup> Moreover, some of the advisers relying on this exemption provided advisory personnel who could expand upon the investment advice provided by the adviser’s interactive website or otherwise provide investment advice to clients without consideration of the 15 non-internet clients per 12-month period de minimis exception within the Internet Adviser Exemption.<sup>38</sup> Certain of these advisers have failed to produce copies of books and records required for advisers relying on the exemption, including books and records necessary to demonstrate compliance with the exception for providing non-interactive website-based advice to fewer than 15 clients in a 12-month period.<sup>39</sup> The number of registration applications and approvals under this exemption have increased, while the number of cancellations, withdrawals, and registration reliance changes resulting from an inability to meet the conditions of the rule also increased. Accordingly, in 2021 the Commission issued a request for information and comments

<sup>34</sup> See *supra* note 14 and accompanying text.

<sup>35</sup> See 2002 Adopting Release, *supra* note 13, at section II.

<sup>36</sup> See *supra* note 26.

<sup>37</sup> See also *infra* section III.B.2, stating that as of Dec. 2022, 266 advisers rely on the internet adviser exemption. Of those advisers, 101 (38%), report zero clients. The median number of reported clients is six. The data comes from Form ADV filings received by the Commission through Mar. 31, 2023.

<sup>38</sup> See *RetireHub*, *supra* note 26 (finding that RetireHub employed on-campus representatives at the university who were made available to provide investment advice to university employees).

<sup>39</sup> See *Boyeda*, *supra* note 32 (finding that the firm violated section 204(a) of the Advisers Act by failing to furnish to the Commission copies of books and records that the firm was required to make, keep, and provide to representatives of the Commission pursuant to an examination).

on the Internet Adviser Exemption, among other areas.<sup>40</sup>

We believe that the “narrow exemption” created over twenty years ago should be amended to reflect its intended, narrow use in light of technological advances and changes in the investment adviser industry.<sup>41</sup> In addition, this would further the investor protection objectives that Congress expressed when designing section 203A of the Advisers Act by better allocating the Commission’s limited oversight and examination resources to those advisers that should be subject to national rules.<sup>42</sup> In light of these observations and as discussed in more detail below, we are proposing certain targeted amendments to rule 203A–2(e) with certain corresponding amendments to Form ADV.

## II. Discussion

### A. Proposed Amendments to Rule 203A–2(e)

Using the authority provided by section 203A(c) of the Act, we are proposing amendments to the internet Adviser Exemption to reflect developments since the adoption of the rule. The amendments we are proposing to the internet Adviser Exemption would require internet investment advisers relying on the internet Adviser Exemption to at all times have an “operational” interactive website.<sup>43</sup> We also are proposing to eliminate the *de minimis* exception in the current rule that permits internet investment advisers to have fewer than 15 non-internet clients in any 12-month period. In light of the widespread use of the internet, as well as the relative ease of building and maintaining a website and applications, we propose requiring that internet investment advisers have an operational interactive website at all times during which the internet investment adviser relies on the Internet Adviser Exemption. We also propose that this exemption should only be available to those advisers that provide advice exclusively to clients through an operational interactive website.

<sup>40</sup> See Request for Information and Comments on Broker-Dealer and Investment Adviser Digital Engagement Practices, Related Tools and Methods, and Regulatory Considerations and Potential Approaches, Exchange Act Release No. 92766 (Aug. 27, 2021) [86 FR 49067 (Sept. 1, 2021)] (“2021 RFC”). The Commission received numerous comments in response to the 2021 RFC, which we considered in developing this proposal. Comment letters received in response to the 2021 RFC are available at: <https://www.sec.gov/comments/s7-10-21/s71021.htm>.

<sup>41</sup> See *supra* note 21 and accompanying text.

<sup>42</sup> See *supra* note 9.

<sup>43</sup> See proposed rule 203A–2(e)(1)(i).

The Commission intended the Internet Adviser Exemption to be a narrow exemption for certain investment advisers that did not fall neatly within the framework established by Congress to divide regulatory authority between state regulators and the Commission.<sup>44</sup> The proposed amendments would adapt the rule to the broader evolution in technology and the marketplace, and would better align current practices in the investment adviser industry with the narrow exemption that was intended to reflect the allocation of responsibility for regulating investment advisers set forth by Congress under NSMIA and the Dodd-Frank Act. In addition, the proposed amendments would enhance investor protection through more efficient use of the Commission’s limited oversight and examination resources by more appropriately allocating Commission resources to advisers with national presence and allowing smaller advisers with sufficient local presence to be regulated by the states.

#### 1. Operational Interactive Website

The current Internet Adviser Exemption requires, among other things, that an internet investment adviser provide investment advice to all of its clients exclusively through an interactive website, except that the investment adviser may provide investment advice to fewer than 15 clients through other means during the preceding 12 months.<sup>45</sup> The rule defines “interactive website” to mean a website in which computer software-based models or applications provide investment advice to clients based on personal information each client supplies through the website. We are proposing the following targeted amendments:

- First, we are proposing to amend the “interactive website” defined term to “operational interactive website.”
- Second, we are proposing to define an “operational interactive website” to mean a website or mobile application through which the investment adviser provides digital investment advisory services on an ongoing basis to more than one client (except during temporary technological outages of a *de minimis* duration).
- Third, we are proposing to define “digital investment advisory service” as investment advice to clients that is generated by the operational interactive website’s software-based models, algorithms, or applications based on

personal information each client supplies through the operational interactive website.

- Finally, we are proposing to require that an internet investment adviser provide advice through an operational interactive website at all times during which the internet investment adviser relies on the Internet Adviser Exemption.

The amendments are designed to modernize the definitions and to adapt the rule more broadly to the evolution of the asset management industry.

The proposed amendments specify that an internet investment adviser must provide digital investment advisory services through its website on an ongoing basis to more than one client. We understand that unforeseen technological issues outside of the control of an adviser occur at times. We also understand that websites may be temporarily inoperable due to periodic maintenance to ensure that the website performs optimally. Accordingly, we have incorporated into the definition of “operational interactive website” a hardship clause that allows an internet investment adviser to satisfy the rule despite temporary technological outages of the operational interactive website of a *de minimis* duration. The proposed amendments also specify that the requirement to provide an operational interactive website would apply at all times during which the adviser relies on the Internet Adviser Exemption (*i.e.*, at the time of the adviser’s registration and at all times an adviser is registered in reliance on the amended Internet Adviser Exemption).<sup>46</sup> Currently, the Internet Adviser Exemption does not specify that an interactive website be “operational,” whether at the time of registration or otherwise. Further, in the 2002 Adopting Release, the Commission did not specify the timing of when the interactive website must be operational, though no grace period exists under the current rule.<sup>47</sup> With advances in

<sup>46</sup> In the case of an existing registered investment adviser seeking to change its registration to rely on the Internet Adviser Exemption, the adviser would be required to have an operational interactive website at the time in which it begins relying on the rule.

<sup>47</sup> See Ajenifuja, *supra* note 26 (finding that rule 203A–2(e) does not contain a grace period). The Commission stated in the 2002 Adopting Release: “Nor is it likely Internet Investment Advisers could rely on rule 203A–2(d) [redesignated as rule 203A–2(c)], see 2011 Redesignation, *supra* note 14 to carry them through an initial period of operation without state registration in anticipation of eligibility under the multi-state exemption. If an adviser relying on [redesignated] rule [203A–2(c)] has not become eligible for SEC registration within 120 days, it must withdraw its registration.” 2002 Adopting Release, *supra* note 13, at section IV.A. Given advances in technology, we preliminarily believe

<sup>44</sup> See *supra* note 24.

<sup>45</sup> See rule 203A–2(e)(1)(i).

technology since the adoption of the rule more than twenty years ago,<sup>48</sup> we believe that advisers seeking to rely on the Internet Adviser Exemption can use the 120-day rule to develop, test, and launch an operational interactive website and obtain initial clients by the time the 120-day temporary registration expires.<sup>49</sup> Moreover, the requirement that an internet investment adviser must provide digital investment advisory services through its website on an ongoing basis to *more than one client* is intended to reflect that advisers with zero or one client are more akin to local businesses that can be effectively regulated by a state, consistent with Congress' intent in NSMIA's amendments to the Advisers Act.

The proposed definition of "operational interactive website" is also designed to specify the rule's application to advisers' use of technology, including their use of mobile applications, in connection with their eligibility to rely on the rule.<sup>50</sup> Thus, the proposed changes would expressly permit an internet investment adviser to use mobile applications to provide investment advice to clients.<sup>51</sup> It is appropriate to allow internet investment advisers using mobile applications to interact with advisory clients to rely on the Internet Adviser Exemption because clients increasingly access services, including investment advisory services, through mobile

that internet investment advisers should be able to develop, test, and deploy an operational interactive website and begin serving clients within 120 days.

<sup>48</sup> See generally, Max Roser, Hannah Ritchie and Edouard Mathieu, *Technological Change* (Mar. 2022), <https://ourworldindata.org/technological-change> (compiling statistics of technological growth); Martin Armstrong, *How Many Websites Are There?* (Aug. 6, 2021), <https://www.statista.com/chart/19058/number-of-websites-online/> (showing growth from inception of the internet to approximately 1.88 billion websites in 2021); Total Number of Websites (accessed July. 11, 2023), <https://www.internetlivestats.com/total-number-of-websites/> (identifying, among others, 38,760,373 websites in 2002 and 1,106,671,903 websites in 2023).

<sup>49</sup> If the adviser is initially relying on rule 203A-2(c) as a basis for registration ("120-day rule"), the interactive website would need to be operational within 120 days of the adviser's registration. For example, an adviser could register with the Commission in anticipation of reliance on the Internet Adviser Exemption by using the 120-day rule, have 0 clients with no website, and within 120 days create an operational interactive website and obtain more than one client, then file an amendment to its Form ADV indicating that it has become eligible for the Internet Adviser Exemption.

<sup>50</sup> See proposed rule 203A-2(e)(2).

<sup>51</sup> The term "mobile application" generally, refers to a software application developed primarily for use on wireless computing devices, such as smartphones and tablets. See, e.g., techopedia, *Mobile Application (Mobile App)* (Aug. 7, 2020), <https://www.techopedia.com/definition/2953/mobile-application-mobile-app> ("techopedia").

applications,<sup>52</sup> and mobile applications can provide interactive functionality similar to the functionality of websites.<sup>53</sup> By including mobile applications in the definition of "operational interactive website," internet investment advisers will have broad flexibility to design the interactive website in a manner that best suits their needs and their clients' needs. We understand that mobile applications use various methods of communication, including, for example, push notifications, in-app messages, and similar forms of electronic communication. The amended rule would permit any form of mobile application technology through which the investment adviser provides digital investment advisory services.

We also are proposing to define "digital investment advisory services" as "investment advice to clients that is generated by the operational interactive website's software-based models, algorithms, or applications based on personal information each client supplies through the operational interactive website."<sup>54</sup> The proposed definition is designed to address that, like the current rule, an adviser must

<sup>52</sup> See Sarah Perez, *Majority of Digital Media Consumption Now Takes Place in Mobile Apps*, TechCrunch (Aug. 21, 2014) ("[M]obile apps [ . . . ] eat up more of our time than desktop usage or mobile web surfing, accounting for 52% of the time spent using digital media. Combined with mobile web, mobile usage as a whole accounts for 60% of time spent, while desktop-based digital media consumption makes up the remaining 40%."); see generally, Hannah Glover, *'Healthy Paranoia' Drives Innovation at Vanguard* (June 17, 2016), [https://www.ignites.com/c/1385943/158263?referrer\\_module=searchSubFromFF&highlight=%22mobile%20applications%22](https://www.ignites.com/c/1385943/158263?referrer_module=searchSubFromFF&highlight=%22mobile%20applications%22) ("Next on the horizon is mobile applications. When you travel [outside of the U.S.], you see how PC-centric technology does not exist anywhere else[.] In the future, [ . . . ] it's going to be all about the phone. Companies without easy-to-use, yet powerful, apps will be left behind [ . . . ]") (internal quotations omitted).

<sup>53</sup> See, e.g., techopedia, *supra* note 51 ("Mobile applications frequently serve to provide users with similar services to those accessed on PCs."); see, e.g., Fundfire, *What Are Major IT Trends in Wealth Mgmt?* (Oct. 15, 2012), [https://www.fundfire.com/c/422571/47531?referrer\\_module=searchSubFromF&highlight=%22mobile%20applications%22](https://www.fundfire.com/c/422571/47531?referrer_module=searchSubFromF&highlight=%22mobile%20applications%22) ("Dedicated mobile applications for smartphones and tablets can enable unified digital communication between advisors and their clients—a combination of email, chat, voice and video.").

<sup>54</sup> See proposed rule 203A-2(e)(2). Personal information provided by the internet client generally should consist of information relevant to the client's financial situation, level of financial sophistication, investment experience, and financial goals and objectives. See also Commission Interpretation Regarding Standard of Conduct for Investment Advisers, *Investment Advisers Act Release No. 5248* (June 5, 2019), at 12–14 (discussing an adviser's duty of care, which includes a duty to provide advice that is in the best interest of the client).

provide investment advice exclusively through an interactive website. However, the proposed definition would specify that the generation of such advice could include advice that is generated by software-based algorithms in addition to software-based models or applications, in each case, based on personal information each client supplies through the interactive website. We understand that advisers are increasingly using algorithms to generate investment advice in order to provide clients with cost-effective and tailored advice and the definition encompasses this use.<sup>55</sup> The proposed amendments would specify that the investment advice to clients must be "generated by" the website's software-based models, algorithms, or applications.<sup>56</sup> Like the current rule,<sup>57</sup> this new definition is designed to reflect that an adviser's personnel are not permitted to generate, modify, or otherwise provide client-specific investment advice through the

<sup>55</sup> See, e.g., Investment Adviser Association, 2020 *Evolution Revolution* (2020), at 8, [https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/resources/Evolution\\_Revolution\\_2020\\_v8.pdf](https://higherlogicdownload.s3.amazonaws.com/INVESTMENTADVISER/aa03843e-7981-46b2-aa49-c572f2ddb7e8/UploadedImages/resources/Evolution_Revolution_2020_v8.pdf) (noting that by 2020, "two of the top five advisers as measured by number of non-high net worth individual clients served [were] digital advice platforms, representing 7.5 million clients, an increase of 2.7 million clients from [the prior year]."); Robo-Advisers, IM Guidance Update No. 2017-02 (Feb. 2017), <https://www.sec.gov/investment/im-guidance-2017-02.pdf> ("Robo-Advisers Guidance"); Akin Ajayi, *The Rise of the Robo-Advisers* (July 16, 2015), <https://www.credit-suisse.com/about-us-news/en/articles/news-and-expertise/the-rise-of-the-robo-advisers-201507.html> ("Robo-advisers—to use the suitably futuristic moniker adopted as a description for these services—are investment services driven by automated customer service and an investment strategy governed by computer algorithms. A clutch of start-ups, largely located in the United States but spreading to Europe and Asia, have emerged over the last few years.").

<sup>56</sup> As a fiduciary, investment advisers have a duty to make full and fair disclosure of all material facts to, and to employ reasonable care to avoid misleading, clients. Given the unique aspects of an internet investment advisers' business models and because client relationships may occur with limited, if any, human interaction, internet investment advisers generally should consider the most effective way to communicate to their clients the limitations, risks, and operational aspects of their advisory services. For example, internet investment advisers generally should effectively disclose to clients, among other matters, that an algorithm is used to manage individual client accounts with a description of the particular risks inherent in the use of an algorithm to manage client accounts.

<sup>57</sup> See 2002 Adopting Release, *supra* note 13, at section II.A.1 ("[T]he exemption is for advisers that provide investment advice to their Internet clients 'exclusively' through their interactive Web sites. An adviser relying on the exemption may not use its advisory personnel to elaborate or expand upon the investment advice provided by its interactive Web site, or otherwise provide investment advice to its Internet clients, except as permitted by the *de minimis* exception discussed below.").

operational interactive website or otherwise.<sup>58</sup> Said differently, human-directed client-specific investment advice, delivered through electronic means, would not be eligible activity under the Investment Adviser Exemption. The use of the internet or other electronic media to communicate with clients is not, alone, a sufficient basis for an adviser to rely on the exemption.<sup>59</sup>

The proposed amendments would not prohibit advisory personnel from all interactions with advisory clients. Advisory personnel could continue to assist clients with technical issues in connection with the use of the website (e.g., accessing the website, *etc.*), including by assisting clients with explanations of how the algorithm generating the investment advice was developed or operates. Advisory personnel generally should be able to perform those services telephonically, through email, live electronic chats, and similar forms of electronic communication. As discussed below, the amended rule would not permit advisory personnel to provide investment advice of any kind to a client.

We also are proposing that an adviser relying on the rule as a basis for registration must represent on Schedule D of its Form ADV that, among other things, it has an operational interactive website.<sup>60</sup> This representation is similar to the representation that advisers relying on the multi-state exemption make on their Form ADV.<sup>61</sup> This representation would also assist Commission staff in connection with its review of existing registrations and registration applications for compliance with the rule and, as applicable, for possible deregistration for an inability to meet the conditions of the rule. This

<sup>58</sup> This excludes human involvement and input other than to the degree necessary for technological oversight and management of a website's software-based models, algorithms, or applications. *But see* Comment Letter of Morningstar, Inc. (Oct. 1, 2021) (recommending, in response to the 2021 RFC, that the Commission should modify the Internet Adviser Exemption to explicitly permit human interaction for "certain types of information"—for example, costs, allocations, financial education—"as long as the actual asset allocation is conducted by the algorithm.").

<sup>59</sup> This treatment is unchanged from the current rule. *See* 2002 Adopting Release, *supra* note 13, at section II.A.1 ("The rule is thus not available to advisers that merely use Web sites as marketing tools or that use Internet vehicles such as E-mail, chat rooms, bulletin boards and webcasts or other electronic media in communicating with clients . . . expansion of the rule to include such activities as suggested by some commenters could undermine NSMIA's allocation of regulatory responsibility over smaller advisers to state securities authorities.").

<sup>60</sup> *See* proposed rule 203A-2(e)(1)(iv).

<sup>61</sup> Rule 203A-2(d)(2)(i).

amendment would require internet investment advisers, as an initial matter and periodically thereafter, to provide an additional affirmative representation on Form ADV that more clearly notes the requirements of the exemption, thus reinforcing the conditions of the exemption for the internet investment adviser.

We request comment on all aspects of the proposed amendments relating to the requirements for internet investment advisers to have an operational interactive website and related amendments to Form ADV, including the following:

1. Should we amend the interactive website definition to "operational interactive website," as proposed? Do commenters agree that the interactive website should be operational at all times an adviser is registered with the Commission and relying on the Internet Adviser Exemption?

2. Does the hardship clause in the proposed definition of interactive website reasonably account for temporary outages? Should planned periods of inoperability, such as planned maintenance, be included, as proposed? Are there other instances in which an adviser intentionally takes an interactive website offline that should be explicitly discussed in the release? The proposed hardship clause specifies that the outages must be *de minimis* in duration? Should the rule text specify a particular time period instead, such as less than 6 hours, 12 hours, or 24 hours?

3. Should the exemption specify what it means to provide investment advice "exclusively" through the operational interactive website? If so, how? Is it sufficiently clear that the amended rule is not designed to prevent advisory personnel from assisting clients with technical issues or from explaining how the adviser's algorithm works? Are there any circumstances not accounted for in the amended rule in which advisory personnel interact with clients without engaging in digital investment advisory services?

4. Do commenters agree that advisers seeking to rely on the proposed exemption could develop, test, and launch an operational interactive website within 120 days? Are there certain web-development issues that are unique to the investment adviser industry that would prevent the launch of an operational interactive website within 120 days?

5. Do commenters agree that advisers seeking to rely on the proposed exemption could develop a test interactive website that is not accessible to the public that subsequently could be made accessible to the public, including

advisory clients, and become an operational interactive website at the time of registration as an internet investment adviser or within 120 days of registration under the 120-day rule? Generally, do commenters agree that initial registration in reliance on the 120-day rule may not be challenging for advisers in the way that it may have been when the Commission adopted the Internet Adviser Exemption?

6. Is the requirement that an internet investment adviser must provide digital investment advisory services through its website on an ongoing basis to *more than one client* appropriate? Should we require that the internet investment adviser provide digital investment advisory services to "one or more clients" instead? Alternatively, should we require a *de minimis* number of clients or some other exact number of clients (e.g. "no fewer than 6 clients" to align with section 222 of the Advisers Act)?

7. Should we include mobile applications in the definition of interactive website, as proposed? Do commenters agree that customers increasingly access investment advisory services through mobile applications? Do commenters agree that mobile applications can provide interactive functionality similar to the functionality of websites?

8. Are there other technologies similar to websites and mobile applications that commenters believe should be included in the definition of operational interactive website? For instance, should the definition include computer programs or software, which may not be a website or a mobile application? Alternatively, should the definition include a broader reference to "digital platform" or some other language instead of "website or mobile application"?

9. Would requiring an affirmative representation on Schedule D to Form ADV that an adviser relying on the Internet Adviser Exemption has an operational interactive website, as proposed, be useful for advisers by reinforcing the conditions of the proposed rule? Why or why not?

10. Generally, is there a need for the Internet Adviser Exemption given the changes in technology and wide use of websites and/or mobile applications by investment advisers to advertise and provide investment advisory services?

## 2. Elimination of De Minimis Non-Internet Client Exception

The current rule includes a *de minimis* exception that permits an internet investment adviser to provide investment advice to fewer than 15 non-

internet clients during the preceding 12 months.<sup>62</sup> We are proposing to amend the rule to remove this *de minimis* exception, such that an internet investment adviser must provide advice to all of its clients exclusively through an interactive website.<sup>63</sup>

The Commission included the non-internet client *de minimis* exception so that internet investment advisers would not lose their ability to rely on the Internet Adviser Exemption as a result of providing advice to a small number of clients through means other than an interactive website.<sup>64</sup> In considering whether to retain the *de minimis* exception in this rule, we took into account the basis of the narrow exception, and the Commission's experience administering the rule. We preliminarily believe, as discussed below, that there is not the same need for this exception now as at the time we originally adopted it. Accordingly, under these proposed amendments, if an internet investment adviser is advising non-internet clients, it would not be exempted from the registration rules that otherwise apply to all investment advisers and should more properly be regulated by a state (or states) or the Commission (using a different basis for registration), as applicable.

In addition, certain internet investment advisers may be able to register with the Commission using separate bases for registration. As such, an internet investment adviser would be less likely today to lose its ability to remain registered with the Commission as a result of taking on a client that would disqualify the adviser from relying on the Internet Adviser Exemption. As of December 31, 2022, ten advisers are dually registered with the Commission under both the Internet Adviser Exemption and another basis

for registration.<sup>65</sup> For example, contrary to the practice of internet investment advisers at the time the Commission adopted the Internet Adviser Exemption,<sup>66</sup> our staff has observed that the operations of certain investment advisers that provide advice over the internet have changed such that they now manage assets of their internet clients.<sup>67</sup> Accordingly, depending on assets under management, certain internet investment advisers may be eligible—or required—to register with us.<sup>68</sup> In addition, due in part to the evolution of technology, investment advisers can appropriately manage advertisements, account openings, and similar operations, and, as a consequence, be able to better control in which states they may be required to register. Since the adoption of the rule over 20 years ago, it has become more common for internet businesses to implement technology that targets and tracks the locations in which they offer services.<sup>69</sup> Moreover, the Dodd-Frank Act reduced the minimum number of states in which an adviser would be required to register before becoming eligible for the multi-state exemption, making it more likely that an adviser would be eligible for the multi-state exemption earlier and more easily than at the time of adoption of the Internet

Adviser Exemption in 2002.<sup>70</sup> Taken together, these regulatory and technological changes make the *de minimis* exception in the Internet Adviser Exemption less necessary than at the time we originally adopted the exemption.<sup>71</sup>

We request comment on the proposed elimination of the *de minimis* exception in the Internet Adviser Exemption:

11. Should the *de minimis* exception for non-internet clients be eliminated, as proposed? If so, should those internet investment advisers registered in reliance on the Internet Adviser Exemption prior to the adoption of the final rule continue to be able to rely on the *de minimis* exception? Do commenters agree that there is less of a need for this exception today than there was when it was originally adopted?

12. For internet investment advisers that currently provide advice outside an interactive website, to what types of clients are you providing this advice, and how does this advice differ from advice provided through the interactive website?

13. As an alternative to the proposal, should the *de minimis* exception remain at 15 as in the current rule? Should it be higher or lower? If, unlike as proposed, it should remain at 15 or some alternative number, is it consistent with the policy goals of the rule that an adviser relying on the rule should be permitted to advise a greater number of non-internet clients than internet clients during the specified timeframe? If, unlike as proposed, it should remain at 15 or some alternative number, should the rule require an equal or greater number of minimum internet clients? If the rule were to retain a *de minimis* exception, rather than specifying the exception as a numerical limit, should we instead require that the *de minimis* exception be a proportion of the number of internet clients an internet investment adviser has? For example, should an internet investment adviser be permitted to have a maximum of 51% of its clients as non-internet clients, as suggested by one commenter, or some greater or lesser percentage? <sup>72</sup> Would such an approach be consistent with the policy goals of the rule of balancing the burdens of multiple state

<sup>65</sup> Based on analysis of Form ADV data.

<sup>66</sup> See 2002 Adopting Release, *supra* note 13, at section IV.A. (stating that "Internet Investment Advisers typically would not initially be eligible to register with us, as they do not manage the assets of their Internet clients.").

<sup>67</sup> See, e.g., Robo-Advisers Guidance, *supra* note 55 ("Robo-advisers, which are typically registered investment advisers, use innovative technologies to provide discretionary asset management services to their clients through online algorithmic-based programs."). Robo-advisers typically do not rely on the Internet Adviser Exemption when they are eligible for Commission registration based on regulatory assets under management.

<sup>68</sup> See, e.g., rule 203A-1.

<sup>69</sup> See John T. Holden, Marc Edleman, *A Short Treatise on Sports Gambling and the Law: How America Regulates its Most Lucrative Vice*, 907 Wisconsin Law Review (2020), <https://wlr.law.wisc.edu/wp-content/uploads/sites/1263/2021/10/15-Holden-Edelman-To-Print.pdf> (illustrating this in the context of online gambling platforms and stating that "any company that is licensed to operate an online sportsbook must limit access to individuals physically located within the state where they have received their license. To illustrate this point, if a company has a license to operate an online sportsbook in New Jersey, that company may accept bets from any individual of legal age (other than self-excluded or prohibited individuals) that is physically located in New Jersey at the time of placing the bet. By contrast, even a licensed New Jersey online sportsbook may not accept bets from people, including New Jersey residents, who are physically located outside of New Jersey at the time of the attempted bet. Therefore, it is critical that any licensed online sportsbook implement proper geo-tracking technology to ensure that all bettors are based in permissible locations.").

<sup>70</sup> See Dodd-Frank Act, Section 410 (amending section 203A of the Advisers Act to enable a mid-sized adviser to register with the Commission if it would be required to register in 15 or more states).

<sup>71</sup> See rule 203A-2(d). As noted above, technological advances related to website development would better allow advisers to effectively utilize the 120-day rule in anticipation of reliance on the multi-state exemption relative to at the time we originally adopted the Internet Adviser Exemption.

<sup>72</sup> Wilson Sonsini Comment Letter.

<sup>62</sup> See rule 203A-2(e)(1)(i).

<sup>63</sup> See proposed rule 203A-2(e)(1)(i). But see Comment Letter of Wilson Sonsini Goodrich & Rosati, P.C. (Oct. 4, 2021) ("Wilson Sonsini Comment Letter") (asserting, in response to the 2021 RFC, that the current rule is not permissive enough with respect to the advising of non-internet clients, further suggesting that the Internet Adviser Exemption should be available to any investment adviser that provides investment advice solely through the internet to at least 51% of its customers").

<sup>64</sup> 2002 Adopting Release, *supra* note 13, at section I. When the Commission initially adopted the fewer than 15 client *de minimis* exception, the Commission noted its similarity to the (then-existing) "private adviser exemption" which, subject to certain additional conditions, exempted from the requirement to register with the Commission any adviser that during the course of the preceding 12 months, had fewer than 15 clients. That exemption was repealed by Section 403 of Dodd-Frank. See 2011 Redesignation, *supra* note 14, at n.4.

registration requirements and the national presence for internet investment advisers with the Advisers Act's allocation of responsibility for regulating smaller advisers to state securities authorities? Would there be benefits to advisers from this approach and would those benefits justify the potential challenges in oversight? Should the *de minimis* exception be based on some other framework or calculation?

14. If we were to retain a *de minimis* exception, should we add a question to Form ADV, asking how many non-internet clients the adviser had during the last fiscal year? Would this reporting requirement help internet investment advisers in their compliance and/or record keeping obligations with respect to the conditions of the exemption as currently constituted?

15. Are there changes to the exemption that might help to encompass those investment advisers that provide advice through the internet while ensuring that advisers that otherwise are not eligible for registration with the Commission and that use the internet only as a marketing tool, for example, remain subject to state registration? Should the Commission create a registration exemption that reflects investment advisers' current use of technology in providing investment advice in a better way than the Internet Adviser Exemption?

16. Should we adopt changes to the recordkeeping requirement? For example, should the recordkeeping requirement require advisers to record the frequency of communication with clients?

17. Should we retain the Internet Adviser Exemption, or should we remove it in its entirety? In light of the other bases for registration that may be available to internet investment advisers, do commenters believe that the rule is necessary? Could these advisers simply rely on another applicable exemption (e.g., the multi-state exemption, mid-sized adviser, related adviser)? Would eliminating the Internet Adviser Exemption and instead causing these advisers to rely on the multi-state exemption to register with the Commission better achieve our goals of only allowing advisers with a larger number of internet clients with a true national presence to register with us? Do commenters believe that certain advisers relying on the rule could instead register with the Commission based on having sufficient assets under management or an ability to rely on another exemption for registration? Do commenters believe that enough advisers rely on the rule to warrant the

relative cost of oversight required for these advisers by our Staff?

18. Is there any particular topic or issue that advisers encounter in complying with the Internet Adviser Exemption currently, or that they would encounter in complying with the proposed amendments to the exemption, that should be addressed by Commission guidance? Would the proposed amendments create excessive reliance on the Internet Advisers Exemption? If so, how?

### III. Economic Analysis

#### A. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 202(c) of the Advisers Act provides that when the Commission is engaging in rulemaking under the Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors.<sup>73</sup> The following analysis considers the likely significant economic effects that may result from the proposed amendments to rules and forms, including the benefits and costs to clients and investors and other market participants as well as the broader implications of the proposed amendments for efficiency, competition, and capital formation.

Where possible, the Commission quantifies the likely economic effects of its proposed amendments. However, the Commission is unable to quantify certain economic effects because it lacks the information necessary to provide estimates or ranges of costs. For instance, data that separately captures the number of non-internet clients or the types of internet clients an adviser has is generally unavailable.<sup>74</sup> Further, in some cases, quantification would require numerous assumptions to forecast how investment advisers and other affected parties would respond to the proposed amendments, and how those responses would in turn affect the broader markets in which they operate. In addition, many factors determining the economic effects of the proposed amendments would be investment adviser-specific. Investment advisers vary in size and sophistication, as well as in the products and services they offer. Even if it were possible to calculate a range of potential

quantitative estimates, that range would be so wide as to not be informative about the magnitude of the benefits or costs associated with the proposed amendments. Many parts of the discussion below are, therefore, qualitative in nature. As described more fully below, the Commission is providing a qualitative assessment and, where practicable, a quantified estimate of the economic effects.

#### B. Baseline and Affected Parties

The amended rule would amend the definitions used in the existing Internet Adviser Exemption, which allows internet investment advisers to register with the Commission. The application of this exemption, along with other applicable rules, determines which advisers the Commission regulates and which advisers may fall under state regulation. The entities potentially affected by the proposed amendments include all advisers that are currently relying on the Internet Adviser Exemption, or are contemplating becoming an internet investment adviser under the current or proposed definition; their clients and affiliated parties; and users of Form ADV data.

##### 1. Regulatory Baseline

The NSMIA divided regulatory responsibility for advisers between the Commission and the states, where larger advisers with national presence are regulated by the Commission and smaller advisers with sufficient local presence are regulated by the states.<sup>75</sup> Currently, subject to certain exceptions, only advisers that advise a registered investment company or have assets under management above \$100 million are allowed to register with the Commission. All other advisers may be subject to state regulation and may be required to register with one or multiple states.<sup>76</sup>

However, section 222(d) of the Advisers Act [15 U.S.C. 80b–18a(d)] provides that no law of any state “shall require an investment adviser to register with the securities commissioner of the State” if the adviser “(1) does not have a place of business located within the State; and (2) during the preceding 12-month period, has had fewer than 6 clients who are residents of that State.” State law varies, and states may exempt from state regulation certain advisers with a place of business in that state if the adviser has a sufficiently low

<sup>73</sup> 15 U.S.C. 80b–2(c).

<sup>74</sup> Information on number of clients, such as that described *supra* section I.B. is generally developed during adviser examinations.

<sup>75</sup> See *supra* notes 2, 3, and the relevant discussion in section 1.

<sup>76</sup> See *supra* note 7; section 222 of the Advisers Act.

number of clients.<sup>77</sup> Depending on the location of the adviser and the number and location of its clients, an adviser not eligible for Commission registration might need to register with no state, or with up to 14 states.<sup>78</sup> States may also require advisers to file copies of their Commission filings with the state (notice filings) even if state registration is not required.<sup>79</sup>

Certain exemptions allow advisers to register with the Commission if state registration becomes unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of section 203A of the Act.<sup>80</sup> The multi-state exemption is one such exemption: it allows advisers that would otherwise

<sup>77</sup> See e.g., N.Y. Gen. Bus. Law § 359-eee(a)(5) (excluding from the definition of “investment adviser” a person that has sold investment advisory services to fewer than 6 persons in the state, in the preceding 12 months); N.J. Stat. Ann. § 49:3-56.9(g)(1) (exempting from registration as an investment adviser a person that does not have more than 5 clients in the state, in a 12-month period); Ill. Admin. Code tit. 12 § 130.805b) (exempting from registration as an investment adviser any investment adviser that had no more than 5 clients in the state, in the preceding 12 months); Ga. Comp. R. & Regs. R. 590-4-4-.13(1)(b) (exempting from registration an investment adviser that had a fewer than 6 clients in the state, in the preceding 12 months).

<sup>78</sup> Advisers that would otherwise have to register with 15 or more states may register with the Commission using the multi-state exemption. See *supra* note 13 and section 1 for the relevant discussion. For information on the number of state-registered investment advisers, see e.g., NASAA, NASAA 2022 Investment Adviser Section Annual Report (Apr. 2022), <https://www.nasaa.org/wp-content/uploads/2022/06/2022-IA-Section-Report-FINAL-updated-05192022.pdf>.

<sup>79</sup> 15 U.S.C. 80b-3a note [Pub. L. 104-290, section 307, “Continued State Authority”]. See, e.g., Neb. Rev. St. sec. 8-1103(2)(b); N.H. Rev. State. sec. 421-B:4-405; 7 TX Admin. Code § 116.1.(b)(2).

<sup>80</sup> 15 U.S.C. 80b-3a(c).

have to register with 15 or more states to register with the Commission instead.<sup>81</sup> The current Internet Adviser Exemption similarly allows Commission registration for advisers that conduct their business predominantly over the internet and by the nature of their business have national presence. That is, their clients may come from multiple states, but they may not advise a registered investment company or have sufficient assets under management to be able to register with the Commission. To alleviate the burden of potentially registering with numerous states for business conducted over the internet, the Commission created in 2002 the exemption found in rule 203A-2(e).<sup>82</sup> Under current rule 203A-2(e), Commission registration is allowed for an investment adviser that provides advice to all of its clients exclusively through an interactive website, except that the investment adviser may provide investment advice to fewer than 15 clients through other means during the preceding 12 months. Rule 203A-2(e) also requires the internet investment adviser to maintain records demonstrating that it meets the conditions of rule 203A-2(e)(1)(i).<sup>83</sup>

<sup>81</sup> See 2002 Adopting Release, *supra* note 13, and section I, for the relevant discussion.

<sup>82</sup> See 2002 Adopting Release, *supra* note 13, and the relevant discussion in section I.A. of this release. The 2002 Adopting Release described the exemption as “providing relief to certain investment advisers who, unlike state-registered advisers, have no local presence and whose advisory activities are not limited to one or few states.” At that time, the threshold for the multi-state exemption was registration in 30 states rather than 15.

<sup>83</sup> See rule 203A2(e)(1)(ii); relevant discussion in *supra* section I.A.

## 2. Current Use of the Internet Adviser Exemption

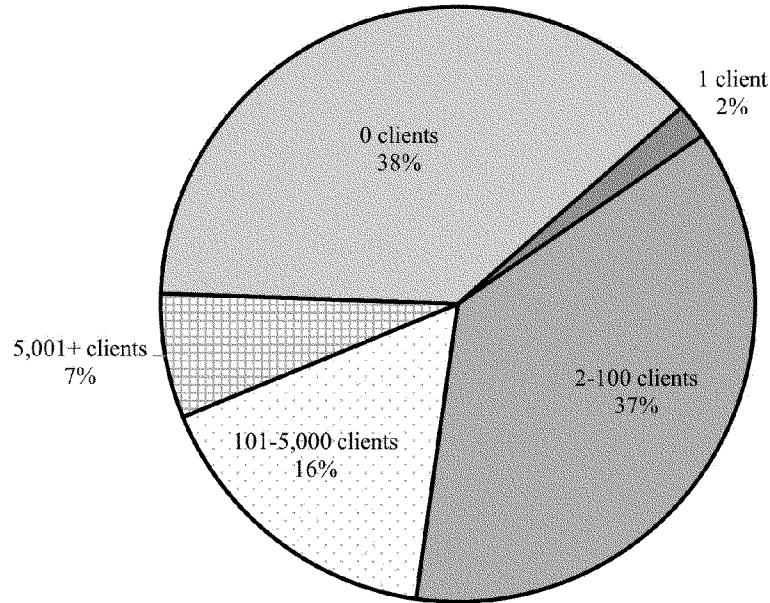
As of December 2022, there were 15,360 registered investment advisers with \$115,050 billion regulatory assets under management. Of these, 256 (1.7%) with a combined total of \$2.94 billion in regulatory assets under management (0.003%) exclusively relied on the Internet Adviser Exemption, while 10 advisers were dually registered with the Commission under both the Internet Adviser Exemption and another basis for registration. The total number of advisers claiming use of the Internet Adviser Exemption was 266, 190 of which were small entity registered investment advisers.<sup>84</sup>

As of December 2022, registered internet investment advisers had on average 5,506 clients, with a minimum of 0 clients, reported by 101 advisers, and a maximum of 522,345 clients.<sup>85</sup> The median number of clients for all advisers using the exemption was 6, indicating that the distribution is highly skewed. As of December 2022, 101 advisers (38% of 266) reported advising 0 clients, 5 advisers (1.9% of 266) reported advising 1 client, and 37% of internet investment advisers (98 of 266) advised 2 to 100 clients. Only 18 advisers (7% of 266) reported advising more than 5,000 clients. Figure 1 demonstrates that 40% of internet advisers have fewer than 2 clients.

<sup>84</sup> The data comes from Form ADV filings received by the Commission through Mar. 31, 2023. Small entity investment advisers are advisers with less than \$25 million in regulatory assets under management.

<sup>85</sup> The data comes from Form ADV filings received by the Commission through Mar. 31, 2023.

Fig. 1: Number of Clients Reported by Internet Advisers



Data source: Form ADV filings received by the Commission through Mar. 31, 2023.

The largest categories of clients that internet investment advisers currently have are: non-high net worth individuals, pension plans, and high net worth individuals.<sup>86</sup>

TABLE 1—LARGEST CATEGORIES OF CLIENTS: DISTRIBUTION ACROSS ALL INTERNET ADVISERS

Type of client	Mean clients per adviser
Non-high net worth individuals	5,085
Pension plans .....	261
High net worth individuals .....	2

Data source: Form ADV filings received by the Commission through Mar. 31, 2023.

The low median, relative to the average, is an indication of skewed distribution within the population of internet advisers. If the dataset is reduced to only those 204 advisers with 100 or fewer clients, the distribution of clients in these categories is as follows:

<sup>86</sup> The instructions of Form ADV specify that the category “individuals” includes trusts, estates, and 401(k) plans and IRAs of individuals and their family members but does not include businesses organized as sole proprietorships. “High Net Worth Individual” is defined as an individual who is a qualified client or who is a “qualified purchaser” as defined in section 2(a)(51)(A) of the Investment Company Act of 1940.

TABLE 2—LARGEST CATEGORIES OF CLIENTS FOR INTERNET ADVISERS WITH 100 OR FEWER CLIENTS

Type of client	Mean clients per adviser
Non-high net worth individuals	6.3
Pension plans .....	0.1
High net worth individuals .....	0.7

Data source: Form ADV filings received by the Commission through Mar. 31, 2023.

The data indicate that the majority of clients using internet advisers are non-high net worth individuals.

We do not have information on the states in which these clients are located. Advisers using the internet Adviser Exemption might also be eligible for the multi-state exemption if they have clients in 15 or more states.<sup>87</sup> But, we would expect that relatively few advisers with the option to use either exemption would choose the internet Adviser Exemption instead of the multi-state exemption, because the multi-state exemption is less restrictive: it does not limit advice provided through non-internet means, as the internet Adviser Exemption does. This suggests that

<sup>87</sup> The multi-state exemption became more widely available after the creation of the current Internet Adviser Exemption, because of the change from a minimum of 30 states to a minimum of 15. Thus, the burden of registering in numerous states was lessened, compared to what it had been when the current exemption was developed.

advisers using the internet Adviser Exemption most likely do not have the option of using the multi-state exemption instead. We invite public comment on this topic.

Similarly, we cannot estimate how many advisers currently using the internet Adviser Exemption would potentially be subject to regulation by multiple states if they did not elect to use the exemption. State law varies, and regulation would depend on the location of the adviser’s place of business and the location of their clients.<sup>88</sup> In light of the substantial number of internet investment advisers with only a few clients, however, it is likely that many of the advisers currently relying on the exemption would, if not registered using the exemption, be subject to registration in not more than one state.<sup>89</sup> Additionally,

<sup>88</sup> For example, the Uniform Securities Act would, if adopted by the relevant state, require an investment adviser to register with the state unless the adviser has no place of business in the state and no more than 5 clients in the state other than certain types of clients described in the Uniform Securities Act. UNIF. SEC. ACT OF 2002 (rev. 2005), sec. 403(b). As of July 2023, 21 states and territories had adopted the 2002 version of the Uniform Securities Act and 5 states had adopted an earlier version. *2002 Securities Act Enactment History*, UNIF. LAW COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=8c3c2581-0fea-4e91-8a50-27eee58da1cf>, last visited July 10, 2023.

<sup>89</sup> The 2002 rule contemplated internet advisers potentially having clients that “can come from any state, at any time, without the adviser’s prior knowledge” and thus potentially necessitating

advisers now may be able to use technology and targeting advertisement in such a way as to limit the number of clients from certain states thereby reducing the state regulation burden.<sup>90</sup>

In the instances where state law does not require the adviser to register with a state, for example because the adviser has fewer than the *de minimis* number of clients in the state, registration with the Commission represents an additional compliance burden that some internet investment advisers appear to be voluntarily assuming. Moreover, where state law would require a Commission-registered adviser to make notice filings with one or more states, the combination of Commission registration and state notice filings may also represent an additional, voluntarily assumed compliance burden as compared to registering directly with those states.<sup>91</sup> Because some advisers choose to register with the Commission despite the potential additional compliance burden, we assume that some advisers perceive value in Commission registration as compared to state registration.

Based on observations of Commission staff conducting examinations, we think some investors may believe that registration with the Commission confers a reputational advantage or appeals to potential clients. Other possibilities include the intent to obtain clients in multiple states in the future, or avoidance of individual state registration requirements such as bond and invoicing requirements. We invite public comment on the location of internet investment advisers and their clients, application of state law to internet investment advisers, reasons to seek the internet Adviser Exemption, and other relevant topics.

### 3. Increased Reliance on the Internet Adviser Exemption

Use of the internet Adviser Exemption has increased since its adoption, especially in recent years.<sup>92</sup> The number

registration in all states. 2002 Adopting Release, *supra* note 13, at 77622. However, the significant number of currently registered internet investment advisers with one or fewer clients would not face that risk. Additionally, as noted *supra*, note 69 and surrounding text, today's investment advisers are better able to control in which states they may be required to register.

<sup>90</sup> See section II.A.2 for a relevant discussion.

<sup>91</sup> The cost of notice filing is often the same as the cost of registering with the state. See INVESTMENT ADVISER REGISTRATION DEPOSITORY, *IA Firm State Registration/Notice Filing Fee Schedule* (Jan. 13, 2023), <https://www.iard.com>, under the tab "Fees & Accounting." We invite public comment on the cost of state registration and notice filing fees.

<sup>92</sup> See *supra* note 23 (number of advisers relying exclusively on the exemption grew from 107 in 2015 to 256 in 2022).

of investment advisers using the exemption at the end of 2022 (that is, 266 advisers) was almost 18 times larger than it was in December 2003, one year after the exemption was put in place, when there were 15 such advisers.<sup>93</sup> The value of regulatory assets under management for advisers exclusively relying on the internet Adviser Exemption at the end of 2022 was \$2.94 billion,<sup>94</sup> or 0.003% of total adviser registered assets under management. The average regulatory assets under management per adviser for internet investment advisers (about \$64.11 million) was 165 times larger than it was in December 2003 when advisers using the exemption had on average about \$0.39 million of registered assets under management per adviser. Further, from 2003 to 2022, 440 unique registered investment advisers that had indicated in their prior ADV filing they were utilizing the internet adviser registration basis withdrew and filed a total of 475 Forms ADV-W.<sup>95</sup> Note that the number of withdrawals has increased, for example, there were 69 ADV-W filings by internet investment advisers between 2003 and 2012 and 387 ADV-W filings between 2013 and 2022.<sup>96</sup> This increase could suggest erroneous registration, as discussed later in this analysis.

Technology use in the advisory industry has also changed. For example, while the 2002 Adopting Release stated that internet investment advisers might not be fully operational within 120 days of registration,<sup>97</sup> today websites and associated services are more common, more website development services are available on the market, and new technologies, such as mobile applications that can generate advice, have emerged as well.<sup>98</sup> Currently,

<sup>93</sup> The 2002 Adopting Release used a figure of 20 eligible advisers in its analysis, acknowledging that the number of eligible firms would likely grow. 2002 Adopting Release, *supra* note 13, at 77623.

<sup>94</sup> Accounting for inflation using CPI calculator ([https://www.bls.gov/data/inflation\\_calculator.htm](https://www.bls.gov/data/inflation_calculator.htm)), this number is 1.83 billion in Dec. 2003 dollars.

<sup>95</sup> The filing of 475 Forms ADV-W includes singular investment advisers that utilized the Internet Adviser Exemption on a non-continuous basis (e.g., investment advisers that registered, withdrew, registered again, and subsequently withdrew).

<sup>96</sup> Based on analysis of Form ADV data available through Mar. 31, 2023.

<sup>97</sup> Exemption for Certain Investment Advisers Operating Through the Internet, Investment Advisers Act Release No. 2091 (67 FR 77619 (Dec. 18, 2002)), at 77622.

<sup>98</sup> See *supra* note 20 and surrounding text. See also Alex Padalka, *RIAs Depend on Tech for Client Communications, Growth*, FIN. ADVISOR IQ (Dec. 10, 2021), [https://www.financialadvisoriq.com/c/3402044/435734/rias\\_depend\\_tech\\_client\\_communications\\_growth?preview=1](https://www.financialadvisoriq.com/c/3402044/435734/rias_depend_tech_client_communications_growth?preview=1).

different options are available on the market to develop a website, from using website builder programs for an average upfront cost of about \$200 and maintenance cost of about \$50 per month, to hiring a website designer for an average upfront cost of about \$6,000 and maintenance cost of about \$1,000 per year.<sup>99</sup>

As discussed in section I.A, the Commission adopted rule 203A-2(e) to alleviate, for a narrow set of advisers with national presence, the burden of having to register in multiple states as a result of providing internet advice. The increase in its use, especially among advisers that would not be subject to registration in more than one state, or that appear to have advised no clients in several years, suggests the exemption may currently be used in ways that were not intended by the 2002 rule.

In addition, the Commission's examination program has identified multiple instances of compliance issues relating to advisers relying on the exemption without an interactive website, or providing advisory personnel who could expand upon the investment advice provided by the adviser's interactive website or otherwise provide investment advice to clients, such as financial planning.<sup>100</sup> The frequency of registration withdrawals has increased as well: as discussed previously in the baseline, the number of withdrawals by internet investment advisers between 2013 and 2022 (387) was over five times larger than the number of withdrawals between 2003 and 2012 (69).<sup>101</sup>

### C. Benefits and Costs and Effects on Efficiency, Competition, and Capital Formation

#### 1. Benefits

The proposed amendments to the internet Adviser Exemption are designed to modernize the exemption and address technological and other industry developments that have occurred since 2002, and to respond to observations about the use of the exemption that were not available when the exemption was first put in place.<sup>102</sup> Further, as discussed in more detail below, the proposed changes to the

<sup>99</sup> These estimates are available from Lucy Carney, *How Much Does a Website Cost in 2023? (Full Breakdown)*, WEBSITEBUILDEREXPERT (Apr. 26, 2023), <https://www.websitebuilderexpert.com/building-websites/how-much-should-a-website-cost/>.

<sup>100</sup> See Risk Alert, *supra* note 25; see also *supra* note 26 and surrounding text.

<sup>101</sup> Based on the analysis of Form ADV data available through Mar. 31, 2023.

<sup>102</sup> See *supra* section I.B for a relevant discussion.

definitions in the rule are designed to better align regulatory authority between the Commission and the states and improve investor protection. The proposed amendments would:

1. Specify that the exemption is available to an investment adviser that provides investment advice to all of its clients exclusively through an operational interactive website at all times during which the investment adviser relies on the exemption found in section 275.203A-2(e).

2. Modernize the meaning of “interactive website” by:

- Adding the term “digital investment advisory service,” defined to mean investment advice to clients that is generated by the website’s algorithms as well as the software-based models and applications covered by the existing rule;

- Adding a reference to mobile applications;

- Requiring more than one client to which the adviser provides digital investment advisory services on an ongoing basis;

- Adding the word “operational,” thus changing the term to “operational interactive website”; and

- Adding an exception to the operational interactive website requirement for “temporary technological outages of a *de minimis* duration.”

3. Eliminate the *de minimis* exception allowing fewer than 15 non-internet clients;

4. Require advisers to make a representation of eligibility on Schedule D of Form ADV (in addition to checking the appropriate box in Item 2.A.(11) of Form ADV).

These changes are intended to modernize the Internet Adviser Exemption, retain its intended narrow scope, and minimize opportunities for advisers to misuse the exemption to register with the Commission without meeting its conditions.

Augmenting the definition of “interactive website” to include the new defined term “digital investment advisory service” would capture the increasing variety of technological methods by which internet investment advisers provide advice using the internet. Additionally, the proposed addition of the terms “mobile application” and “algorithms” would better align with technological advances in the industry. Advisers increasingly make use of various mobile applications to interact with the clients, and use algorithms to generate investment advice.<sup>103</sup> The improved definition thus

would allow internet investment advisers that rely on mobile applications to generate advice to use the Internet Adviser Exemption, potentially reducing their burdens associated with multiple states’ registrations and regulations. Further, internet investment adviser clients would be able to benefit from being able to rely on mobile applications and algorithms, which offer a convenient means of interaction between the adviser and its clients. Additionally, including an exception for temporary technological outages of a *de minimis* duration should help accommodate occasional technological issues with the website or mobile application so the internet investment adviser is not required to frequently withdraw and re-register due to minor or temporary technical difficulties or planned maintenance.

To the extent advisers may be registering with the Commission in order to market themselves to potential clients, the proposed changes should help avoid misleading clients. For instance, advisers without an “operational” website would be excluded from the pool of advisers eligible for the Internet Adviser Exemption. This would avoid clients contracting with an adviser that is relying on the Internet Adviser Exemption for registration whose website cannot be used to provide investment advice. To the extent any investors may be led to believe that an adviser relying on the Internet Adviser Exemption for registration has national presence and conducts its business via the internet, while this is not in fact the case, the proposed amendments could help avoid the possibility of investors using a type of adviser they did not intend to use.

The proposed amendments would remove the *de minimis* exception for non-internet clients, preventing advisers with any non-internet clients from relying on the Internet Adviser Exemption. Removing the exception better services the narrow-intended scope of the Internet Adviser Exemption.<sup>104</sup> This amendment would assist Commission staff in conducting examinations of internet advisers, because it can be difficult to identify the instances of advice given and the exact number of clients that received advice through means other than an operational interactive website.

Additionally, the proposed amendments requiring advisers to represent their Internet Adviser Exemption eligibility on Schedule D of

Form ADV should reduce the number of erroneous registrations and subsequent withdrawals. Currently, prospective advisers need only check a box on Form ADV indicating they “are an internet adviser relying on rule 203A-2e” but the proposed change to Form ADV would include a separate text description of the actions the adviser must have taken to become or remain eligible for the Internet Adviser Exemption.<sup>105</sup> Listing the required elements of eligibility for the Internet Adviser Exemption should explicitly state for the registrants the requirements that they must meet in order to qualify, and which they are certifying that they have met when they file Form ADV.<sup>106</sup> We also anticipate that by avoiding erroneous registration, ineligible registrants would avoid expending time and effort on dealing with withdrawals, and corresponding legal fees.

Currently, the Internet Adviser Exemption does not require an adviser to have a minimum number of clients. Requiring that digital investment advisory services be provided on an ongoing basis to more than one client would better align with the original goal of the exemption, which was to provide relief from multiple state registration requirements for advisers with a national presence via the internet. Advisers with one or zero clients cannot be considered entities with national presence requiring relief from a state registration burden. Further, advisers with zero clients that effectively do not conduct advisory business but are able to register as internet investment advisers may be misleading potential future clients to believe they are providing advisory business via the internet.

## 2. Costs

The proposed amendments may adversely affect some advisers. The proposed amendments would specifically require that the website be “operational,” and advisers may incur a cost of developing a website or withdrawing their Commission registration if their website is not operational. Advisers should already have an interactive website and the Commission does not currently

<sup>105</sup> Schedule D of Part 1A of Form ADV currently is submitted in a structured (*i.e.*, machine-readable), XML-based data language specific to that Form, so the additional information that would be required on Schedule D under the proposed rule amendments would also be structured.

<sup>106</sup> This amendment would also assist Commission staff in connection with its review of existing registrations and registration applications for compliance with the rule and, as applicable, for possible deregistration for inability to meet the conditions of the rule.

<sup>103</sup> See *supra* section II.A.1, specifically note 55 and surrounding text.

<sup>104</sup> See *supra* section II.A.2.

recognize a grace period to develop a website, beyond the separate, rule 203A–2(c) exemption for an investment adviser expecting to be eligible for Commission registration within 120 days, so the proposed amendments should not require new website development costs.<sup>107</sup>

Advisers that choose to withdraw their Commission registration must file form ADV–W. The current burden estimate to file form ADV–W is 0.75 hour per respondent,<sup>108</sup> implying a cost of withdrawal of \$319 per adviser.<sup>109</sup> The costs to file this form may vary between advisers and may be larger than this estimate for some. In addition, depending on their location and the scope and nature of their activities (if any), advisers that withdraw from Commission registration might need to register with one or more states. Also, to the extent some clients value Commission registration and select advisers based on their Commission registration status, advisers could lose clients as a result of withdrawal; however, we do not have information that would allow us to predict the size or magnitude of this effect.<sup>110</sup> We request public comment on this topic.

Adding the term “mobile applications” and the term “digital investment advisory service” still may not prevent some non-internet advisers from relying on the exemption by claiming to provide mobile application or website-generated advice or “digital investment advisory service” when in fact the advice involves some human input.<sup>111</sup> Such advisers are likely to incur costs of withdrawing their Commission registration.

<sup>107</sup> See *supra* note 49.

<sup>108</sup> See, e.g., Submission for OMB Review; Comment request; Extension: Rule 203–2 and Form ADV–W, 88 FR 37913 (Jun. 9, 2023) (describing the burden associated with the previously approved collection of information under OMB Control No. 3235–0313).

<sup>109</sup> 0.75 hour \* \$425 = \$319. The maximum total cost of withdrawals assuming all 256 currently registered internet investment advisers relying exclusively on the Internet Investment Adviser Exemption have to withdraw is 0.75 hour \* \$425 \* 256 = \$81,600. Assuming only 101 currently registered internet investment advisers with zero clients and 5 advisers with one client will have to withdraw, the total estimated cost is 0.75 hour \* \$425 \* 106 = \$33,788. The \$425 compensation rate used is the rate for a Sr. Operations Manager in the SIFMA Report on Management & Professional Earnings in the Securities Industry—2013 (Oct. 7, 2013), adjusted for inflation using the Bureau of Labor Statistics' Consumer Price Index inflation calculator, modified to account for a 1,800-hour work-year, and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead.

<sup>110</sup> See *supra* note 65 and surrounding text (discussion of dual basis registration).

<sup>111</sup> See, e.g., the findings in *RetireHub*, *supra* note 26.

Internet investment advisers that rely exclusively on the Internet Adviser Exemption and have non-internet clients, as is currently allowed, would be affected by the proposed amendments because they could no longer rely on the exemption as a basis for registering with the Commission. Human-directed advice provided by electronic means would not be eligible for the exemption. These advisers may be required to register with one or more states if their total number of clients in any given state exceeds five and the state requires registration.<sup>112</sup>

Similarly, the proposed amendments are designed to focus on advisers that exclusively advise through the internet. Advisers currently relying on the Internet Adviser Exemption may need to change the way they communicate with or deliver services to their clients or rely on a different basis for Commission registration, if available. For example, internet investment advisers that provide advice via means other than an interactive website or with some human input might have to change their communication with clients in order to continue to rely on the exemption. In some cases, such advisers may either have to withdraw their registration or lose some of their clients as well if the clients require more than digital investment advisory services in order to remain with the specific adviser. Further, the clients may have to switch to a different adviser. As discussed in section III.B, internet investment advisers typically advise non-high net worth individual clients. In addition to the cost associated with finding a new adviser, switching to a different adviser may represent a cost increase for such clients if the new adviser has higher fees.

Finally, the proposed additional representation of eligibility on Schedule D of Form ADV may increase the time and effort advisers expend when filing Form ADV. However, as discussed in the PRA, such costs are expected to be minimal.<sup>113</sup>

Some of the costs associated with advisers having to register with multiple states are alleviated by the fact that the state registration burdens assessed when the exemption was originally implemented have declined since 2002, as now the advisers may be able to rely

<sup>112</sup> See section 222(d) of the Advisers Act. We are unable to quantify the costs of registering with the States, beyond state registration fees, because the registration requirements and forms, and the corresponding time spent by firms, vary by each state and there is no available data to make such estimates. The average of state registration fees is \$224, see *supra* note 91.

<sup>113</sup> See *supra* section IV.C.

on other available exemptions or more easily meet registrations thresholds in order to register with the Commission. For example, as discussed in the baseline, the multi-state exemption threshold was decreased from 30 to 15, making it easier for advisers to qualify for this exemption. Further, as discussed in the baseline, advisers relying on the Internet Adviser Exemption now tend to have more registered assets under management on average per adviser and some may be able to reach the minimum threshold on the registered assets under management sooner in order to qualify for the Commission registration.<sup>114</sup>

The proposed change would render ineligible for the exemption all the currently registered internet investment advisers with one or zero clients. This would reduce the current population of exemption-eligible advisers by approximately 40%, unless those advisers obtained additional clients.<sup>115</sup> While reducing the number of advisers relying on the exemption is not a goal of the proposal, a reduction would reflect the narrow scope of the Commission's exemptive rule.<sup>116</sup>

### 3. Effects on Efficiency, Competition, and Capital Formation

We do not anticipate any significant effects on efficiency, competition, and capital formation, as the proposal represents a minor change of the exemption parameters and is not intended to conceptually change the exemption or the original intended division of the regulatory authority over investment advisers between the Commission and the states. As discussed in the baseline, the number of advisers potentially affected by the proposed change is small, and does not represent a significant portion of the population of investment advisers or their clients.

The proposed amendments may have a positive effect on competition and capital formation as they are designed to modernize the rule to recognize advances in technology and digital services employed by the investment advisory industry. Specifying that internet investment advisers may use technology, such as mobile applications, that can better fit their clients' needs

<sup>114</sup> See also a related discussion in section II.A.2.

<sup>115</sup> See previous discussion in baseline on the number of internet investment advisers with zero (101) and one (5) client out of 266 total internet investment advisers.

<sup>116</sup> 2002 Adopting Release, *supra* note 13, at 77621; 15 U.S.C. 80b–3a(c) (allowing exemptions from the limits on Commission registration when those limits “would be unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of this section”).

should improve client-adviser interactions, and the quality of the services provided, and could encourage client participation.

However, the positive effects discussed above could be lessened by the fact that certain proposed amendments, such as the removal of the current *de minimis* exception, could adversely affect adviser-client interactions by preventing internet investment advisers from relying on the Internet Adviser Exemption when providing, to any client, advice beyond digital investment advisory services. In some cases, advisers may need to choose between retaining their Commission registration (if they rely solely on the Internet Adviser Exemption) or continuing to provide human-directed advice as is allowed under the current wording of the exemption. This may lead to advisers losing some clients who value both Commission registration and human-directed advice and thus affect competition in the investment adviser market.

#### D. Reasonable Alternatives

##### 1. Allowing Fewer Non-Internet Clients

As an alternative to removing the *de minimis* provision that allowed internet investment advisers to have 15 or fewer non-internet clients, the Commission considered reducing that number, for example, by setting a defined maximum of non-internet clients, such as five. Reducing the maximum to five could strengthen the link between the Internet Adviser Exemption and the Internet advisory business, while retaining an adviser's flexibility to accommodate a small number of customers who seek advice beyond mere website output allowed under the proposed amendment to the exemption.

However, as discussed in section II.A.2, if an internet investment adviser is advising non-internet clients, it should not be exempted from the registration rules that otherwise apply to all investment advisers and should more properly be regulated by a state (or states) or the Commission (using a different basis for registration), as applicable. This alternative may require advisers to keep additional records tracing instances in which clients received advice beyond the model generated output. Such cases may be hard to identify because, as discussed earlier in the Economic Analysis, it may not always be clear when some human input was involved and to what extent. This alternative may thus result in a greater number of erroneous registrations and subsequent

withdrawals as compared to the current rule.

The Commission also considered variations, such as defining a maximum number of non-internet clients as a percentage of the adviser's total number of clients. Under this variation, however, the maximum number of non-internet clients could be quite large for advisers with many clients, implying sufficient local presence to register with one or more states, while remaining quite small for investors with few clients and still limiting their interactions with clients. This may not be fair, efficient or reflect the originally intended allocation of adviser regulation responsibilities between the Commission and the states: for example, advisers with a large number of non-internet clients in a given state are more likely to have a local presence in the state as opposed to a national presence.

##### 2. Alternative Definitions of "Interactive Website"

The Commission also considered adding a different minimum number of clients to the definition of "interactive website." A larger number of clients would help limit Commission registration to those advisers with a national presence. Requiring a larger minimum number of clients to qualify for the exemption would exclude advisers that are not otherwise eligible for Commission regulation, but that obtain one or a few clients with sole purpose of relying on the exemption. This would work against the originally intended division of regulatory authority between the Commission and the states. A larger minimum number of clients may, however, disadvantage advisers with a small clientele or advisers which are at the early stages of starting their advisory business.

Further, the definition of "interactive website" could use a term other than "operational," such as "functioning" or "working," to highlight the requirement that the website can be used by the clients or prospective clients to interact with adviser or obtain advising services. These alternative terms could simplify the rule text. However, such terms may be less technical and more prone to potentially inconsistent interpretations across advisers.

Further, the definition of "interactive website" could use a definition of the term "digital investment advisory services," other than "investment advice to clients that is generated by the operational interactive website's software-based models, algorithms, or applications based on personal information each client supplies through the operational interactive

website." For example, the definition of the term could be less specific, such as "investment advice to clients that is generated based on personal information each client supplies through an operational interactive website." This alternative does not specify the type of technology used to generate advice, which allows more flexibility in technology use by internet investment advisers. However, this may result in non-internet advisers attempting to rely on the Internet Adviser Exemption by referencing a technology that is not typically used to provide investment advice via internet.

##### 3. Eliminating the Internet Adviser Exemption

As another alternative, the Commission considered eliminating the Internet Adviser Exemption. With the proliferation of internet tools and their frequent use by all types of advisers, the distinction might no longer be valuable. In addition, specifically defining the bounds of the exemption may remain difficult, as evolving industry practices could quickly make rule definitions stale. New innovations and new ways of communication with the clients, which are not accounted for by the current or proposed exemption definitions, could render the exemption unavailable to some internet investment advisers who adopt those new technologies. Further, as discussed in the section on costs, erroneous registrations associated with the rule can create additional costs for advisers due to registration withdrawals. Eliminating the exemption would eliminate these issues.

However, eliminating the exemption would result in certain costs. Advisers that currently rely on the exemption would no longer be able to use it, and therefore would not be eligible to register with the Commission unless they meet the criteria of another exemption. Losing Commission registration would impose costs: for example, the adviser may lose some clients or may need to comply with state regulation requirements, as discussed in the Costs section. Further, losing a basis for Commission registration would require the adviser to file Form ADV-W. We estimate the burden to file Form ADV-W to withdraw from registration as 0.75 hour per respondent.<sup>117</sup> Assuming 256 currently registered internet investment advisers relying exclusively on the Internet Adviser Exemption would have to withdraw from registration, the total cost of filing

<sup>117</sup> See *supra* note 108 and accompanying text.

Form ADV-W is estimated as \$81,600.<sup>118</sup>

This alternative may also result in advisers losing some clients to the extent clients value Commission registration. Such clients would have to seek a different adviser and may face higher fees as well as switching costs as discussed above.<sup>119</sup> Further, losing Commission registration may result in advisers having to register in multiple (up to 14) states and be subject to the appropriate state regulations until they become eligible under a different rule or exemption, which would create a burden, especially for new and small advisers.<sup>120</sup>

Such costs, however, would likely be small as the advisers exclusively using the Internet Adviser Exemption comprise a very small portion of the relevant market (as discussed previously, 1.7% of the total number of advisers and 0.003% of the total assets under management). Moreover, state registration fees are typically the same as state notice filing fees,<sup>121</sup> so to the extent the adviser is already paying notice filing fees in the states where it would need to register, the difference in filing fees should be *de minimis*.

#### Request for Comment

19. What additional qualitative or quantitative information should be considered as part of the baseline for the economic analysis of the proposals?

20. Do commenters agree with our characterization of the estimated benefits, burden hours, and costs? Please explain and supplement with data or estimates if available.

21. Are the effects on competition, efficiency, and capital formation arising from the proposed amendments accurately characterized? Please explain, and provide data or estimates if available.

22. Please provide data, if available, on the number of currently registered advisers that do not have an operational interactive website.

23. Please provide data, if available, on the cost of setting up and

maintaining an operational interactive website.

24. Please provide data, if available, on the number of non-internet clients of registered internet investment advisers.

25. Please provide data, if available, on the location of internet investment advisers and their clients.

26. Please provide data, if available, on the application of state law to internet investment advisers.

27. For what reasons do investment advisers seek to use the Internet Adviser Exemption?

28. Please provide data, if available, on the types of internet clients of registered internet investment advisers. What type of clients seek or prefer internet advisers? Do clients prefer internet advisers registered with the Commission?

29. How would clients react if a previously-registered adviser was no longer registered with the Commission? How would current clients react if an internet adviser could no longer provide advice by means other than a website?

30. Please provide data, if available, on the number of clients that may have to switch to a different adviser as a result of the proposed amendments.

31. Please provide data, if available, on the clients an adviser may lose as a result of withdrawing from registration with the Commission, as well as the new advisers the clients may have selected.

32. Are there known technological advances in advisory business other than “models,” “algorithms,” or “applications” generated advice that should be included in “digital investment advisory service” definition? Please explain.

33. Is there a better term than “operational,” which can be used in the definition of “interactive website”? Are there alternatives to the proposed items in the definition of “interactive website”?

34. Please provide any available estimates or data that can help estimate the average costs of state registrations, and of state notice filings.

35. Please provide any available data regarding the advisers that currently rely on the Internet Adviser Exemption and will likely need to withdraw from registration with the Commission. How many of those advisers may face multiple state registrations if the exemption is eliminated?

## IV. Paperwork Reduction Act

### A. Introduction

Our proposal would result in new “collection of information” requirements within the meaning of the

Paperwork Reduction Act of 1995 (“PRA”).<sup>122</sup> The proposed amendments would have an impact on the current collection of information burdens of rule 203A-2(e) and Form ADV under the Act. The existing collections of information that we are proposing to amend are: (i) “Exemption for Certain Investment Advisers Operating Through the Internet (Rule 203A-2(e))” (OMB control number 3235-0559); and (iii) “Form ADV” (OMB control number 3235-0049). The Commission is submitting these collections of information to the OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We discuss below these proposed amendments and new collection of information burdens. Responses provided to the Commission in the context of its examination and oversight program concerning the proposed amendments to rule 203A-2(e) subject to the provisions of applicable law. Responses to the disclosure requirements of the proposed amendments to Forms ADV are not kept confidential.

### B. Rule 203A-2(e) Recordkeeping Requirement

The amended rule would require an internet investment adviser to provide investment advice to all of its clients exclusively through an operational interactive website,<sup>123</sup> and would require advisers registering with the Commission under the exemption to maintain a record demonstrating that the adviser’s advisory business has been conducted through an operational interactive website in accordance with the rule.<sup>124</sup> Although most advisers registering under the rule usually generate the necessary records in the ordinary conduct of their Internet advisory business, the recordkeeping requirement of rule 203A-2(e) nonetheless may impose a small additional burden on these advisers. We estimate this recordkeeping burden to

<sup>118</sup> \$425 \* 0.75 hour per respondent \* 256 advisers. The \$425 compensation rate is calculated as described *supra*, note 109.

<sup>119</sup> As discussed previously in the costs section, we are unable to quantify these costs due to a lack of data on such clients and the new advisers they may have selected. We invite public comment on this topic.

<sup>120</sup> See relevant discussion in section III.C.2. As stated previously in the Costs discussion, we are unable to quantify the costs of registering with the States, beyond state registration fees (\$224 on average across states), because the registration requirements and forms, and the corresponding time spent by firms, vary by each state and there is no available data to make such estimates.

<sup>121</sup> See *supra* note 91.

<sup>122</sup> 44 U.S.C. 3501 *et seq.*

<sup>123</sup> See proposed rule 203A-2(e)(1)(i).

<sup>124</sup> See proposed rule 203A-2(e)(1)(ii). Under the proposed rule, as under the current rule, advisers would need to maintain records of their compliance with the rule. The proposed change to remove the *de minimis* exception does not result in an increase in the burden under the current rule but it has been accounted for in our estimated burden for the proposed rule.

amount to an average of four (4) hours annually per adviser.<sup>125</sup>

We estimate the number of respondents to this information collection to be 266 advisers.<sup>126</sup> Accordingly, we estimate the total recordkeeping burden hours for all rule 203A–2(e) advisers to be 1,064 hours.<sup>127</sup> We estimate that the total monetized cost to each internet adviser to comply with the recordkeeping provision of rule 203A–2(e) would be approximately \$1,700,<sup>128</sup> and that the total monetized cost for the 266 advisers relying on this exemption at this time would be \$452,200.<sup>129</sup>

**C. Form ADV**

We are proposing amendments to Form ADV Part 1A, Schedule D, requiring advisers to indicate on Schedule D that, if applying for registration with the Commission, the adviser will provide—and if amending

its existing registration and is continuing to rely on the internet adviser exemption, that it has provided—investment advice to all of its clients exclusively through an operational interactive website.<sup>130</sup> These changes are designed to provide information to the Commission in connection with the registration and annual amendments to Form ADV filed by internet investment advisers and would assist Commission staff in connection with its review of existing registrations and registration applications for compliance with the rule and, as applicable, for possible deregistration for an inability to meet the conditions of the rule. We do not believe that these ministerial amendments to Form ADV requiring a very small number of advisers to check a box make any substantive modifications to any existing collection of information requirements or impose

any new substantive recordkeeping or information collection requirements within the meaning of the Paperwork Reduction Act of 1995 (“PRA”). Accordingly, we are not revising any burden and cost estimates in connection with these amendments.

**D. Total Hour Burden Associated With Proposed Amendments to Rule 203A–2(e)**

We estimate investment advisers that would be subject to the amended rule would incur a total annual hour burden resulting from the collections of information discussed above of approximately 1,064 hours, at a monetized cost of \$452,200.<sup>131</sup> The total external burden costs would be \$0.

A chart summarizing the various proposed components of the total annual burden for investment advisers with custody of client assets is below.

Rule 203A–2(e) description of new requirements	Number of responses	Internal burden hours	External burden costs
<b>Final Estimates for Internet Investment Advisers under Rule 203A–2(e)</b>			
Annual burden for making records sufficient to demonstrate compliance with rule.	266 .....	1,064 (4 hours per adviser) ....	0
Annual burden for making representations on Form ADV, Part 1A, Schedule D.	<i>De Minimis</i> .....	<i>De Minimis</i> .....	0

We estimate the total burden under proposed 203A–2(e) to amount to an average of four (4) hours annually per adviser. This estimate is identical to the estimate of the per-adviser burden under current 203A–2(e). We believe that the only differences in burden hours and internal monetized costs between current 203A–2(e) and proposed 203A–2(e) will be determined by the number of advisers subject to the proposed rule.

**E. Request for Comments**

We request comment on whether our estimates for burden hours and any external costs as described above are reasonable. Pursuant to 44 U.S.C.

3506(c)(2)(B), the Commission solicits comments in order to: (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission’s estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection

techniques or other forms of information technology.

In addition to these general requests for comment, we also request comment specifically on the following issues:

36. Our analysis relies upon certain assumptions, such as that 266 advisers will rely on the Internet Adviser Exemption and that it will take advisers approximately 4 hours per year to comply with the recordkeeping requirements proposed. Do commenters agree with these assumptions? If not, why not, and what data would commenters propose?

37. Our analysis relies upon the assumption that internet investment advisers will incur no meaningful

<sup>125</sup> The adviser would need to demonstrate that all of its clients obtain investment advice from the firm exclusively through an operational interactive website. Internet advisers that conduct their business exclusively through interactive websites and whose employees never directly communicate with clients would likely need to spend very little time documenting their compliance with the condition. An adviser that has personnel that assist clients directly (whether through email, chatbots, telephonically, or otherwise) with administrative functions like accessing the website may need to spend more time.

<sup>126</sup> This estimate is based on information reported by advisers through the Investment Adviser Registration Depository (“IARD”). Based on IARD data as of Dec. 31, 2022, of the approximately

15,360 SEC-registered advisers, 266 checked Item 2.A(11) of Part 1A of Form ADV to indicate their basis for SEC registration under the Internet Adviser Exemption. This estimate may be overinclusive to the extent that advisers currently registered in reliance on the exemption, including, but not limited to, those that currently have one or fewer clients, are not able to satisfy the requirements of the proposed amendments. The estimate may be underinclusive to the extent that additional advisers seek to rely on the Internet Adviser Exemption, whether due to the industry’s increased reliance on technology or otherwise.

<sup>127</sup> Four (4) hours × 266 advisers = 1,064 hours.  
<sup>128</sup> We estimate the cost at a rate of \$425 per hour. The compensation rate for the current approved information collection used is the rate for a Sr.

Operations Manager in the Securities Industry and Financial Markets Association’s Report on Management & Professional Earnings in the Securities Industry 2013 updated for 2023, and is modified to account for an 1,800-hour work-year and inflation and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. 4 hours × \$425 per hour = \$1,700.

<sup>129</sup> 1,064 hours × \$425 per hour = \$452,200. We do not expect advisers to incur any external cost burden in connection with this information collection because advisers registering under the rule would generate the necessary records in the ordinary course of their advisory businesses.

<sup>130</sup> See proposed rule 203A–2(e)(1)(iv).

<sup>131</sup> This estimate is based upon the following calculation: 1,064 hours × \$425.

burden to make the proposed representations on Form ADV, Part 1A, Schedule D. Do commenters agree with this assumption? If not, why not, and what burden hours and costs would commenters propose?

The agency is submitting the proposed collections of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090, with reference to File No. S7-13-23. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-13-23, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

## V. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (“IRFA”) in accordance with section 3(a) of the Regulatory Flexibility Act<sup>132</sup> regarding our proposed rule.

### A. Reason for and Objectives of the Proposed Action

#### 1. Proposed Amendments to Rule 203A-2(e)

We are proposing amendments to the internet Adviser Exemption, which we adopted in 2002. The current internet Adviser Exemption generally requires an adviser to:

- Provide investment advice to all of its clients exclusively through an interactive website, except that the investment adviser may provide investment advice to fewer than 15 clients through other means during the preceding twelve months; and
- Maintain records for a period of not less than five years demonstrating compliance with the conditions of the rule.

The proposed changes to the internet Adviser Exemption are designed to reflect the evolution in technology and advisory industry since the adoption in the rule. In addition, the proposed changes are designed to better reflect the allocation of authority between the Federal government and States that Congress intended under NSMIA and the Dodd-Frank Act and enhance investor protection through more efficient use of the Commission’s limited oversight and examination resources by more appropriately allocating Commission resources to advisers with national presence and allowing smaller advisers with sufficient local presence to be regulated by the states.

Specifically, the rule would require an internet investment adviser to provide investment advice to all of its clients exclusively through an operational interactive website at all times during which the adviser relies on the internet Adviser Exemption. The rule’s definition of interactive website would be amended to “operational interactive website” and would be expanded to include mobile applications; the definition would also be amended to define operational interactive website as one through which the investment adviser provides digital investment advisory services on an ongoing basis to more than one client (except temporary technological outages of a *de minimis* duration).<sup>133</sup> The amended rule would also remove the current rule’s *de minimis* exception,<sup>134</sup> which exception allows advisers relying on the rule to provide advice to fewer than 15 clients through means other than an interactive website during the preceding 12 months. As under the current rule, the amended rule would require advisers to comply with the requirement to maintain certain records in accordance with amended rule 203A-2(e)(1)(ii). The reasons for, and objectives of, the proposed amendments are discussed in more detail in sections I and II, above. The burdens of these requirements on small advisers are discussed below as well as above in sections III and IV, which discuss the burdens on all advisers. The professional skills required to meet

these specific burdens are also discussed in section IV.

#### 2. Proposed Amendments to Form ADV

The amended rule would also require an adviser to make representations on its Form ADV, Part 1A, Schedule D, indicating that it satisfies the requirements of the rule. This representation is similar to the representation that advisers relying on the multi-state exemption make on their Form ADV and would assist Commission staff in connection with its review of registration applications and deregistrations of advisers that are not in compliance with the rule. The reasons for, and objectives of, the proposed amendments are discussed in more detail in sections I and II, above. The burdens of these requirements on small advisers are discussed below as well as above in sections III and IV, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens are also discussed in section IV.

### B. Legal Basis

The Commission is proposing to amend rule 203A-2(e) and amend Form ADV under the authority set forth in sections 203A(c) and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-3a(c) and 80b-11(a)].

### C. Small Entities Subject to the Rule and Rule Amendments

In developing these proposals, we have considered their potential impact on small entities that would be subject to the proposed amendments. The proposed amendments would affect a relatively small number of investment advisers registered with the Commission, including some small entities.

Under Commission rules, for the purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than \$25 million; (2) did not have total assets of \$5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of \$25 million or more, or any person (other than a natural person) that had total assets of \$5 million or more on the last day of its most recent fiscal year. Our proposed amendments would not affect most investment advisers that are small entities (“small advisers”) because they are generally registered with one or more state securities authorities and not with the Commission. Under section

<sup>133</sup> See proposed rule 203A-2(e)(2). For purposes of the rule, “digital investment advisory service” would be defined as investment advice to clients that is generated by the operational interactive website’s software-based models, algorithms, or applications based on personal information each client supplies through the operational interactive website. See *id.*

<sup>134</sup> See rule 203A-2(e)(1)(i).

<sup>132</sup> 5 U.S.C. 603(a).

203A of the Advisers Act, unless subject to an exemption such as the internet Adviser Exemption, most small advisers are prohibited from registering with the Commission and are regulated by state regulators. Based on IARD data, we estimate that as of December 31, 2022, approximately 489 SEC-registered advisers are small entities under the RFA.

#### 1. Small Entities Subject to Amendments to the Internet Adviser Rule

As discussed above in section III (the Economic Analysis), the Commission estimates that based on IARD data as of December 31, 2022, approximately 266 investment advisers would be subject to the amended rule and the related proposed amendments to Form ADV. Of the approximately 489 SEC-registered advisers that are small entities under the RFA, 190 would be subject to the proposed amendments to rule 203A–2(e) and the corresponding amendments to Form ADV.

#### D. Projected Reporting, Recordkeeping and Other Compliance Requirements

##### 1. Proposed Amendments to Rule 203A–2(e)

The proposed amendments to rule 203A–2(e) would impose certain reporting and compliance requirements on investment advisers relying on the exemption for registration with the Commission, including those that are small entities. As under the current rule, all internet investment advisers, which we estimate to be 266 advisers,<sup>135</sup> would be required to comply with the proposed rule's requirement to maintain records in accordance with amended rule 203A–2(e)(1)(ii).<sup>136</sup> The proposed requirements and rule amendments, including compliance, reporting, and recordkeeping requirements, are summarized in this IRFA (section V.A., above). All of these proposed requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in section IV.

As discussed above, approximately 489 small advisers were registered with

us as of December 31, 2022, and we estimate that 190 of those small advisers registered with us would be subject to the proposed amendments (38.9% of all registered small advisers). As discussed above in our Paperwork Reduction Act Analysis in section IV above, the proposed amendments to rule 203A–2(e) under the Advisers Act would create an annual burden of approximately 4 hours per adviser, or 760 hours in aggregate for small advisers.<sup>137</sup> We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments to the Internet Adviser Exemption would be \$323,000.<sup>138</sup>

##### 2. Proposed Amendments to Form ADV

Proposed amendments to Form ADV would impose certain reporting and compliance requirements on investment advisers relying on the rule to register and remain registered with the Commission, including those that are small entities. An adviser relying on the rule as a basis for registration would be required to represent on Schedule D of its Form ADV that it provides investment advice to all of its clients exclusively through an operational interactive website.<sup>139</sup> An adviser registered under the rule and continuing to rely on the rule as a basis for its registration would be required to make a representation that it has provided investment advice to all of its clients exclusively through an operational interactive website.<sup>140</sup> The proposed requirements and rule amendments, including recordkeeping requirements, are summarized above in this IRFA (section V.A). All of these proposed requirements are also discussed in detail, above, in section II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis) and below. The professional skills required to meet these specific burdens are also discussed in section IV.

Our Economic Analysis (section III above) discusses these costs and

<sup>137</sup> 190 small advisers × 4 hours.

<sup>138</sup> We estimate the cost at a rate of \$425 per hour. The compensation rate for the current approved information collection used is the rate for a Sr. Operations Manager in the Securities Industry and Financial Markets Association's Report on Management & Professional Earnings in the Securities Industry 2013 updated for 2023, and is modified to account for an 1,800-hour work-year and inflation and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead. 760 hours × \$425 = \$323,000.

<sup>139</sup> See proposed rule 203A–2(e)(1)(iv).

<sup>140</sup> See id.

burdens for respondents, which include small advisers. As discussed above in our Paperwork Reduction Act Analysis in section IV above, the proposed amendments to Form ADV would not increase the annual burden for advisers and would have no annual monetized cost.

#### E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed rule amendments.

#### F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. We considered the following alternatives for small entities in relation to our proposed amendments to rule 203A–2(e) and the corresponding proposed amendments to Form ADV: (i) differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the amended rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposals, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, the Commission believes that establishing different compliance or reporting requirements for small advisers, or exempting small advisers from the proposed rule, or any part thereof, would be inappropriate under these circumstances. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small firms, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the proposed amendment to rule 203A–2(e) and Form ADV. As discussed above, the proposed amendments are intended to better reflect the allocation of authority between the Federal government and States that Congress intended under NSMIA and the Dodd-Frank Act and would enhance investor protection through more efficient use of the Commission's limited oversight and examination resources by more appropriately allocating Commission resources to advisers with national presence and allowing smaller advisers with sufficient local presence to be regulated by the states. We believe that these benefits should apply to clients of

<sup>135</sup> Based on IARD data as of Dec. 31, 2022.

<sup>136</sup> Proposed 203A–2(e)(1)(ii) is identical to current 203A–2(e)(1)(ii) except for a conforming change to reflect the proposed requirement that the interactive website be "operational."

smaller firms as well as larger firms. In addition, as discussed above, our staff would use the corresponding information that advisers would report on the proposed amended Form ADV to help determine compliance with the rule and to help prepare for examinations of investment advisers. Establishing different compliance or reporting requirements for large and small advisers relying on the Internet Adviser Exemption would negate these benefits and would be inconsistent with our mandate to provide a system of public disclosure of investment adviser information. An internet investment adviser that is a small entity, however, by the nature of its business, would likely spend fewer resources in maintaining records and completing Form ADV and amendments than a larger adviser. Regarding the fourth alternative, specifically, the Commission has considered exempting small advisers from the proposed rule. Such an exemption would be inconsistent with the intended purpose of the proposal, which, in part, is to provide regulatory relief from multiple state regulatory requirements. Small advisers are one of the primary beneficiaries of this exemption.

Regarding the second alternative, we believe the current proposal is clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. As discussed above, the amended rule would require an internet investment adviser to (i) provide investment advice to all of its clients exclusively through an operational interactive website, (ii) maintain records demonstrating that it provides investment advice to its clients exclusively through an operational interactive website,<sup>141</sup> and (iii) represent on Schedule D of its Form ADV that it provides investment advice to all of its clients exclusively through an operational interactive website.<sup>142</sup> These provisions would better reflect the allocation of authority between the Federal government and States that Congress intended under NSMIA and the Dodd-Frank Act and would enhance investor protection through more efficient use of the Commission's limited oversight and examination resources by more appropriately

allocating Commission resources to advisers with national presence and allowing smaller advisers with sufficient local presence to be regulated by the states. Further, our proposal to require the representation on Schedule D of Form ADV would assist the Commission's examination and enforcement capabilities, including assessing compliance with rules, and therefore, it would provide important investor protections.

Regarding the third alternative, we determined to use design standards because we determined that removing the *de minimis* exception and requiring internet investment advisers to exclusively advise internet clients to be a design standard necessary to better reflect Congress's intent under NSMIA and the Dodd-Frank Act.

#### G. Solicitation of Comments

We encourage written comments on the matters discussed in this IRFA. We solicit comment on the number of small entities subject to proposed amendments to rule 203A-2(e) and related amendments to Form ADV, as well as the potential impacts discussed in this analysis; and whether the proposal could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

#### VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or "SBREFA,"<sup>143</sup> we must advise OMB whether a proposed regulation constitutes a "major" rule. Under SBREFA, a rule is considered "major" where, if adopted, it results in or is likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed rule amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

#### Statutory Authority

The Commission is proposing to amend rule 203A-2(e) and amend Form ADV under the authority set forth in

sections 203A(c) and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b-3a(c) and 80b-11(a)].

#### List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements; Securities.

#### Text of Proposed Rules and Rule and Form Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

#### PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for part 275 continues to read as follows:

**Authority:** 15 U.S.C. 80b-2(a)(11)(G), 80b-2(a)(11)(H), 80b-2(a)(17), 80b-3, 80b-4, 80b-4a, 80b-6(4), 80b-6a, and 80b-11, unless otherwise noted.

\* \* \* \* \*

Section 275.203A-2 is also issued under 15 U.S.C. 80b-3a.

\* \* \* \* \*

■ 2. Amend § 275.203A-2 by revising paragraph (e) to read as follows:

#### § 275.203A-2 Exemptions from prohibition on Commission registration.

\* \* \* \* \*

(e) *Internet investment advisers.* (1) An investment adviser that:

(i) Provides investment advice to all of its clients exclusively through an operational interactive website at all times during which the investment adviser relies on this paragraph (e);

(ii) Maintains, in an easily accessible place, for a period of not less than five years from the filing of a Form ADV that includes a representation that the adviser is eligible to register with the Commission under this paragraph (e), a record demonstrating that it provides investment advice to its clients exclusively through an operational interactive website in accordance with the limits in paragraph (e)(1)(i) of this section; and

(iii) Does not control, is not controlled by, and is not under common control with, another investment adviser that registers with the Commission under paragraph (b) of this section solely in reliance on the adviser registered under this paragraph (e) as its registered adviser.

(2) For purposes of this paragraph (e), "operational interactive website" means a website or mobile application through which the investment adviser provides digital investment advisory services on an ongoing basis to more than one client

<sup>141</sup> See proposed rule 203A-2(e)(1)(i) and (ii). As with the current rule, the proposed rule amendments would provide that an internet investment adviser does not control, is not controlled by, and is not under common control with, another investment adviser registered with the Commission solely in reliance on an adviser registered under the Internet Adviser Exemption. See rule 203A-2(e)(1)(iii); proposed rule 203A-2(e)(1)(iii).

<sup>142</sup> See proposed rule 203A-2(e)(1)(iv).

<sup>143</sup> Public Law 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

(except during temporary technological outages of a *de minimis* duration). For purposes of this rule, “digital investment advisory service” is investment advice to clients that is generated by the operational interactive website’s software-based models, algorithms, or applications based on personal information each client supplies through the operational interactive website.

(3) An investment adviser may rely on the definition of client in § 275.202(a)(30)–1 in determining whether it is eligible to rely on this paragraph (e).

**PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940**

■ 3. The authority citation for part 279 continues to read as follows:

**Authority:** The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*, Pub. L. 111–203, 124 Stat. 1376.

■ 4. Amend Form ADV (referenced in § 279.1) by:

■ a. In the instructions to the form, Form ADV: Instructions for Part 1A, by revising 2.i.;

■ b. In the Glossary of Terms by: ■ i. Redesignating paragraphs 14. through 42. as paragraphs 15. through 43.; and paragraphs 43. through 65. as paragraphs 45. through 67.; and ■ ii. Adding new paragraphs 13. and 44.;

■ c. In Part 1A, revising Item 2.A.(11); and

■ d. In Part 1A, Schedule D, by adding Section 2.A.(11).

**Note:** Form ADV is attached as Appendix A to this document. Form ADV will not appear in the Code of Federal Regulations.

By the Commission.

Dated: July 26, 2023.

**Vanessa A. Countryman,**  
*Secretary.*

**Note:** The following appendix will not appear in the Code of Federal Regulations.

**Appendix A—Form ADV**

**FORM ADV (Paper Version)**

\* \* \* \* \*

**Form ADV: Instructions for Part 1A**

\* \* \* \* \*

2. Item 2: SEC Registration and SEC Report by Exempt Reporting Advisers

\* \* \* \* \*

i. Item 2.A.(11): Internet Adviser. You may check box 11 only if you are eligible for the Internet Adviser Exemption from the prohibition on SEC registration. See SEC rule 203A–2(e). If you check box 11, you must complete Section 2.A.(11) of Schedule D. You are eligible for this exemption if:

- You provide investment advice to all of your *clients* exclusively through an *operational interactive website* at all times during which you rely on rule 203A–2(e). Other forms of online or internet investment advice do not qualify for this exemption;
- You maintain a record demonstrating that you provide investment advice to your *clients* exclusively through an operational interactive website in accordance with these limits.

\* \* \* \* \*

**Glossary of Terms**

\* \* \* \* \*

13. Digital Investment Advisory Service: Investment advice to *clients* that is generated by the *operational interactive website’s* software-based models, algorithms, or applications based on personal information each *client* supplies through the *operational interactive website*.

\* \* \* \* \*

44. Operational Interactive website: A website or mobile application through which the investment adviser provides *digital investment advisory services* on an ongoing basis to more than one *client* (except during temporary technological outages of a *de minimis* duration).

\* \* \* \* \*

**PART 1A**

\* \* \* \* \*

Item 2. \* \* \*

\* \* \* \* \*

(11) are an internet adviser relying on rule 203A–2(e);

*If you check this box, complete Section 2.A.(11) of Schedule D.*

\* \* \* \* \*

**Schedule D**

\* \* \* \* \*

Section 2.A.(11) Internet Adviser

If you are relying on rule 203A–2(e), the Internet Adviser Exemption from the prohibition on registration, you are required to make a representation about your eligibility for SEC registration. By checking the appropriate box, you will be deemed to have made the required representation.

If you are applying for registration as an investment adviser with the SEC or changing your existing Item 2 response regarding your eligibility for SEC registration, you must make this representation:

I will provide investment advice to all of my clients exclusively through an operational interactive website.

If you are filing an annual updating amendment to your existing registration and are continuing to rely on the Internet Adviser Exemption for SEC registration, you must make this representation:

I have provided and will continue to provide investment advice to all of my clients exclusively through an operational interactive website.

\* \* \* \* \*

[FR Doc. 2023–16287 Filed 7–31–23; 8:45 am]

**BILLING CODE 8011–01–P**

**ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

**36 CFR Part 1195**

[Docket No. ATBCB–2023–0001]

RIN 3014–AA45

**Standards for Accessible Medical Diagnostic Equipment**

**AGENCY:** Architectural and Transportation Barriers Compliance Board.

**ACTION:** Notice of proposed rulemaking; extension of comment period.

**SUMMARY:** The Architectural and Transportation Barriers Compliance Board (hereafter, “Access Board” or “Board”), is extending the comment period for the Notice of Proposed Rulemaking on Standards for Accessible Medical Diagnostic Equipment published in the **Federal Register** on May 23, 2023. In that document, the Access Board requested comments by July 24, 2023. The Access Board is taking this action to allow interested parties additional time to submit comments.

**DATES:** The comment period for the notice of proposed rulemaking published on May 23, 2023, at 88 FR 33056, is extended. Comments should be received on or before August 31, 2023.

**ADDRESSES:** You may submit comments by any one of the following methods:

• **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

• **Email:** [docket@access-board.gov](mailto:docket@access-board.gov). Include docket number ATBCB–2023–0001 in the subject line of the message.

• **Mail:** Office of General Counsel, U.S. Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111.

**Instructions:** All submissions must include the docket number (ATBCB–2023–0001) for this regulatory action. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**Docket:** For access to the docket to read background documents or comments received, go to <https://www.regulations.gov/docket/ATBCB-2023-0001>.

**FOR FURTHER INFORMATION CONTACT:** Accessibility Specialist Bobby Stinnette, (202) 272–0021, [stinnette@access-board.gov](mailto:stinnette@access-board.gov); or Attorney Advisor Wendy Marshall, (202) 272–0043, [marshall@access-board.gov](mailto:marshall@access-board.gov).

**SUPPLEMENTARY INFORMATION:** On May 23, 2023, the Access Board issued a notice of proposed rulemaking to remove the sunset provisions in the Board's existing accessibility guidelines for medical diagnostic equipment related to the low-height specifications for transfer surfaces, and replace them with a final specification for the low-transfer-height of medical diagnostic equipment used in the supine, prone, and side-lying position and the seated position. See 88 FR 33056 (May 23, 2023).

On July 19, 2023, the Medical Imaging & Technology Alliance requested a 60-day extension of the comment period for additional time to submit their comments due to the "technical and engineering considerations and potential impact on device design."

Although the Access Board has already provided a 60-day comment period and held a public informational meeting regarding our research on low transfer height on May 12, 2022, the Access Board will provide additional time for the public to submit comments. However, the Board believes that an additional 30 days, providing a total of a 90-day comment period is sufficient.

**Christopher Kuczynski,**

*General Counsel.*

[FR Doc. 2023-16218 Filed 7-31-23; 8:45 am]

**BILLING CODE 8150-01-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 679

[Docket No. 230726-0176]

RIN 0648-BM45

#### Control Date for Pacific Cod by Catcher Vessels Greater Than or Equal to 60 Feet Length Overall and Catcher/Processors Using Pot Gear in the Bering Sea and Aleutian Islands Management Area

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

**ACTION:** Advance notice of proposed rulemaking; control date; request for comments.

**SUMMARY:** At the request of the North Pacific Fishery Management Council (Council), this document announces a control date of August 1, 2023, that may be used to determine future participation in the Bering Sea and

Aleutian Islands (BSAI) Pacific cod fishery by license limitation program (LLP) license holders, vessel owners and vessel operators of catcher/processors (C/Ps), and vessel owners and vessel operators of catcher vessels (C/Vs) greater than or equal to 60 ft (18.3 meters (m)) length overall (LOA), who participate in Federal groundfish fisheries with pot gear in the BSAI. This document is necessary to inform interested parties that the Council is considering a future action that may affect or limit the number of participants in this fishery and that participants should locate and preserve all fishing related documents. This control date corresponds to the date of publication of this advance notice of proposed rulemaking (ANPR). This document provides notice to the public that any person participating in the applicable sector after the control date may not receive continued access to this fishery under a future management action. This document is intended to discourage speculative entry or fishing activity in this fishery while the Council considers whether and how access to the fishery may be further limited under a future management action.

**DATES:** Written comments must be received on or before October 2, 2023. August 1, 2023, shall be known as the control date for LLP license holders, vessel owners, and vessel operators of C/Ps and C/Vs greater than or equal to 60 ft (18.3 m) LOA who participate in Federal groundfish fisheries with pot gear in the BSAI, and may be used as a reference date for participation in a future management action that is consistent with the Council's objectives and applicable Federal laws.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2023-0088, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2023-0088 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Gretchen Harrington, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802-1668.
- *Fax:* (907) 586-7465; Attn: Gretchen Harrington.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be

considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on [www.regulations.gov](http://www.regulations.gov) without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

Please consult the Council's website at <https://www.npfmc.org/> for information on public participation in the Council's decision-making process.

**FOR FURTHER INFORMATION CONTACT:**

Alicia M. Miller: 907-586-7228 or [alicia.m.miller@noaa.gov](mailto:alicia.m.miller@noaa.gov).

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fisheries in the U.S. exclusive economic zone (EEZ) of the BSAI under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The Council prepared, and NMFS approved, the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600 and 679.

This ANPR establishes August 1, 2023 as the control date for use in determining historical participation in the BSAI Pacific cod pot gear catcher/processors (C/P) and catcher vessels (C/Vs) greater than or equal to 60 ft (18.3 m) length overall (LOA) fishery. Interested persons should locate and preserve all records that substantiate and verify their participation in this fishery.

On June 11, 2023, the Council announced its intent to evaluate participation and effort in the BSAI Pacific cod pot gear C/Ps and C/Vs greater than or equal to 60 ft (18.3 m) LOA fishery and consider further limits on access to this fishery. This document is intended to promote awareness of possible rulemaking and provide notice to the public that any person participating in the BSAI Pacific cod pot C/P and C/V greater than or equal to 60 ft (18.3 m) LOA fishery after the control date may not have continued access to this fishery under a future management action. This document is also intended to discourage speculative entry into this fishery while the Council considers whether and how access to the fishery may be further limited under a future management action. The Council requested that the date of their decision

be established as the control date. However, because this ANPR cannot act as a retroactive notice to the public and can act only as a prospective notice, the date of this ANPR's publication in the **Federal Register** is the control date. This ANPR is being published relatively close to the Council's decision date and consequently provides most of the temporal disincentives to further entry into the fishery as the Council's decision date.

This ANPR and related future rulemaking would apply to LLP license holders, vessel owners, and vessel operators of C/Ps and C/Vs greater than or equal to 60 ft (18.3 m) LOA who participate in Federal groundfish fisheries with pot gear in the BSAI. The BSAI is defined at § 679.2 and shown in Figure 1 to 50 CFR part 679.

The Council and NMFS annually establish overfishing limits and annual total allowable catch limits for groundfish species to sustainably manage the groundfish fisheries in the BSAI. To achieve these objectives, NMFS requires vessel operators participating in BSAI Pacific cod fishery to comply with various regulatory restrictions, such as fishery closures and limits on participation and effort.

The Council and NMFS have long sought to control fishing effort in the North Pacific Ocean, including the BSAI management area, to ensure that fisheries are conservatively managed and do not exceed established biological thresholds. One of the measures used by the Council and NMFS is the LLP, which limits access to the federally managed groundfish, crab, and scallop fisheries in the BSAI and the Gulf of Alaska (GOA). For groundfish, the LLP requires that persons hold and assign a license to each vessel that is used to fish in federally managed fisheries, with some limited exemptions. The preamble to the final rule implementing the groundfish LLP provides a more detailed explanation of the rationale for specific provisions in the LLP (October 1, 1998; 63 FR 52642).

A vessel participating in groundfish fisheries in Federal waters in the BSAI or the GOA is required to have an LLP license with the applicable area, gear, and operation type endorsements, and a sufficient maximum LOA. In 2023, there were a total of seven LLP licenses with a Bering Sea (BS) Pacific cod pot C/P endorsement. Of those seven LLP licenses, five LLP licenses also had an Aleutian Islands (AI) Pacific cod pot C/P endorsement. In 2023 there were a total of fifty LLP licenses with a BS Pacific cod pot C/V endorsement with a minimum LOA of equal to or greater than 60 ft. Of those fifty LLP licenses, two also had an AI Pacific cod pot C/V endorsement with a maximum LOA of equal to or greater than 60 ft.

As it had in previous meetings over time, in June 2023, the Council received public testimony from participants in the BSAI Pacific cod pot C/V sector. These participants requested Council action to address factors that are negatively impacting fishery participants. These factors include: decreasing Pacific cod catch limits; an increase in the number of participating LLP licenses in the C/V sector; the potential for additional new participants in both the C/V sector and the CP sector; a race among existing participants (often in unsafe conditions) to harvest the available Pacific cod catch limits, resulting in an inability to control bycatch of crab; and increasingly shortened seasons in recent years.

After considering this public testimony at the June meeting, the Council stated its intent to evaluate methods—including allocation of available Pacific cod, bycatch management, and cooperatives—for further limiting participation by CPs and C/Vs greater than or equal to 60 ft LOA using pot gear in a future management action. To prevent speculative entry into these fishery sectors during this deliberative period, the Council announced a control date. The control date may be used as a cutoff or reference date for a future management action to further limit

access to the BSAI Pacific cod pot gear C/P and C/V sectors. The Council is not obligated to use this control date in any future management action. Furthermore, this control date does not obligate the Council to take any action and does not prevent the Council from selecting another control date. Accordingly, this document is intended to promote awareness that the Council may develop a future management action to achieve its objectives for the BSAI Pacific cod pot C/Ps and C/Vs greater than or equal to 60 ft (18.3 m) LOA; to provide awareness to the public that new eligibility criteria for any current or future access to the Pacific cod pot gear fishery may be affected or restricted; and to discourage speculative participation and behavior in the fishery while the Council considers whether to initiate a management action to further limit access to this fishery. Any measures the Council considers may require changes to the FMP. Such measures may be adopted in a future amendment to the FMP, which would require a rulemaking action that includes opportunity for further public participation and comment.

NMFS encourages public participation in the Council's consideration of a management action to further limit access to BSAI Pacific cod fishery. Please consult the Council's website (See **ADDRESSES**) for information on public participation in the Council's consideration of a management action. The Council will schedule review of information collected and analyses prepared for a future Council meeting or meetings.

This notification and control date do not impose any legal obligations, requirements, or expectations.

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

**Samuel D. Rauch, III,**  
*Deputy Assistant Administrator for  
Regulatory Programs, National Marine  
Fisheries Service.*

[FR Doc. 2023–16230 Filed 7–31–23; 8:45 am]

**BILLING CODE 3510–22–P**

# Notices

Federal Register

Vol. 88, No. 146

Tuesday, August 1, 2023

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## AGENCY FOR INTERNATIONAL DEVELOPMENT

### USAID Information Collection Activities; Submission for OMB Review, Comment Request, Legislative and Public Affairs (LPA) Bureau

**AGENCY:** USAID.

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** USAID Bureau for Legislative and Public Affairs (LPA) and USAID/Ghana Mission are collaborating to conduct research regarding public perception of USAID programs in Ghana. The goal of this research is to use both qualitative and quantitative methods to gain insights into Ghanaian people's awareness and perceptions of development and USAID assistance programs and activities. The research will also narrow preferred media channels. The research data in the report will be aggregated and not provide PII or other privacy-related information. USAID LPA invites the general public and other Federal agencies to take this opportunity to comment on the following new information collection, as required by the Paperwork Reduction Act of 1995.

**DATES:** 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](http://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.

**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please access the survey questionnaire at <https://drive.google.com/file/d/110zdb2aPbYGaG9bAmsIC7jaKQrDQ4Ww/view?usp=sharing>, the interview guide at <https://drive.google.com/file/d/1GHCuNQGl3pExz7aDvRC-VQvTVpZ78wu6/view?usp=sharing>, and the focus group screening questionnaire at <https://drive.google.com/file/d/1m1uC4CgSrv8Pxi9UwTYv-pAGwxvmVys/view?usp=sharing>. Comments submitted in response to this notice should be submitted electronically through the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Written requests for information or comments submitted by postal mail or delivery should be addressed to Lauren Shaw, the Director of International Communications, at 1300 Pennsylvania Avenue, Suite 6.10A, Washington, DC 20523 or via email at [staffdoc@usaid.gov](mailto:staffdoc@usaid.gov). Verbal requests for information or comments submitted can contact 202-712-4300.

### SUPPLEMENTARY INFORMATION:

**Title of Information Collection:** USAID Bureau for Legislative and Public Affairs and USAID/Ghana Public Opinion Research.  
**Type of Request:** Notice for public comment; generic clearance.  
**Originating Office:** USAID Bureau for Legislative and Public Affairs (LPA).  
**Respondents:** Members of the Ghanaian public: women, youths (ages 15–24), farmers, pelagic fishers, service providers, entrepreneurs, rural community leaders, and members of civil society organizations.  
**Respondent's obligation to respond:** Voluntary.  
**Estimated number of respondents:** 2,266 Ghanaians total (2,200 survey respondents, 48 focus-group participants [eight participants across six sessions], and 18 interviewees).  
**Average Time per Response:** 30 minutes for survey respondents and interviews, 90 minutes for focus groups.  
**Frequency of response:** Approximately every two years.  
**Total estimated burden:** 596 hours.  
**Total estimated cost:** \$59,624.55.

We are soliciting public comments to permit USAID to:

- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the

use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record.

**Lauren Shaw,**

*Director, International Communications.*

[FR Doc. 2023-16248 Filed 7-31-23; 8:45 am]

**BILLING CODE 6116-01-P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[Doc. No. AMS-SC-23-0011]

### Notice of Request for Renewal of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Agricultural Marketing Service's (AMS) intention to request for renewal a recordkeeping burden for the information collection for the Export Fruit Acts covering exports of apples and grapes.

**DATES:** Comments on this notice are due by October 2, 2023 to be assured of consideration.

**ADDRESSES:** Contact Thomas Nalepa, Marketing Specialist, Rulemaking Services Branch, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Room 1406-S, Washington, DC 20250-0237; Telephone (202) 720-6862 or Email: [thomas.nalepa@usda.gov](mailto:thomas.nalepa@usda.gov).

Small businesses may request information on complying with the regulation and responding to this notice by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or Email: [richard.lower@usda.gov](mailto:richard.lower@usda.gov).

**Comments:** Comments should reference the document number and the date and page number of this issue of the **Federal Register**, and be mailed to

the Docket Clerk, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, Room 1406–S, Washington, DC 20250–0237; Fax: (202) 720–8938; or submitted through the internet at <https://www.regulations.gov>.

**SUPPLEMENTARY INFORMATION:**

*Title:* Export Fruit Regulations—Export Apple Act (7 CFR part 33) and the Export Grape and Plum Act (7 CFR part 35).

*OMB Number:* 0581–0143.

*Expiration Date of Approval:* September 30, 2023.

*Type of Request:* Request for Renewal of a Recordkeeping Burden.

*Abstract:* Fresh apples and grapes grown in the United States shipped to any foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple Act (7 U.S.C. 581–590) and the Export Grape and Plum Act (7 U.S.C. 591–599) (Acts), which are found at 7 CFR parts 33 and 35, respectively. Both Acts were designed to promote foreign trade in the export of apples, grapes and plums grown in the United States; to protect the reputation of the American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce. The Acts have been in effect since 1933 (apples) and 1960 (grapes). Currently, plums are not regulated under the Export Grape and Plum Act.

The Secretary of Agriculture is authorized to oversee the implementation of the Acts and issue regulations regarding that activity. Regulations issued under the Acts cover exports of fresh apples and grapes grown in the United States and shipped to foreign destinations, except for grapes shipped to Canada or Mexico and apples in bulk bins shipped to Canada. Certain limited quantity provisions may exempt some shipments from this information collection. Regulations issued under the Acts (7 CFR 33.11 for apples and 35.12 for grapes) require that the U.S. Department of Agriculture (USDA) officially inspect and certify that each export shipment of fresh apples and grapes complies with quality and shipping requirements effective under the Acts.

The information collection requirements in this request are essential to carry out the intent and administration of the Acts. The currently approved collection under OMB No. 0581–0143 authorizes the use of an Export Form Certificate (SC–205). Federal or Federal-State Inspection Program (FSIP) inspectors use the

Export Form Certificate to certify inspection of the shipment for exports bound for non-Canadian destinations. Procedures require shippers to maintain and provide, upon USDA's request, a paper or electronic copy of the SC–205 when needed for USDA to monitor compliance with regulations. Based on procedures amended in 2016 and approved by OMB for information collection purposes, carriers, which transport goods on behalf of shippers, are no longer required to maintain a copy of the SC–205.

*Estimate of Burden:* Public recordkeeping burden for this collection of information is estimated to average 0.058 hours per response.

*Respondents (Recordkeepers):* Apple and grape export shippers and carriers.

*Estimated Number of Recordkeepers:* 200 (150 shippers and carriers of exported apples and 50 shippers and carriers of exported grapes).

*Estimated Total Annual Responses:* 90,000.

*Estimated Number of Responses per Recordkeeper:* 775 for apples and 882 for grapes.

*Estimated Total Annual Burden on Recordkeepers:* 9,750 hours.

*Comments are invited on:* (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. All comments received will be available for public inspection at the street address in the "Comment" section and can be viewed at: [www.regulations.gov](https://www.regulations.gov).

**Erin Morris,**

*Associate Administrator, Agricultural Marketing Service.*

[FR Doc. 2023–16296 Filed 7–31–23; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF COMMERCE**

**Foreign-Trade Zones Board**

[B–24–2023]

**Foreign-Trade Zone (FTZ) 1; Authorization of Production Activity; Jos. H Lowenstein & Sons, Inc.; (Dyestuff Chemicals for Hair, Fur and Leather); Brooklyn, New York**

On March 29, 2023, the City of New York, grantee of FTZ 1, submitted a notification of proposed production activity to the FTZ Board on behalf of Jos. H Lowenstein & Sons, Inc., within Subzone 1E, in Brooklyn, New York.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (88 FR 20853–20855, April 7, 2023). On July 27, 2023, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: July 27, 2023.

**Elizabeth Whiteman,**  
*Executive Secretary.*

[FR Doc. 2023–16270 Filed 7–31–23; 8:45 am]

**BILLING CODE 3510–DS–P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A–489–829]

**Steel Concrete Reinforcing Bar From the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2021–2022**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily finds that certain producers/exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey) made sales of subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) July 1, 2021, through June 30, 2022. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable August 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Benito Ballesteros or Seth Brown, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401 Constitution Avenue

NW, Washington, DC 20230; telephone: (202) 482-4725 or (202) 482-0029, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 14, 2017, Commerce published in the **Federal Register** an antidumping duty order on rebar from Turkey.<sup>1</sup> On September 6, 2022, based on timely requests for review, Commerce initiated an administrative review of the *Order* covering seven companies, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup> On February 17, 2023, we extended the deadline for the preliminary results of this administrative review until July 28, 2023.<sup>3</sup> For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.<sup>4</sup>

##### Scope of the Order

The merchandise covered by the *Order* is rebar from Turkey. For a full description of the scope, see the Preliminary Decision Memorandum.

##### Methodology

Commerce is conducting this review in accordance with sections 751(a) of the Act. We calculated export price and constructed export price in accordance with section 772 of the Act. We calculated NV in accordance with section 773 of the Act.

For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and

Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

##### Preliminary Results of Review

We preliminarily determine the following weighted-average dumping margins exist for the period July 1, 2021, through June 30, 2022:

Exporter/producer	Weighted-average dumping margin (percent)
Colakoglu Metalurji A.S./ Colakoglu Dis Ticaret A.S. ....	0.00
Kaptan Demir Celik Endustrisi Ve Ticaret A.S./Kaptan Metal Dis Ticaret Ve Nakliyat A.S. ...	29.30
Companies Not Selected for Individual Review <sup>5</sup> .....	29.30

##### Review-Specific Rate for Companies Not Selected for Individual Review

The Act and Commerce's regulations do not address the rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair value (LTFV) investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely on the basis of facts available.

For these preliminary results, because the rate calculated for Colakoglu Metalurji A.S./Colakoglu Dis Ticaret A.S. (collectively, Colakoglu) is zero, we have preliminarily assigned a dumping margin to these companies based on the rate calculated for Kaptan Demir Celik Endustrisi Ve Ticaret A.S./Kaptan Metal Dis Ticaret Ve Nakliyat A.S. (collectively, Kaptan).

<sup>5</sup> The exporters and/or producers not selected for individual review are listed in Appendix II.

##### Disclosure and Public Comment

We intend to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice in the **Federal Register**.<sup>6</sup> Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.<sup>7</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>8</sup> Case and rebuttal briefs should be filed using ACCESS.<sup>9</sup> Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>10</sup>

Interested parties who wish to request a hearing must do so within 30 days of publication of these preliminary results by submitting a written request to the Assistant Secretary for Enforcement and Compliance using Enforcement and Compliance's ACCESS system.<sup>11</sup> Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs.<sup>12</sup> If a request for a hearing is made, parties will be notified of the time and date for the hearing.<sup>13</sup>

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

##### Assessment Rates

Upon completion of this administrative review, Commerce shall

<sup>6</sup> See 19 CFR 351.224(b).

<sup>7</sup> Commerce is exercising its discretion, under 19 CFR 351.309(d)(1), to alter the time limit for filing of rebuttal briefs.

<sup>8</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>9</sup> See, generally, 19 CFR 351.303.

<sup>10</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

<sup>11</sup> See 19 CFR 351.310(c).

<sup>12</sup> See 19 CFR 351.310.

<sup>13</sup> See 19 CFR 351.310(d).

<sup>1</sup> See *Steel Concrete Reinforcing Bar from the Republic of Turkey and Japan: Amended Final Affirmative Antidumping Duty Determination for the Republic of Turkey and Antidumping Duty Orders*, 82 FR 32532 (July 14, 2017), as amended by *Notice of Court Decision Not in Harmony with the Amended Final Determination in the Less-Than-Fair-Value Investigation; Notice of Amended Final Determination*, 87 FR 934 (January 22, 2022) (*Order*).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 87 FR 54463 (September 6, 2022) (*Initiation Notice*).

<sup>3</sup> See Memorandum, "Extension of Deadline for the Preliminary Results of Antidumping Duty Administrative Review," dated February 17, 2023.

<sup>4</sup> See Memorandum, "Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; 2020-2021," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. Pursuant to 19 CFR 351.212(b)(1), because both respondents reported the entered value for their U.S. sales, we calculated importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those same sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c), or an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's "automatic assessment" practice will apply to entries of subject merchandise during the POR produced by Colakoglu or Kaptan for which these companies did not know that the merchandise they sold to an intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. We will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>14</sup>

For the companies which were not selected for individual review, we intend to assign an assessment rate based on the review-specific rate, calculated as noted in the "Review-Specific Rate for Companies Not Selected for Individual Review" section, above. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties, where applicable.<sup>15</sup>

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (i.e., within 90 days of publication).

<sup>14</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>15</sup> See section 751(a)(2)(C) of the Act.

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered by this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.90 percent, the all-others rate established in the LTFV investigation.<sup>16</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

### Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

<sup>16</sup> See *Order*, 87 FR at 935.

Dated: July 26, 2023.

**Abdelali Elouaradia,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

### Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. Discussion of the Methodology
- V. Recommendation

### Appendix II—List of Companies Not Selected for Individual Examination

1. Diler Dis Ticaret A.S.
2. Ekcinciler Demir ve Celik Sanayi A.S.
3. Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S.
4. Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S.
5. Sami Soybas Demir Sanayi ve Ticaret A.S.

[FR Doc. 2023-16304 Filed 7-31-23; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

#### Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) and the International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

#### Upcoming Sunset Reviews for September 2023

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in September 2023 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
<b>Antidumping Duty Proceedings</b>	
Tapered Roller Bearings from China, A-570-601 (5th Review) .....	Mary Kolberg, (202) 482-1785.
Stainless Steel Bar from India, A-533-810 (5th Review) .....	Mary Kolberg, (202) 482-1785.
Large Power Transformers from South Korea, A-580-867 (2nd Review) .....	Jacky Arrowsmith, (202) 482-5255.

### Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in September 2023.

### Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in September 2023.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>1</sup>

This notice is not required by statute but is published as a service to the international trading community.

Dated: July 20, 2023.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2023-16284 Filed 7-31-23; 8:45 am]

**BILLING CODE 3510-DS-P**

<sup>1</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

### DEPARTMENT OF COMMERCE

#### International Trade Administration

[C-122-858]

#### Certain Softwood Lumber Products From Canada: Final Results and Final Rescission, in Part, of the Countervailing Duty Administrative Review; 2021

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that producers and exporters of certain softwood lumber products (softwood lumber) from Canada received countervailable subsidies during the period of review (POR), January 1, 2021, through December 31, 2021. With respect to one company, we are rescinding this administrative review because the company did not have a reviewable entry during the POR.

**DATES:** Applicable August 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Kristen Johnson or Samuel Brummitt, 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) 482-4793 or (202) 482-7851, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

Commerce published the preliminary results of this countervailing duty administrative review of softwood lumber from Canada on January 27, 2023, and invited interested parties to comment.<sup>1</sup> For a summary of the events that occurred since the *Preliminary Results*, see the Issues and Decision Memorandum.<sup>2</sup> A list of topics discussed in the Issues and Decision Memorandum is included as Appendix

<sup>1</sup> See *Certain Softwood Lumber Products from Canada: Preliminary Results, Partial Rescission, and Preliminary Intent to Rescind, in Part, the Countervailing Duty Administrative Review; 2021*, 88 FR 5302 (January 27, 2023) (*Preliminary Results*).

<sup>2</sup> See Memorandum, "Decision Memorandum for the Final Results of the Administrative Review of the Countervailing Duty Order on Certain Softwood Lumber Products from Canada; 2021," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

#### Scope of the Order

The product covered by this order is certain softwood lumber products from Canada. For a complete description of the scope of the order, see the Issues and Decision Memorandum.

#### Final Rescission of Administrative Review, in Part

Based on our analysis of U.S. Customs and Border Protection (CBP) data, we determine that North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick) had no reviewable shipments, sales, or entries of subject merchandise during the POR. Absent evidence of shipments on the record, we are rescinding the administrative review of this company, pursuant to 19 CFR 351.213(d)(3). For further information, see the section, "Final Rescission of Administrative Review, in Part" in the Issues and Decision Memorandum.

#### Analysis of Subsidy Programs and Comments Received

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). The subsidy programs under review, and the issues raised in case and rebuttal briefs submitted by the interested parties, are discussed in the Issues and Decision Memorandum. Based on our analysis of the comments received from the interested parties, we made changes to the subsidy rates calculated for certain respondents. For a discussion of these changes, see the Issues and Decision Memorandum.

#### Rate for Non-Selected Companies Under Review

Because the rates calculated for the companies selected for individual review are above *de minimis* and not based entirely on facts available, we

applied a subsidy rate based on a weighted average of the subsidy rates calculated for the reviewed companies using sales data submitted by those companies to calculate a rate for the companies not selected for review. This is consistent with the methodology that we would use in an investigation to establish the all-others rate, pursuant to section 705(c)(5)(A) of the Act.

For further information on the calculation of the non-selected rate, see the section, “Final *Ad Valorem* Rate for Non-Selected Companies under Review” in the Issues and Decision Memorandum. For a list of the non-selected companies, see Appendix II to this notice.

### Final Results of Review

In accordance with section 751(a)(1)(A) and of the Act and 19 CFR 351.221(b)(5), we determine that the following total estimated countervailable subsidy rates exist for the period January 1, 2021, through December 31, 2021:

Companies	Subsidy rate (percent <i>ad valorem</i> )
Canfor Corporation and its cross-owned affiliates <sup>3</sup> .....	1.36
J.D. Irving, Limited and its cross-owned affiliates <sup>4</sup> .....	1.72
West Fraser Mills Ltd. and its cross-owned affiliates <sup>5</sup> .....	2.19
Non-Selected Companies .....	1.79

### Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

### Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce will determine, and CBP shall assess, countervailing duties on all appropriate entries of subject merchandise covered by this review.

Commerce intends to issue assessment instructions to CBP no

<sup>3</sup> Commerce finds the following companies to be cross-owned with Canfor Corporation: Canadian Forest Products, Ltd.; and Canfor Wood Products Marketing, Ltd.

<sup>4</sup> Commerce finds the following companies to be cross-owned with J.D. Irving, Limited: Miramichi Timber Holdings Limited; The New Brunswick Railway Company; Rothesay Paper Holdings Ltd.; and St. George Pulp & Paper Limited.

<sup>5</sup> Commerce finds the following companies to be cross-owned with West Fraser Mills Ltd.: Blue Ridge Lumber Inc.; Manning Forest Products, Ltd.; Sundre Forest Products Inc.; Sunpine Inc.; and West Fraser Alberta Holdings, Ltd.; and West Fraser Timber Co., Ltd.

earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

For North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick), the company for which this review is rescinded, Commerce will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2021, through December 31, 2021, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue rescission instructions to CBP no earlier than 41 days after the date of publication of the notice of rescission in the **Federal Register**.

### Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for the companies subject to this review. For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposits, when imposed, shall remain in effect until further notice.

### Administrative Protective Order (APO)

This notice also serves as a final reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

### Notification to Interested Parties

Commerce is issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4) and 351.221(b)(5).

Dated: July 26, 2023.

**Abdelali Elouaradia,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

### Appendix I

#### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Case History
- III. Period of Review

IV. Final Rescission of Administrative Review, in Part

V. Scope of the *Order*

VI. Subsidies Valuation

VII. Analysis of Programs

VIII. Final *Ad Valorem* Rate for Non-Selected Companies Under Review

IX. Discussion of Issues

A. General Issues

Comment 1: Whether Commerce Selected an Appropriate Number of Respondents  
 Comment 2: Whether Commerce’s Specificity Analysis Is Consistent With the Law

Comment 3: Whether Commerce Should Consider Climate Change Goals

B. General Stumpage Issues

Comment 4: Whether Stumpage Is an Untied Subsidy

Comment 5: Whether Commerce Was Correct to Treat the GOA and GBC’s Timber Tenure Systems as Part of Stumpage Subsidy Programs

Comment 6: The Appropriate Methodology to Calculate a Benefit in the Event Commerce Treats the GOA and GBC’s Timber Tenures as Separate from Stumpage Subsidy Programs

Comment 7: Whether Commerce Should Make Adjustments to Stumpage Rates Paid by the Respondents to Account for “Total Remuneration” in Alberta and New Brunswick

C. Alberta Stumpage Issues

Comment 8: Whether Commerce Should Annualize Alberta Stumpage Purchase and Benchmark Prices

Comment 9: Whether the Alberta Stumpage Market Is Distorted

Comment 10: Whether TDA Survey Prices Are an Appropriate Benchmark for Alberta Crown-Origin Stumpage

D. British Columbia Stumpage Issues

Comment 11: Whether British Columbia’s Stumpage Market Is Distorted

Comment 12: Whether Commerce Should Use the 2017–2018 Private Market Survey as a Benchmark for BC Stumpage for LTAR

Comment 13: Whether to Continue to Use a Tier-Three U.S. PNW Log Benchmark for BC Stumpage

E. New Brunswick Stumpage Issues

Comment 14: Whether the Private Stumpage Market in New Brunswick Is Distorted and Should be Used as Tier-One Benchmarks

Comment 15: Whether Commerce Should Use JDIL’s Own Purchases of Sawlogs in Nova Scotia or the 2017–2018 Private Market Survey as a Benchmark for New Brunswick Crown Stumpage

Comment 16: Whether Log Pricing Differences Between Nova Scotia and New Brunswick Require an Adjustment to the Nova Scotia Benchmark Utilized in JDIL’s Stumpage Benefit Analysis

F. British Columbia Stumpage Benchmark Issues

Comment 17: Whether Commerce Should Use Log Prices from F2M as a Benchmark for BC Stumpage for LTAR  
 Comment 18: Whether Commerce Should Use/Selection of a Beetle-Killed Benchmark Price

- Comment 19: Whether Commerce's Selection of a Log Volume Conversion Factor Was Appropriate
- G. Nova Scotia Stumpage Benchmark Issues
- Comment 20: Whether Commerce Should Adjust the Method Used to Index the Nova Scotia Benchmark
- Comment 21: Whether Commerce Should Publicly Disclose the Anonymized Data That Comprise the 2017–2018 Private Market Survey and the Price Index Used to Calculate the Nova Scotia Benchmark
- Comment 22: Whether Private Standing Timber Prices in Nova Scotia Are Available in Alberta
- Comment 23: Whether to Revise the Conversion Factor Used in the Calculation of the Nova Scotia Benchmark
- Comment 24: Whether to Compare Government Transaction-Specific Prices to an Average Benchmark Price or Offset the LTAR Benefit Using Negative Benefits
- Comment 25: Whether the Nova Scotia Benchmark is Comparable or Should Be Adjusted to Account for Log Product Characteristics
- Comment 26: Whether the Nova Scotia Benchmark Adequately Accounts for Regional and County-Level Differences
- Comment 27: Whether Nova Scotia Is Comparable to Alberta in Terms of Haulage Costs and Whether to Otherwise Adjust the Nova Scotia Benchmark To Account for Such Differences
- Comment 28: Whether to Adjust the Nova Scotia Benchmark To Account for Beetle-Killed- and Fire-Killed Timber Harvested in Alberta
- Comment 29: Whether Nova Scotia's Forest Is Comparable to Alberta's Forest
- Comment 30: Whether the Tree Size in Nova Scotia, as Measured by Diameter, Is Comparable to Tree Size in Alberta
- Comment 31: Whether SPF Species in Nova Scotia Are Comparable to SPF Species in Alberta
- Comment 32: Reliability of Nova Scotia Private-Origin Standing Timber Benchmark
- H. Log Export Restraint Issues
- Comment 33: Whether Commerce Should Find Restrictions on Log Exports in Alberta and New Brunswick to Be Countervailable Subsidies
- Comment 34: Whether the LER in British Columbia Results in a Financial Contribution
- Comment 35: Whether the LER Has an Impact in British Columbia
- I. Purchase of Goods for MTAR Issues
- Comment 36: Whether Benefits Under the BC Hydro EPA Program Are Tied to West Fraser's Overall Production
- Comment 37: Whether Commerce Properly Calculated the Benefit Conferred Under the BC Hydro EPAs
- J. Grant Program Issues
- *Federal*
- Comment 38: Whether the Green Jobs Program Is Countervailable
- *Alberta*
- Comment 39: Whether the AESO Load Shedding Program Is Countervailable
- *British Columbia*
- Comment 40: Whether the Purchase of Carbon Offsets from Canfor Is Countervailable
- Comment 41: Whether British Columbia's Coloured Fuel Program Is Countervailable
- *New Brunswick*
- Comment 42: Whether Commerce Should Continue to Find the Silviculture and License Management Programs Countervailable
- Comment 43: Whether Commerce Should Find LIREPP Countervailable
- K. Tax and Other Revenue Forgone Program Issues
- *Federal*
- Comment 44: Whether the ACCA for Class 53 Assets Program Is Specific
- Comment 45: Whether the AJCTC Is Specific
- Comment 46: Whether the CCA for Class 1 Assets Is Countervailable
- Comment 47: Whether the Federal and Provincial SR&ED Tax Credits Are Specific
- Comment 48: Whether the FLTC and PLTC Are Countervailable
- *Alberta*
- Comment 49: Whether the TEFU Program Is Countervailable
- Comment 50: Whether the Property Tax EOA Is Countervailable
- Comment 51: Whether Tax Savings Under Alberta's Schedule D Are Countervailable
- *British Columbia*
- Comment 52: Whether the CleanBC CIIP and CIF Subprograms Are Countervailable
- Comment 53: Whether the IPTC Is Countervailable
- *New Brunswick*
- Comment 54: Whether the Gasoline and Fuel Tax Program Provides a Financial Contribution in the Form of Revenue Forgone or Can Be Found Specific
- Comment 55: Whether Commerce Correctly Calculated the Benefit JDIL Received from the Atlantic Investment Tax Credit
- Comment 56: Whether the New Brunswick R&D Tax Credit Is Specific
- Comment 57: Whether Commerce Should Find New Brunswick's Property Tax Incentives for Private Forest Producers Program Countervailable
- *Québec*
- Comment 58: Whether the Research Consortium Tax Credit Is *De Facto* Specific
- Comment 59: Whether the Federal CCA for Class 1 Assets and the ACCA for Class 29 and Class 53 Contain a Ministerial Error
- L. Company-Specific Issues
- *Canfor*
- Comment 60: Whether Commerce Should Correct a Ministerial Error in the British Columbia Stumpage Calculations for Canfor
- Comment 61: Whether Commerce Should Correct a Ministerial Error in the Federal and British Columbia SR&ED Tax Credit Programs
- *West Fraser*
- Comment 62: Whether Commerce Correctly Calculated West Fraser's Benefit Under the ACCA for Class 53 Assets Program
- Comment 63: Whether To Revise West Fraser's Sales Denominators
- Comment 64: Whether To Revise West Fraser's BC Stumpage and LER Calculations
- X. Recommendation

## Appendix II

### Non-Selected Exporters/Producers

1. 0752615 B.C Ltd; Fraserview Remanufacturing Inc, DBA Fraserview Cedar Products.
2. 10104704 Manitoba Ltd O/A Woodstock Forest Products.
3. 1074712 BC Ltd. (Quadra Cedar)
4. 5214875 Manitoba Ltd. (aka AM Lumber Brokerage)
5. AJ Forest Products Ltd.
6. Alpa Lumber Mills Inc.
7. Andersen Pacific Forest Products Ltd.
8. Antrim Cedar Corporation
9. Aquila Cedar Products Ltd.
10. Arbec Lumber Inc. (aka Arbec Bois Doeuvre Inc.)
11. Aspen Planers Ltd.
12. B&L Forest Products Ltd.
13. B.B. Pallets Inc. (aka Les Palettes B.B. Inc.)
14. Babine Forest Products Limited
15. Bakerview Forest Products Inc.
16. Barrette-Chapais Ltee
17. BarretteWood Inc.
18. Benoit & Dionne Produits Forestiers Ltee (aka Benoit & Dionne Forest Products Ltd.)
19. Blanchet Multi Concept Inc.
20. Bois Aise de Montreal Inc.
21. Bois Bonsai Inc.
22. Bois D'oeuvre Cedrico Inc. (aka Cedrico Lumber Inc.)
23. Bois Daaquam inc. (aka Daaquam Lumber Inc.)
24. Bois et Solutions Marketing SPEC, Inc. (aka SPEC Wood & Marketing Solution or SPEC Wood and Marketing Solutions Inc.)
25. Boisaco Inc.
26. Boscus Canada Inc.
27. Boucher Bros. Lumber Ltd.
28. BPWood Ltd.
29. Bramwood Forest Inc.
30. Brink Forest Products Ltd.
31. Brunswick Valley Lumber Inc.
32. Busque & Laflamme Inc.
33. Canyon Lumber Company, Ltd.
34. CarlWood Lumber Ltd.
35. Carrier & Begin Inc.
36. Carrier Forest Products Ltd.
37. Carrier Lumber Ltd.
38. Carter Forest Products Inc.
39. Cedarland Forest Products Ltd.
40. Cedarline Industries Ltd.
41. Central Cedar Ltd.
42. Central Forest Products Inc.
43. Centurion Lumber Ltd.
44. Chaleur Forest Products Inc.
45. Chaleur Forest Products LP.
46. Channel-ex Trading Corporation.
47. Clair Industrial Development Corp. Ltd.
48. Clermond Hamel Ltee.
49. CLG Enterprises Inc.
50. CNH Products Inc.
51. Coast Clear Wood Ltd.

52. Columbia River Shake & Shingle Ltd.; Teal Cedar Products Ltd., dba The Teal Jones Group.
53. Commonwealth Plywood Co. Ltd.
54. Conifex Fibre Marketing Inc.
55. Cowichan Lumber Ltd.
56. CS Manufacturing Inc., dba Cedarshed.
57. CWP—Industriel Inc.
58. Dakeryn Industries Ltd.
59. Decker Lake Forest Products Ltd.
60. Deep Cove Forest Products, Inc.
61. Delco Forest Products Ltd.
62. Delta Cedar Specialties Ltd.
63. Devon Lumber Co. Ltd.
64. DH Manufacturing Inc.
65. Doubletree Forest Products Ltd.
66. Downie Timber Ltd.
67. Dunkley Lumber Ltd.
68. EACOM Timber Corporation.
69. East Fraser Fiber Co. Ltd.
70. Edgewood Forest Products Inc.
71. ER Probyn Export Ltd.
72. Falcon Lumber Ltd.
73. Fontaine Inc.
74. Foothills Forest Products Inc.
75. Fraser Specialty Products Ltd.
76. FraserWood Industries Ltd.
77. Furtado Forest Products Ltd.
78. Gilbert Smith Forest Products Ltd.
79. Glandell Enterprises Inc.
80. Goldwood Industries Ltd.
81. Goodfellow Inc.
82. Gorman Bros. Lumber Ltd.
83. Greendale Industries Inc.
84. GreenFirst Forest Products (QC) Inc.
85. Greenwell Resources Inc.
86. Griff Building Supplies Ltd.
87. Groupe Crete Chertsey Inc.
88. Groupe Crete Division St-Faustin Inc.
89. Groupe Lebel Inc.
90. H.J. Crabbe & Sons Ltd.
91. Haida Forest Products Ltd.
92. Halo Sawmill Manufacturing Limited Partnership.
93. Hornepayne Lumber LP.
94. Hudson Mitchell & Sons Lumber Inc.
95. Interfor Corporation.
96. Interfor Sales & Marketing Ltd.
97. Ivor Forest Products Ltd.
98. J&G Log Works Ltd.
99. J.H. Huscroft Ltd.
100. Jan Woodlands (2001) Inc.
101. Jasco Forest Products Ltd.
102. Jhajj Lumber Corporation.
103. Kalesnikoff Lumber Co. Ltd.
104. Kebois Ltee/Ltd.
105. Kelfor Industries Ltd.
106. Kermod Forest Products Ltd.
107. Keystone Timber Ltd.
108. Lafontaine Lumber Inc.
109. Langevin Forest Products Inc.
110. Lecours Lumber Co. Limited.
111. Leisure Lumber Ltd.
112. Les Bois d'oeuvre Beaudoin Gauthier Inc.
113. Les Bois Martek Lumber.
114. Les Chantiers de Chibougamau Ltd./Ltee.
115. Les Industries P.F. Inc.
116. Les Produits Forestiers D&G Ltee (aka D&G Forest Products Ltd.)
117. Les Produits Forestiers Sitka Inc. (aka Sitka Forest Products Inc.)
118. Leslie Forest Products Ltd.
119. Lignum Forest Products LLP.
120. Linwood Homes Ltd.
121. Lonestar Lumber Inc.
122. Lulumco Inc.
123. Magnum Forest Products, Ltd.
124. Maibec Inc.
125. Mainland Sawmill, a division of Terminal Forest Products Ltd.
126. Manitou Forest Products Ltd.
127. Marcel Lauzon Inc.
128. Marwood Ltd.
129. Materiaux Blanchet Inc.
130. Metrie Canada Ltd.
131. Mid Valley Lumber Specialties Ltd.
132. Midway Lumber Mills Ltd.
133. Mill & Timber Products Ltd.
134. Millar Western Forest Products Ltd.
135. Mirax Lumber Products Ltd.
136. Mobilier Rustique (Beauce) Inc.
137. Monterra Lumber Mills Limited.
138. Morwood Forest Products Inc.
139. Multicedre Ltee.
140. Murray Brothers Lumber Company Ltd.
141. Nakina Lumber Inc.
142. National Forest Products Ltd.
143. Nicholson and Cates Ltd.
144. NorSask Forest Products Limited Partnership.
145. North American Forest Products Ltd. (located in Abbotsford, British Columbia)
146. North Enderby Timber Ltd.
147. Northland Forest Products Ltd.
148. Olympic Industries, Inc.; Olympic Industries Inc-Reman Code; Olympic Industries ULC; Olympic Industries ULC Reman; Olympic Industries ULC-Reman Code.
149. Oregon Canadian Forest Products Inc., dba Oregon Canadian Forest Products.
150. Pacific Lumber Remanufacturing Inc.
151. Pacific Western Wood Works Ltd.
152. Parallel Wood Products Ltd.
153. Peak Industries (Cranbrook) Ltd.
154. Phoenix Forest Products Inc.
155. Pine Ideas Ltd.
156. Pioneer Pallet & Lumber Ltd.
157. Porcupine Wood Products Ltd.
158. Portbec Forest Products Ltd. (aka Les Produits Forestiers Portbec Ltee)
159. Power Wood Corp.
160. Precision Cedar Products Corp.
161. Produits Forestiers Petit Paris Inc.
162. Produits forestiers Temrex, s.e.c. (aka Temrex Forest Products LP)
163. Produits Matra Inc.; Sechoirs de Beauce Inc.
164. Promobois G.D.S. Inc.
165. Rayonier A.M. Canada GP.
166. Rembos Inc.
167. Rene Bernard inc.
168. Resolute FP Canada Inc.
169. Rielly Industrial Lumber Inc.
170. River City Remanufacturing Inc.
171. S&R Sawmills Ltd.
172. San Group.
173. San Industries Ltd.
174. Sawarne Lumber Co. Ltd.
175. Scierie Alexandre Lemay & Fils Inc.
176. Scierie St-Michel Inc.
177. Scierie West Brome Inc.
178. Scott Lumber Sales Ltd.
179. Shakertown Corp.
180. Sigurdson Forest Products Ltd.
181. Sinclair Group Forest Products Ltd.
182. Skana Forest Products Ltd.
183. Skeena Sawmills Ltd.
184. South Beach Trading Inc.
185. South Coast Reman Ltd.
186. Southcoast Millwork Ltd.
187. Specialiste du Bardeau de Cedre Inc. (aka SBC)
188. Spruceland Millworks Inc.
189. Sundher Timber Products Inc.
190. Surrey Cedar Ltd.
191. Taan Forest Limited Partnership (aka Taan Forest Products)
192. Taiga Building Products Ltd.
193. Tall Tree Lumber Company
194. Tenryu Canada Corporation
195. Terminal Forest Products Ltd.
196. TG Wood Products.
197. The Wood Source Inc.
198. Tolko Industries Ltd.; Tolko Marketing and Sales Ltd.
199. Top Quality Lumber Ltd.
200. Trans-Pacific Trading Ltd.
201. Triad Forest Products Ltd.
202. Twin Rivers Paper Co. Inc.
203. Tyee Timber Products Ltd.
204. Usine Sartigan Inc.
205. Vaagen Fibre Canada, ULC.
206. Vancouver Specialty Cedar Products Ltd.
207. Vanderhoof Specialty Wood Products Ltd.
208. Visscher Lumber Inc.
209. W.I. Woodtone Industries Inc.
210. West Bay Forest Products Ltd.
211. Western Forest Products Inc.
212. Western Lumber Sales Limited.
213. Westminster Industries Ltd.
214. Weston Forest Products Inc.
215. Weyerhaeuser Co.
216. White River Forest Products L.P.
217. Woodline Forest Products Ltd.
218. Woodstock Forest Products.
219. Woodtone Specialties Inc.

[FR Doc. 2023-16297 Filed 7-31-23; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE****International Trade Administration**

[A-122-857]

**Certain Softwood Lumber Products From Canada: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2021**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The U.S. Department of Commerce (Commerce) determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value during the period of review (POR), January 1, 2021, through December 31, 2021.

**DATES:** Applicable August 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Jeff Pedersen (Canfor), Maisha Cryor (West Fraser), Zachary Shaykin (PMS Allegation) AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration,

U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2769, (202) 482-5831, and (202) 482-2638, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

Commerce published the *Preliminary Results* on January 27, 2023.<sup>1</sup> This review covers 291 producers/exporters of subject merchandise, including two mandatory respondents, Canfor<sup>2</sup> and West Fraser.<sup>3</sup> For events subsequent to the *Preliminary Results*, see the Issues and Decision Memorandum.<sup>4</sup> The final weighted-average dumping margins are listed below in the “Final Results of Review” section of this notice. Commerce conducted this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

**Scope of the Order**

The product covered by this review is softwood lumber from Canada. For a full description of the scope, see the Issues and Decision Memorandum.

**Analysis of Comments Received**

All issues raised in the case briefs filed in this administrative review are addressed in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is included in Appendix I of this notice. The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Services System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum is also accessible on the internet at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

**Changes Since the Preliminary Results**

Based on our review of the record and comments received from interested parties, we made the following changes to the *Preliminary Results*:

- Corrected an error with our calculation of West Fraser’s byproduct offset;
- Adjusted West Fraser’s cost of manufacturing to account for inputs obtained from affiliated parties;

- Adjusted West Fraser’s general and administrative expenses to account for underlying producer ratios of the collapsed entity.
- Removed certain freight expenses from the calculation of West Fraser’s home market prices.
- Adjusted Canfor’s purchases of electricity from an affiliate.
- Revised the review-specific rate for non-selected respondents.

**Use of Adverse Facts Available**

Pursuant to sections 776(a) and (b) of the Act, and for the reasons explained in the Issues and Decision Memorandum, we applied certain changes to West Fraser’s margin calculation based on the use of partial facts available with an adverse inference.

**Final Results of Review**

As a result of this administrative review, we are assigning the following weighted-average dumping margins to the manufacturers/exporters listed below for the POR, January 1, 2021, through December 31, 2021:

Exporter/producer	Weighted-average dumping margin (percent)
Canfor Corporation/Canadian Forest Products Ltd./Canfor Wood Products Marketing Ltd .....	5.25
West Fraser Mills Ltd., Blue Ridge Lumber Inc./Manning Forest Products Ltd./and Sundre Forest Products Inc .....	6.96
Non-Selected Companies <sup>5</sup> .....	6.20

**Assessment Rates**

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

We intend to calculate importer- (or customer-) specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer’s (or customer’s) examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1). Where an importer-

(or customer-) specific rate is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Generally, when calculating margins for non-selected respondents, Commerce looks to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an investigation. Section 735(c)(5)(A) of the Act provides that when calculating the all-others rate, Commerce will exclude any zero and *de minimis* weighted-average dumping margins, as well as any weighted-average dumping margins based on total

facts available. Accordingly, Commerce’s usual practice has been to average the margins for selected respondents, excluding margins that are zero, *de minimis*, or based entirely on facts available.

In this review, we calculated a weighted-average dumping margin of 5.25 percent for Canfor and 6.96 percent for West Fraser. In accordance with section 735(c)(5)(A) of the Act, Commerce assigned the weighted-average of these two calculated weighted-average dumping margins to the non-selected companies in these final results, based on their publicly ranged sales data.<sup>6</sup> Accordingly, we

<sup>1</sup> See *Certain Softwood Lumber Products from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 88 FR 5306 (January 27, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

<sup>2</sup> As described in the *Preliminary Results* PDM, we have treated Canfor Corporation, Canadian Forest Products Ltd., and Canfor Wood Products Marketing Ltd. (collectively, Canfor) as a single entity. See *Preliminary Results* PDM at 5.

<sup>3</sup> As described in the *Preliminary Results* PDM, we have treated West Fraser Mills Ltd., Blue Ridge Lumber Inc., Manning Forest Products Ltd., and Sundre Forest Products Inc. (collectively, West Fraser) as a single entity. See *Preliminary Results* PDM at 5–6.

<sup>4</sup> See Memorandum, “Issues and Decision Memorandum for the Final Results of the 2021 Administrative Review of the Antidumping Duty Order on Certain Softwood Lumber Products from

Canada,” dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>5</sup> See Appendix II of this notice for a list of the non-selected respondent companies.

<sup>6</sup> See Memorandum, “Calculation of the Rate for Non-Selected Respondents,” dated concurrently with this notice. A list of the non-selected companies under review is included as Appendix II.

have applied a rate of 6.20 percent to the non-selected companies.<sup>7</sup> A list of all non-selected companies is included in Appendix II.

Commerce's "reseller policy" will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (e.g., a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>8</sup>

The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated duties, where applicable. Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies under review will be equal to the weighted-average dumping margin listed above in the "Final Results of Review" section; (2) for merchandise exported by producers or exporters not covered in this review but covered in a previously completed segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the final results for the most recent period in which that producer or exporter participated; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the producer is, then the cash deposit rate will be that established for the producer of the merchandise in these final results of review or in the final results for the most recent period in which that producer participated; and (4) if neither the exporter nor the producer is a firm covered in this review or in any previously completed segment of this proceeding, then the

cash deposit rate will be 6.58 percent *ad valorem*, the all-others rate established in the less than fair value investigation.<sup>9</sup> These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

#### Notification Regarding Administrative Protective Order

This notice is the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the 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 violation subject to sanction.

#### Notification to Interested Parties

We are issuing and publishing these final results and this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: July 26, 2023.

**Abdelali Elouaradia,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

#### Appendix I

##### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Issues
  - Comment 1: Particular Market Situation (PMS) Allegation
  - Comment 2: The Cohen's *d* Test is Not Contrary to Law
  - Comment 3: Whether Commerce Failed To Consider Qualitative Factors in

Determining Whether Price Differences Were Significant in Differential Pricing Analysis

- Comment 4: Whether Commerce Erred in Finding a Pattern of U.S. Prices That Differ Significantly Among Purchasers, Regions, or Periods of Time
  - Comment 5: Whether the A-to-A Method Accounts for the Identified Price Differences in Applying the "Meaningful Difference" Test
  - Comment 6: Zeroing
  - Comment 7: Whether the Cohen's *d* Test Results in Double Counting
  - Comment 8: Whether It Was Proper Not To Have Adjusted U.S. Price by Countervailing Duties
  - Comment 9: Whether Commerce Should Adjust West Fraser's General & Administrative (G&A) Expense Ratio
  - Comment 10: Whether Commerce Should Make Certain Revisions to West Fraser's Byproduct Offset Calculation
  - Comment 11: Whether Commerce Should Further Adjust West Fraser's COM to Account for Inputs Obtained From Affiliated Parties
  - Comment 12: Whether Commerce Should Disallow West Fraser's Claimed Adjustment for "Other Freight Charges" Incurred in Canada
  - Comment 13: Whether Commerce Used the Proper Market Price for Canfor's Wood Chip Sales
  - Comment 14: Whether Commerce Should Adjust the Reported Cost of Electricity at Canfor's Prince George (PG) Sawmill
  - Comment 15: Whether Commerce Properly Determined Canfor's G&A Expense Ratio
  - Comment 16: Whether Commerce Should Correct the Rate Assigned to Non-Selected Respondents
- V. Recommendation

#### Appendix II

##### Non-Selected Exporters/Producers

1. 0752615 B.C Ltd./752615 B.C Ltd./Fraserview Remanufacturing Inc, DBA Fraserview Cedar Products
2. 10104704 Manitoba Ltd O/A Woodstock Forest Products
3. 1074712 BC Ltd./DBA Quadra Cedar
4. 5214875 Manitoba Ltd.
5. 54 Reman
6. 9224-5737 Quebec Inc. (aka A.G. Bois)
7. AA Trading Ltd.
8. Absolute Lumber Products Ltd.
9. Adwood Manufacturing Ltd.
10. AJ Forest Products Ltd.
11. Aler Forest Products Ltd.
12. All American Forest Products Inc.
13. Alpa Lumber Mills Inc.
14. Andersen Pacific Forest Products Ltd.
15. Anglo American Cedar Products Ltd.; Anglo-American Cedar Products Ltd.
16. Antrim Cedar Corporation
17. Aquila Cedar Products Ltd.
18. Arbec Lumber Inc. (aka Arbec Bois Doeuvre Inc.)
19. Aspen Planers Ltd.
20. B&L Forest Products Ltd.
21. B.B. Pallets Inc. (aka Les Palettes B.B. Inc.)
22. Babine Forest Products Limited

<sup>7</sup> *Id.*

<sup>8</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>9</sup> See *Certain Softwood Lumber Products from Canada: Final Affirmative Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 82 FR 51806 (November 8, 2017).

23. Bakerview Forest Products Inc.
24. Bardobec Inc.
25. Barrette-Chapais Ltee
26. BarretteWood Inc.
27. Benoît & Dionne Produits Forestiers Ltee (aka Benoît & Dionne Forest Products Ltd.)
28. Best Quality Cedar Products Ltd.
29. Blanchet Multi Concept Inc.
30. Blanchette & Blanchette Inc.
31. Bois Aise de Montreal Inc.
32. Bois Bonsaï Inc.
33. Bois Daaquam inc. (aka Daaquam Lumber Inc.)
34. Bois D'oeuvre Cedrico Inc. (aka Cedrico Lumber Inc.)
35. Bois et Solutions Marketing SPEC, Inc. (aka SPEC Wood & Marketing Solution or SPEC Wood and Marketing Solutions Inc.)
36. Boisaco Inc.
37. Boscus Canada Inc.
38. Boucher Bros. Lumber Ltd.
39. BPWood Ltd.
40. Bramwood Forest Inc.
41. Brink Forest Products Ltd.
42. Brunswick Valley Lumber Inc.
43. Burrows Lumber (CD) Ltd., Theo A. Burrows Lumber Company Limited
44. Busque & Laflamme Inc.
45. Campbell River Shake & Shingle Co. Ltd.
46. Canada Pallet Corp.
47. Canasia Forest Industries Ltd.
48. Canyon Lumber Company Ltd.
49. Careau Bois inc.
50. CarlWood Lumber Ltd.
51. Carrier & Begin Inc.
52. Carrier Forest Products Ltd.
53. Carrier Lumber Ltd.
54. Carter Forest Products Inc.
55. Cedar Island Forest Products Ltd.
56. Cedar Valley Holdings Ltd.
57. Cedarcoast Lumber Products
58. Cedarland Forest Products Ltd.
59. Cedarline Industries Ltd.
60. Central Cedar Ltd.
61. Central Forest Products Inc.
62. Centurion Lumber Ltd.
63. Chaleur Forest Products Inc.
64. Chaleur Forest Products LP
65. Channel-ex Trading Corporation
66. CHAP Alliance Inc.<sup>10</sup>
67. Clair Industrial Development Corp. Ltd.
68. Clermond Hamel Ltee
69. CLG Enterprises Inc.
70. CNH Products Inc.
71. Coast Clear Wood Ltd.
72. Coast Mountain Cedar Products Ltd.
73. Columbia River Shake & Shingle Ltd./Teal Cedar Products Ltd., DBA the Teal Jones Group.
74. Commonwealth Plywood Co. Ltd.
75. Comox Valley Shakes (2019) Ltd.
76. Conifex Fibre Marketing Inc.
77. Coulson Manufacturing Ltd.
78. Cowichan Lumber Ltd.
79. CS Manufacturing Inc. (dba Cedarshed)
80. CWP—Industriel Inc.
81. CWP—Montreal Inc.
82. D & D Pallets Ltd.
83. Dakeryn Industries Ltd.
84. Decker Lake Forest Products Ltd.
85. Deep Cove Forest Products, Inc.
86. Delco Forest Products Ltd.
87. Delta Cedar Specialties Ltd.
88. Devon Lumber Co. Ltd.
89. DH Manufacturing Inc.
90. Direct Cedar Supplies Ltd.
91. Distribution Rioux Inc.
92. Doubletree Forest Products Ltd.
93. Downie Timber Ltd.
94. Dunkley Lumber Ltd.
95. EACOM Timber Corporation
96. East Fraser Fiber Co. Ltd.
97. Edgewood Forest Products Inc.
98. Elrod Cartage Ltd.
99. ER Probyn Export Ltd.
100. Falcon Lumber Ltd.
101. Fontaine Inc.
102. Foothills Forest Products Inc.
103. Resolute Growth Canada Inc.; Forest Products Mauricie LP, Société en commandite Scierie Opitciwan; Resolute-LP Engineered Wood Larouche Inc.; Resolute-LP Engineered Wood St-Prime Limited Partnership; Resolute FP Canada Inc.
104. Fraser Specialty Products Ltd.
105. FraserWood Industries Ltd.
106. Furtado Forest Products Ltd.
107. Glandell Enterprises Inc.
108. Goldband Shake & Shingle Ltd.
109. Goldwood Industries Ltd.
110. Goodfellow Inc.
111. Gorman Bros. Lumber Ltd.
112. Greendale Industries Inc.
113. GreenFirst Forest Products (QC) Inc.
114. Greenwell Resources Inc.
115. Griff Building Supplies Ltd.
116. Groupe Crete Chertsey Inc.
117. Groupe Crete Division St-Faustin Inc.
118. Groupe Lebel Inc.
119. Groupe Lignarex Inc.
120. H.J. Crabbe & Sons Ltd.
121. Haida Forest Products Ltd.
122. Halo Sawmill, a division of Delta Cedar Specialties Ltd./Halo Sawmill Manufacturing Limited Partnership
123. Hampton Tree Farms, LLC (dba Hampton Lumber Sales Canada)
124. Hornepayne Lumber LP
125. Hudson Mitchell & Sons Lumber Inc.
126. Hy Mark Wood Products Inc.
127. Imperial Cedar Products Ltd.
128. Independent Building Materials Distribution Inc.
129. Interfor Corporation/Interfor Sales & Marketing Ltd.<sup>11</sup>
130. Intertran Holdings Ltd. (dba Richmond Terminal)
131. Island Cedar Products Ltd.
132. Ivor Forest Products Ltd.
133. J&G Log Works Ltd.
134. J.D. Irving, Limited
135. J.H. Huscroft Ltd.
136. Jan Woodlands (2001) Inc.
137. Jasco Forest Products Ltd.
138. Jazz Forest Products Ltd.
139. Jhaji Lumber Corporation
140. Kalesnikoff Lumber Co. Ltd.
141. Kan Wood Ltd.
142. Kebois Ltee; Kebois Ltd.
143. Kelfor Industries Ltd.
144. Kermod Forest Products Ltd.
145. Keystone Timber Ltd.
146. Lafontaine Lumber Inc.
147. Langevin Forest Products Inc.
148. Lecours Lumber Co. Limited
149. Leisure Lumber Ltd.
150. Les Bardeaux Lajoie Inc.
151. Les Bois d'oeuvre Beaudoin Gauthier inc.
152. Les Bois Martek Lumber
153. Les Bois Traités M.G. Inc.
154. Les Chantiers de Chibougamau Ltd.; Les Chantiers de Chibougamau Ltd.
155. Les Industries P.F. Inc.
156. Les Produits Forestiers D&G Ltee; D&G Forest Products Ltd.
157. Les Produits Forestiers Sitka Inc. (aka Sitka Forest Products Inc.)
158. Leslie Forest Products Ltd.
159. Lignum Forest Products LLP
160. Linwood Homes Ltd.
161. Lonestar Lumber Inc.
162. Lulumco Inc.
163. Magnum Forest Products Ltd.
164. Maibec Inc.
165. Mainland Sawmill, a division of Terminal Forest Products
166. Manitou Forest Products Ltd.
167. Marcel Lauzon Inc.
168. Marwood Ltd.
169. Matériaux Blanchet Inc.
170. Metrie Canada Ltd.
171. Mid Valley Lumber Specialties Ltd.
172. Midway Lumber Mills Ltd.
173. Mill & Timber Products Ltd.
174. Millar Western Forest Products Ltd.
175. Mirax Lumber Products Ltd.
176. Mobilier Rustique (Beauce) Inc.
177. Modern Terminal Ltd.
178. Monterra Lumber Mills Limited
179. Morwood Forest Products Inc.
180. Multicedre Ltee

<sup>10</sup> On August 26, 2021 Commerce published the final results of a changed circumstances review determining that CHAP Alliance, Inc. (CHAP) is the successor-in-interest to L'Atelier de Réadaptation au Travail de Beauce Inc. (L'Atelier). *See Certain Softwood Lumber Products from Canada: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 86 FR 47621 (August 26, 2021). We intend to liquidate all entries by L'Atelier based on the final results, but revise the cash deposit rate to apply to CHAP.

<sup>11</sup> In the previous review, in the ACE module Interfor Corporation and Interfor Sales & Marketing

Ltd. were set up with different company numbers, i.e., A-122-857-118 and A-122-857-299. In the instant review, Interfor Corporation and Interfor Sales & Marketing Ltd. have stated that both Interfor Corporation and Interfor Sales & Marketing export lumber produced by Interfor Corporation. *See Interfor Corporation and Interfor Sales & Marketing Ltd.'s Letter*, "Comments in Response to Commerce's Request for Clarification of the Review Requests," dated February 14, 2022. Therefore, for the final results, we will combine both company names under one company number.

181. Murray Brothers Lumber Company Ltd.  
 182. Nagaard Sawmill Ltd.  
 183. Nakina Lumber Inc.  
 184. National Forest Products Ltd.  
 185. Nicholson and Gates Ltd.  
 186. Nickel Lake Lumber  
 187. Norsask Forest Products Inc.  
 188. Norsask Forest Products Limited Partnership  
 189. North American Forest Products Ltd. (located in Abbotsford, British Columbia)  
 190. North American Forest Products Ltd. (located in Saint-Quentin, New Brunswick)  
 191. North Enderby Timber Ltd.  
 192. Northland Forest Products Ltd.  
 193. NSC Lumber Ltd.  
 194. Olympic Industries Inc.  
 195. Olympic Industries ULC  
 196. Oregon Canadian Forest Products; Oregon Canadian Forest Products Inc.  
 197. Pacific Coast Cedar Products Ltd.  
 198. Pacific Lumber Remanufacturing Inc.  
 199. Pacific Pallet Ltd.  
 200. Pacific Western Wood Works Ltd.  
 201. PalletSource Inc.  
 202. Parallel Wood Products Ltd.  
 203. Pat Power Forest Products Corporation  
 204. Peak Industries (Cranbrook) Ltd.  
 205. Phoenix Forest Products Inc.  
 206. Pine Ideas Ltd.  
 207. Pioneer Pallet & Lumber Ltd.  
 208. Porcupine Wood Products Ltd.  
 209. Portbec Forest Products Ltd. (aka Les Produits Forestiers Portbec Ltée)  
 210. Power Wood Corp.  
 211. Precision Cedar Products Corp.  
 212. Prendville Industries Ltd. (aka Kenora Forest Products)  
 213. Produits Forestiers Petit Paris Inc.  
 214. Produits Matra Inc.  
 215. Promobois G.D.S. Inc.  
 216. Rayonier A.M. Canada GP  
 217. Rembos Inc.  
 218. Rene Bernard Inc.  
 219. Rick Dubois  
 220. Rielly Industrial Lumber Inc.  
 221. River City Remanufacturing Inc.  
 222. S&R Sawmills Ltd.  
 223. S&W Forest Products Ltd.  
 224. San Group  
 225. San Industries Ltd.  
 226. Sapphire Lumber Company  
 227. Sawarne Lumber Co. Ltd.  
 228. Scierie Alexandre Lemay & Fils Inc.  
 229. Scierie St-Michel Inc.  
 230. Scierie West Brome Inc.  
 231. Scott Lumber Sales/Scott Lumber Sales Ltd.<sup>12</sup>

232. Sechoirs de Beauce Inc.  
 233. Shakertown Corp.  
 234. Sigurdson Forest Products Ltd.  
 235. Silvaris Corporation  
 236. Sinclair Group Forest Products Ltd.  
 237. Skana Forest Products Ltd.  
 238. Skeena Sawmills Ltd.  
 239. Sonora Logging Ltd.  
 240. Source Forest Products  
 241. South Beach Trading Inc.  
 242. South Coast Reman Ltd./Southcoast Millwork Ltd.<sup>13</sup>  
 243. South Fraser Container Terminals  
 244. Specialiste du Bardeau de Cedre Inc./Specialiste du Bardeau de Cedre Inc. (SBC)  
 245. Spruceland Millworks Inc.  
 246. Star Lumber Canada Ltd.  
 247. Suncoast Industries Inc.  
 248. Suncoast Custom Lumber Ltd.  
 249. Sundher Timber Products Inc.  
 250. Surplus G Rioux  
 251. Surrey Cedar Ltd.  
 252. Swiftwood Forest Products Ltd.  
 253. T&P Trucking Ltd.  
 254. Taan Forest Limited Partnership (aka Taan Forest Products)  
 255. Taiga Building Products Ltd.  
 256. Tall Tree Lumber Company  
 257. Temrex Forest Products LP; Produits Forestiers Temrex SEC.  
 258. Tenryu Canada Corporation  
 259. Terminal Forest Products Ltd.  
 260. TG Wood Products  
 261. The Wood Source Inc.  
 262. Tolko Industries Ltd.; Tolko Marketing and Sales Ltd.; Gilbert Smith Forest Products Ltd.  
 263. Top Quality Lumber Ltd.  
 264. Trans-Pacific Trading Ltd.  
 265. Triad Forest Products Ltd.  
 266. Twin Rivers Paper Co. Inc.  
 267. Tyee Timber Products Ltd.  
 268. Usine Sartigan Inc.  
 269. Vaagen Fibre Canada ULC  
 270. Valley Cedar 2 Inc.  
 271. Vancouver Specialty Cedar Products Ltd.  
 272. Vanderhoof Specialty Wood Products Ltd.  
 273. Visscher Lumber Inc.  
 274. W.I. Woodtone Industries Inc.  
 275. Waldun Forest Product Sales Ltd.  
 276. Watkins Sawmills Ltd.  
 277. West Bay Forest Products Ltd.  
 278. Western Forest Products Inc.  
 279. Western Lumber Sales Limited  
 280. Western Timber Products, Inc.

281. Westminster Industries Ltd.  
 282. Weston Forest Products Inc.  
 283. Weyerhaeuser Co.  
 284. White River Forest Products L.P.  
 285. Winton Homes Ltd.  
 286. Woodline Forest Products Ltd.  
 287. Woodstock Forest Products  
 288. Woodtone Specialties Inc.  
 289. WWW Timber Products Ltd.

[FR Doc. 2023-16298 Filed 7-31-23; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### Initiation of Five-Year (Sunset) Reviews

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating the five-year reviews (Sunset Reviews) of the antidumping duty and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The U.S. International Trade Commission (ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

**DATES:** Applicable August 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205-3193.

#### SUPPLEMENTARY INFORMATION:

##### Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

<sup>12</sup> See Scott Lumber Sales Letter, "Requests for Clarifications of Review Requests," dated February

10, 2022, in which Scott Lumber Sales confirmed that its complete name is Scott Lumber Sales Ltd.

<sup>13</sup> Patrick Lumber submitted information that South Coast Reman Ltd. and Southcoast Millwork Ltd. are the same company. See Patrick Lumber's Letter, "Patrick Lumber Company Response to Request for Clarification of Review Request," dated February 14, 2022; see also Patrick Lumber's Letter, "Company Request for Administrative Review (1/1/2021-12/31/2021)," dated January 31, 2022. We have added Southcoast Millwork Ltd. to the ACE module for case number A-122-857-322.

**Initiation of Review**

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are

initiating the Sunset Reviews of the following AD and CVD orders and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A-570-067 .....	731-TA-1394	China .....	Forged Steel Fittings (1st Review) .....	Mary Kolberg (202) 482-1785.
A-475-839 .....	731-TA-1395	Italy .....	Forged Steel Fittings (2nd Review) ....	Mary Kolberg (202) 482-1785.
A-583-863 .....	731-TA-1396	Taiwan .....	Forged Steel Fittings (1st Review) .....	Mary Kolberg (202) 482-1785.
C-570-068 .....	701-TA-589	China .....	Forged Steel Fittings (1st Review) .....	Mary Kolberg (202) 482-1785.

**Filing Information**

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: <https://enforcement.trade.gov/sunset/>. All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

**Letters of Appearance and Administrative Protective Orders**

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following

publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304-306. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>1</sup>

**Information Required From Interested Parties**

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.<sup>2</sup>

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC's information requirements. Consult Commerce's regulations for information regarding

<sup>1</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

<sup>2</sup> See 19 CFR 351.218(d)(1)(iii).

Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: July 20, 2023.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2023-16282 Filed 7-31-23; 8:45 am]

**BILLING CODE 3510-DS-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[RTID 0648-XD194]

**Permanent Advisory Committee To Advise the U.S. Commissioners to the Western and Central Pacific Fisheries Commission; Meeting Announcement**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** NMFS announces a public meeting of the Permanent Advisory Committee (PAC) to advise the U.S. Commissioners to the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC) on October 2-3, 2023. Meeting topics are provided under the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** The meeting of the PAC will be held on October 2, 2023 from 9 a.m. to 5:30 p.m. Hawaii Standard Time (HST) (or until business is concluded) and October 3, 2023 from 9 a.m. to 5:30 p.m. HST (or until business is concluded). Members of the public may submit written comments on meeting topics or materials; comments must be received by September 18, 2023.

**ADDRESSES:** The public meeting will be held at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI 96814—in the Garden Lanai Meeting Room, and will also be broadcast via web conference. Documents to be considered by the PAC will be made available at the meeting. For details on how to join via web conference, call in, or to submit comments, please contact Emily Reynolds (see **FOR FURTHER INFORMATION CONTACT**). Documents to be considered by the PAC will be sent out via email in advance of the meeting. Please submit contact information to Emily Reynolds (see **FOR FURTHER INFORMATION CONTACT**) at least 3 days in advance of the meeting to receive documents via email. This meeting may be audio recorded for the purposes of generating notes of the meeting. As public comments will be made publically available, participants and public commenters are urged not to provide personally identifiable information (PII) at this meeting. Participation in the meeting, in person, by web conference, or by telephone constitutes consent to the audio recording.

**FOR FURTHER INFORMATION CONTACT:** Emily Reynolds, NMFS Pacific Islands Regional Office; 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818; telephone: 808-725-5039; facsimile: 808-725-5215; email: [emily.reynolds@noaa.gov](mailto:emily.reynolds@noaa.gov).

**SUPPLEMENTARY INFORMATION:** In accordance with the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*), the PAC, has been formed to advise the U.S. Commissioners to the WCPFC. The PAC is composed of: (i) not less than 15 nor more than 20 individuals appointed by the Secretary of Commerce in consultation with the U.S. Commissioners to the WCPFC; (ii) the chair of the Western Pacific Fishery Management Council's Advisory Committee (or the chair's designee); and (iii) officials from the fisheries management authorities of American Samoa, Guam, and the Northern Mariana Islands (or their designees). The PAC supports the work of the U.S. National Section to the WCPFC in an advisory capacity. The U.S. National Section is made up of the U.S. Commissioners and the Department of State. NMFS Pacific Islands Regional Office provides administrative and technical support to the PAC in cooperation with the Department of State. More information on the WCPFC, established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, can

be found on the WCPFC website: <https://www.wcpfc.int>.

#### Meeting Topics

The PAC meeting topics may include the following: (1) outcomes of the 2022 annual session of the WCPFC and 2023 sessions of the WCPFC Scientific Committee, Northern Committee, and Technical and Compliance Committee; (2) issues to be considered in the WCPFC 2023 annual session; (3) potential U.S. proposals to the WCPFC 2023 annual session; (4) input and advice from the PAC on issues that may arise at the WCPFC 2023 annual session; (5) potential proposals from other WCPFC members; and (6) other issues.

#### Special Accommodations

The meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Emily Reynolds at 808-725-5039 by September 18, 2023.

*Authority:* 16 U.S.C. 6902 *et seq.*

Dated: July 27, 2023.

**Jennifer M. Wallace,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2023-16273 Filed 7-31-23; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XD201]

#### Marine Mammals; File No. 27128

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that Tamara McGuire, Ph.D., 310 W 123rd Avenue, Anchorage, AK 99515, has applied in due form for a permit to conduct research on the endangered Cook Inlet distinct population segment (DPS) of beluga whales (*Delphinapterus leucas*).

**DATES:** Written comments must be received on or before August 31, 2023.

**ADDRESSES:** The application 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 (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 27128 from the list of available applications. These documents

are also available upon written request via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov).

Written comments on this application should be submitted via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Please include File No. 27128 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](mailto: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:** Amy Hapeman or Erin Markin, Ph.D., (301) 427-8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

Dr. McGuire requests a 5-year permit to continue to conduct research on the endangered DPS of beluga whales in Cook Inlet, Alaska. The purpose of the research is to identify individual whales and to provide information about movement patterns, habitat use, survivorship, reproduction, and population size of Cook Inlet beluga whales. Researchers would conduct up to 1,600 approaches by vessel that may result in Level B harassment for observations, photography, and photo-identification of whales annually. Up to 100 harbor seals (*Phoca vitulina*) annually could be unintentionally harassed during surveys.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 26, 2023.

**Julia M. Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2023-16210 Filed 7-31-23; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[RTID 0648–XD205]

**Pacific Fishery Management Council; Public Meeting**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council (Pacific Council, Council) will convene webinar meetings of its Coastal Pelagic Species Management Team (CPSMT), Groundfish Advisory Subpanel (GAP), and Groundfish Management Team (GMT) to discuss items on the Pacific Council's September Council meeting agenda as detailed in the **SUPPLEMENTARY INFORMATION** section below. These meetings are open to the public.

**DATES:** The CPSMT's webinar meeting to discuss the Council's September 2023 meeting agenda will be held on Monday, August 21, 2023, from 1 p.m. to 3 p.m., Pacific Time.

The GAP's webinar meeting to discuss the Council's September 2023 meeting agenda will be held on Friday, September 1, 2023, from 8:30 a.m. to 12:30 p.m., Pacific Time.

The GMT's webinar meeting to discuss the Council's September 2023 meeting agenda will be held on Friday, September 1, 2023, from 12:30 p.m. to 4:30 p.m. Pacific Time.

**ADDRESSES:** These meetings will be held online. Specific meeting information, including directions on how to join the meeting and system requirements, will be provided in the meeting announcement on the Pacific Council's website (see [www.pcouncil.org](http://www.pcouncil.org)). You may send an email to Mr. Kris Kleinschmidt ([kris.kleinschmidt@noaa.gov](mailto:kris.kleinschmidt@noaa.gov)) or contact him at (503) 820–2412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

**FOR FURTHER INFORMATION CONTACT:** Todd Phillips, Staff Officer, Pacific Council; [todd.phillips@noaa.gov](mailto:todd.phillips@noaa.gov), telephone: (503) 820–2426.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the CPSMT, GAP, and GMT webinar meetings is to prepare for the Pacific Council's September 2023 meeting agenda items. The CPSMT, GAP, and GMT will

discuss items related to the advisory body's particular management items and administrative matters on the Pacific Council's agenda. The CPSMT, GAP, and GMT may also address other assignments as directed by the Pacific Council. No management actions will be decided by the CPSMT, GAP, and GMT. The advisory body recommendations will be considered by the Council at their September Council meeting. A detailed agenda for each of the CPSMT, GAP, and GMT webinars will be available on the Pacific Council's website prior to the meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

**Special Accommodations**

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt ([kris.kleinschmidt@noaa.gov](mailto:kris.kleinschmidt@noaa.gov)); (503) 820–2412 at least 10 days prior to the meeting date.

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

Dated: July 26, 2023.

**Rey Israel Marquez,**

*Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 2023–16222 Filed 7–31–23; 8:45 am]

**BILLING CODE 3510–22–P**

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[RTID 0648–XD188]

**Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Elkhorn Slough Tidal Marsh Restoration Project, Phase III in Monterey County, California**

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

**ACTION:** Notice; request for comments on proposed renewal incidental harassment authorization.

**SUMMARY:** NMFS received a request from the California Department of Fish and Wildlife (CDFW) for the renewal of their

currently active incidental harassment authorization (IHA) to take marine mammals incidental to restoration activity associated with the Elkhorn Slough Tidal Marsh Restoration Project, Phase III, in Monterey County, California. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act, prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed renewal not previously provided during the initial 30-day comment period.

**DATES:** Comments and information must be received no later than August 16, 2023.

**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.clevenstine@noaa.gov](mailto:ITP.clevenstine@noaa.gov).

*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. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. 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. Electronic copies of the original application, renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:**

Alyssa Clevestine, Office of Protected Resources, NMFS, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:****Background**

The Marine Mammal Protection Act (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 issued or, if the taking is limited to harassment, an incidental harassment authorization is issued.

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 such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed 1 year for each reauthorization. In the notice of proposed IHA for the initial authorization (86 FR 43204, August 6, 2021), NMFS described the circumstances under which we would consider issuing a renewal for this activity, and requested public comment on a potential renewal under those circumstances. Specifically, 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 Detailed Description of Specified Activities section of the initial IHA issuance notice is planned or (2)

the activities as described in the Description of the Specified Activities and Anticipated Impacts section of the initial IHA issuance notice would not be completed by the time the initial IHA expires and a renewal would allow for completion of the activities beyond that described in the **DATES** section of the notice of issuance of the initial IHA, provided all of the following conditions are met:

1. 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).

2. The request for renewal must include the following:

- 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).

- 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.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed renewal. A description of the renewal process may be found on our website at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals>. Any comments received on the potential renewal, along with relevant comments on the initial IHA, have been considered in the development of this proposed IHA renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the

requested renewal, and agency responses will be summarized in the final notice of our decision.

**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 renewal) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental take authorizations 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 determined that the issuance of the initial IHA qualified to be categorically excluded from further NEPA review. NMFS has preliminarily determined that the application of this categorical exclusion remains appropriate for this renewal IHA.

**History of Request**

On September 16, 2021, NMFS issued an IHA to CDFW to take marine mammals incidental to Phase III of the Elkhorn Slough Tidal Marsh Restoration Project in Monterey County, CA, effective from September 16, 2021 through September 15, 2022 (86 FR 52644). On July 12, 2022, CDFW informed NMFS that the project was delayed and none of the work identified in the initial IHA (*i.e.*, restoration work at the Seal Bend Restoration Area) had occurred, and submitted a request for re-issuance of the initial IHA with new effective dates of September 16, 2022, through September 15, 2023 (87 FR 56631, September 15, 2022). On July 6, 2023, NMFS received an application for the renewal of the IHA. As described in the application for renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial, and reissued, authorization but will not be completed prior to its expiration. As required, the applicant also provided preliminary monitoring results which confirm that the applicant has implemented the required mitigation and monitoring, and which also show that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

**Description of the Specified Activities and Anticipated Impacts**

Phase III of CDFW’s construction Elkhorn Slough Tidal Marsh Restoration Project consists of relocating soil from an upland area through the use of heavy earth-moving equipment to the Seal Bend Restoration Area, and will restore 28.6 acres (11.57 hectares) within a 12 month period. The planned activities (including mitigation, monitoring, and reporting) and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the initial IHA.

A detailed description of the planned restoration activities is found in the **Federal Register** notice for the proposed initial IHA (86 FR 43204, August 6, 2021). The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Construction activities are expected to produce airborne noise and visual disturbance that have the potential to result in behavioral harassment of Pacific harbor seals (*Phoca vitulina richardii*). A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is included in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent stock assessment reports, information on relevant unusual mortality events, and recent scientific literature, and determined that no new information affects our original analysis of impacts under the initial IHA. No work was completed under the initial IHA and only 15 days of work have been completed since reissuance of the initial IHA.

This renewal request is to cover a subset of the activities described for the initial IHA that will not be completed during the effective IHA period. CDFW plans to continue construction activities between September 2023 and September 2024. CDFW estimates it will take 225 days to complete construction necessary to support restoration of the Seal Bend Restoration Area, as only 15 days of

work out of the 240 days of planned construction are expected to be completed within the effective dates of the currently active IHA.

The likely or possible impacts of CDFW’s proposed activity on marine mammals could involve both non-acoustic and acoustic stressors and is unchanged from the impacts described in the initial IHA. Potential non-acoustic stressors could result from the physical presence of construction equipment and personnel. Acoustic stressors include effects of heavy equipment operation during soil excavation, transport, and placement. The effects of airborne noise and visual disturbance from CDFW’s proposed activities have the potential to result in Level B harassment of marine mammals in the action area.

*Detailed Description of the Activity*

A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed and final IHAs for the initial authorization (86 FR 43204, August 6, 2021; 86 FR 52644, September 22, 2021). As previously mentioned, this request is for a subset of the activities anticipated in the initial, and reissued, IHA that would not be completed prior to its expiration. The location, timing, and nature of the activities, including the types of equipment planned for use, are identical to those described in the previous notice for the initial IHA. CDFW is requesting a renewal IHA for relocating soil from an upland area through the use of heavy earth-moving equipment. The proposed renewal would be effective for a period not exceeding 1 year from the date of expiration of the reissued IHA. The proposed renewal IHA would be effective from September 16, 2023 through September 15, 2024.

*Description of Marine Mammals*

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notice of the proposed IHA for the initial authorization (86 FR 43204, August 6, 2021). NMFS has

reviewed the preliminary monitoring data from the reissued IHA, recent draft stock assessment reports, information on relevant unusual mortality events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the description of the marine mammals in the area of specified activities contained in the supporting documents for the initial IHA (86 FR 43204, August 6, 2021).

*Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which the authorization of take is proposed here may be found in the notice of the proposed IHA for the initial authorization (86 FR 43204, August 6, 2021). NMFS has reviewed the preliminary monitoring data from the reissued IHA, recent draft stock assessment reports, information on relevant unusual mortality events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat.

*Estimated Take*

A detailed description of the methods and inputs used to estimate take for the specified activity are found in the notice of the proposed IHA for the initial authorization (86 FR 43204, August 6, 2021). Specifically, days of operation, area or space within which harassment is likely to occur, and marine mammal occurrence data applicable to this authorization remain unchanged from the initial IHA. Similarly, the stock taken, methods of take, daily take estimates, and types of take remain unchanged from the initial IHA. The number of takes proposed for authorization in this renewal are a subset of the initial authorized takes that represent the amount of activity left to complete. These takes, which reflect the lower number of remaining days of work (225 days), are indicated below in Table 1.

TABLE 1—PROPOSED AMOUNT OF TAKING, BY LEVEL B HARASSMENT, BY SPECIES AND STOCK AND PERCENT OF TAKE BY STOCK

Species	Scientific name	Stock	Proposed take	Percent of stock
Harbor seal .....	<i>Phoca vitulina richardii</i> .....	California .....	1,800	5.8

### *Description of Proposed Mitigation, Monitoring and Reporting Measures*

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA remains accurate. The following measures are proposed for this renewal:

- Construction work must occur only during daylight hours and should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.*, fog, heavy rain, smoke), construction must be delayed until the Protected Species Observer (PSO) is confident marine mammals within the shutdown zone could be detected;
  - CDFW must fulfill visual monitoring requirements, which includes the use of NMFS-approved PSOs and the establishment of a Level B harassment zone within 300 meters (m) of all construction activities;
    - A 30 minute pre-construction clearance period must occur prior to the start of ramp-up (*e.g.*, ramp up by moving around the project area and starting equipment sequentially) and construction activities;
      - CDFW must shutdown heavy machinery work if a marine mammal comes within 10 m;
        - During harbor seal pupping season (March through July), CDFW must not initiate construction activities within 300 m of a mom/pup pair that is hauled out, or within 100 m of a mom/pup pair in the water. If there is a gap in construction activities of more than an hour or if construction moves to a different area, this initiation protocol must again be implemented. During site containment activities that are underway, heavy machinery must not approach closer than 100 m of where mothers and pups are actively hauled out. If a pup less than one week old (neonate) comes within 20 m of where heavy machinery is working, construction activities in that area must be shut down or delayed until the pup has left the area. In the event that a pup less than one week old remains within those 20 m, NMFS will be consulted to determine the appropriate course of action;
          - Construction activities must be halted upon observation of either 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;

- CDFW must conduct a census of marine mammals in the project area and the area surrounding the project at least 30 minutes prior to the beginning of construction on monitoring days, and again 30 minutes after the completion of construction activities. CDFW must also conduct hourly counts of animals hauled out and in the water within at least the Level B harassment zone, as well as reactions observed in relation to construction activities;
  - CDFW must submit a draft report detailing all monitoring within 90 calendar days of the completion of marine mammal monitoring or 60 days prior to the issuance of any subsequent IHA for this project, whichever comes first;
    - CDFW must prepare and submit final report within 30 days following resolution of comments on the draft report from NMFS;
      - CDFW must submit all PSO datasheets and/or raw sighting data (in a separate file (*e.g.*, Microsoft Excel or similar) from the Final Report referenced immediately above); and,
        - CDFW must report injured or dead marine mammals.

### **Comments and Responses**

As noted previously, NMFS published a notice of a proposed IHA (86 FR 43204, August 6, 2021) and solicited public comments on both our proposal to issue the initial IHA for construction activities associated with Phase III of the Elkhorn Slough Tidal Marsh Restoration Project and on the potential for a renewal IHA, should certain requirements be met. During the 30-day public comment period, NMFS received no comments on either the proposal to issue the initial IHA or the potential for a renewal IHA.

### **Preliminary Determinations**

The proposed renewal request consists of a subset of activities analyzed through the initial authorization described above. In analyzing the effects of the activities for the initial IHA, NMFS determined that the CDFW's activities would have a negligible impact on the affected species or stock and that authorized take numbers of each species or stock were small relative to the relevant stocks (*e.g.*, less than one-third the abundance of all stocks). The mitigation measures and monitoring and reporting requirements as described above are identical to the initial IHA.

NMFS has preliminarily concluded that there is no new information

suggesting that our analysis or findings should change from those reached for the initial IHA. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) CDFW's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

### **Endangered Species Act**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 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 proposed action.

### **Proposed Renewal IHA and Request for Public Comment**

As a result of these preliminary determinations, NMFS proposes to issue a renewal IHA to CDFW for conducting construction activities associated with Phase III of the Elkhorn Slough Tidal Marsh Restoration Project in Monterey County, CA, from September 16, 2023, through September 15, 2024, provided the previously described mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed and final initial IHA can be found at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities>. We request comment on our analyses, the proposed renewal IHA, and any other aspect of this notice. Please include with your comments any supporting data or literature citations to

help inform our final decision on the request for MMPA authorization.

Dated: July 27, 2023.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2023-16286 Filed 7-31-23; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XD107]

#### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Site Characterization Surveys Offshore From Massachusetts to New Jersey for Vineyard Northeast, LLC

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Vineyard Northeast, LLC (Vineyard Northeast) to incidentally harass, by Level B harassment only, marine mammals during marine site characterization surveys offshore from Massachusetts to New Jersey.

**DATES:** This Authorization is effective for 1 year from date of issuance.

**ADDRESSES:** Electronic copies of the original application and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), 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-other-energy-activities-renewable>. In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Jessica Taylor, 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 issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be 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 such species or stocks for taking for certain subsistence uses (referred to in shorthand as “mitigation”); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

##### History of Request

On December 17, 2021, NMFS received a request from Vineyard Northeast for an IHA to take marine mammals incidental to high-resolution geophysical (HRG) marine site characterization surveys offshore from Massachusetts to New Jersey, in the area of Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf Lease Areas OCS-A 0522 and OCS-A 0544 (Lease Areas) and potential offshore export cable corridor (OECC) routes to landfall locations. Vineyard Northeast requested authorization to take small numbers of 19 species (comprising 20 stocks) of marine mammals by Level B harassment only. NMFS published a notice of the proposed IHA in the **Federal Register** on May 20, 2022 (87 FR 30872). After a 30-day public comment period and consideration of all public comments received, we subsequently issued the 2022 IHA, which was effective from July 27, 2022, to July 26, 2023 (87 FR 52913, August 30, 2022).

Vineyard Northeast completed a subset of the survey work under the

2022 IHA and submitted a preliminary monitoring report, which demonstrates that they conducted the required marine mammal mitigation and monitoring, and did not exceed the authorized levels of take under the previous IHA issued for surveys offshore from Massachusetts to New Jersey (See 87 FR 52913, August 30, 2022). These monitoring results are available to the public on our website: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

On April 17, 2023, NMFS received a request from Vineyard Northeast for an IHA to take marine mammals incidental to HRG marine site characterization surveys offshore from Massachusetts to New Jersey in the areas of Bureau of Ocean Energy Management (BOEM) Commercial Lease of Submerged Lands for Renewable Energy Development on the OCS-A 0522 (Lease Area), OCS-A 0544 (Lease Area), and associated OECC routes. Following NMFS’ review of the application, Vineyard Northeast submitted a revised request on May 25, 2023. The application (the 2023 request) was deemed adequate and complete on May 25, 2023. Vineyard Northeast’s request is for take of 19 species (comprising 20 stocks) of marine mammals, by Level B harassment only. Neither Vineyard Northeast nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

The activities described in Vineyard Northeast’s request and the acoustic sources authorized for use are identical to what was previously analyzed in support of the IHA issued by NMFS to Vineyard Northeast for 2022 site characterization surveys (2022 IHA) (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022), although the survey duration and project area will be a subset of the survey effort authorized for the 2022 IHA as a portion of this effort has been completed. All mitigation, monitoring, and reporting requirements remain the same. While Vineyard Northeast’s activity would have qualified for renewal of the 2022 IHA, due to the availability of updated marine mammal density data (<https://seamap.env.duke.edu/models/Duke/EC/>), which NMFS has determined represents the best available scientific data, NMFS determined to proceed with a new IHA process rather than a renewal, providing a 30-day period for the public to comment on the proposed action.

The 2023 request is nearly identical to the 2022 IHA, with the exception that the survey effort is a subset of the original effort authorized for the 2022

IHA. In evaluating the 2023 request and to the extent deemed appropriate, NMFS also relied on the information presented in notices associated with issuance of the 2022 IHA (87 FR 30872, May 30 2022; 87 FR 52913, August 30, 2022).

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

### Description of the Activity and Anticipated Impacts

#### Overview

Vineyard Northeast will conduct HRG marine site characterization surveys in the BOEM Lease Areas OCS-A 0522 and 0544 and along potential submarine OECC's from southern Massachusetts to southern New Jersey. The purpose of the surveys is to obtain an assessment of seabed (geophysical, geotechnical, and geohazard), ecological, and archeological conditions within the footprint of the planned offshore wind facility development area. Surveys are also conducted to inform and support engineering design and to map unexploded ordnance. Survey equipment will be deployed from multiple vessels during site characterization activities in the project area, and up to two vessels will operate at a time in the lease areas and along the OECCs. During survey effort, the vessel will operate at a maximum speed of 4 knots (4.6 miles or 7.4 kilometers (km) per hour). Underwater sound, resulting from Vineyard Northeast's activities, has the potential to result in incidental take of marine mammals in the form of Level B harassment.

The planned activity is estimated to require 467 survey days (37,360 km of trackline) using a maximum of four concurrently operating survey vessels, and is expected to be carried out over the course of the 1-year period beginning from the date of issuance of this IHA.

Underwater sound resulting from Vineyard Northeast's survey activities during use of specific active acoustic sources has the potential to result in incidental take of marine mammals in the form of behavioral harassment (Level B harassment). Geophysical activities were discussed previously for the 2022 IHA NMFS issued to Vineyard Northeast (87 FR 52913, August 30, 2022) and, as no new information has been presented that changed our determinations on these activities, this information will not be reiterated here. The mitigation, monitoring, and reporting measures are described in more detail later in this document (please see Description of Mitigation, Monitoring, and Reporting).

A detailed description of Vineyard Northeast's planned surveys is provided in the **Federal Register** notice of the proposed IHA (88 FR 40212, June 21, 2023) and the 2022 **Federal Register** notice (87 FR 30872, May 30 2022; 87 FR 52913, August 30, 2022). Since that time, no changes have been made to the survey activities. Therefore, a detailed description is not provided here. Please refer to those **Federal Register** notices for the description of the specified activities.

#### Comments and Responses

A notice of NMFS' proposal to issue an IHA to Vineyard Northeast was published in the **Federal Register** on June 21, 2023 (88 FR 40212). That notice described, in detail, Vineyard Northeast's proposed activities, the marine mammal species that may be affected by these activities, and the anticipated effects on marine mammals. We requested public input on the request for authorization described therein, our analyses, the proposed authorization, and requested that interested persons submit relevant information, suggestions, and comments.

NMFS received 39 public comment letters. Three of these comment letters were from non-governmental organizations: Oceana, Clean Ocean Action (COA), and Sea Life Conservation (SLC). The remaining 36 comment letters were from private citizens. The majority of these expressed general opposition to issuance of the IHA or to the underlying associated activities, but without providing specific information relevant to NMFS' request for public comment. Three of the letters from private citizens provided substantive comments that are addressed below.

We reiterate here that NMFS' action concerns only the authorization of marine mammal take incidental to the planned surveys—NMFS' authority under the MMPA does not extend to the surveys themselves or to wind energy development more generally. Many of the comments requested that NMFS not issue any IHAs related to wind energy development and/or expressed opposition for wind energy development generally without providing information relevant to NMFS' decision to authorize take incidental to Vineyard Northeast's survey activities. We do not specifically address comments expressing general opposition to activities related to wind energy development or respond to comments not relevant to the scope of the proposed IHA (88 FR 40212, June 21, 2023), such as comments on other

Federal agency processes and activities not authorized under this IHA (e.g., seismic surveys, offshore wind construction, installation of wind turbines, other marine site characterization surveys).

All substantive comments and NMFS' responses are provided below, and all substantive comments are available on NMFS' website: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. Please see the comment letters for full details regarding the comments and associated rationale.

*Comment 1:* COA states that BOEM has no legal authority for permitting offshore geotechnical and geophysical survey activities, based on text from the proposed BOEM Renewable Energy Modernization proposed rule (88 FR 5968, January 30, 2023; 88 FR 19578, April 3, 2023). They further state that this has allowed for no oversight with regards to surveys off New Jersey and New York and that they do not understand how BOEM can make assertions without regulations/guidance for HRG survey work.

*Response:* NMFS' statutory authority for this particular action is limited to authorizing incidental take of marine mammals. NMFS respectfully refers the commenter to BOEM, the agency with responsibility for managing development of U.S. Outer Continental Shelf energy and mineral resources in an environmentally and economically responsible way.

*Comment 2:* COA expressed concerns with the high amount of increased vessel traffic associated with the offshore wind projects in the two lease areas transited or utilized by certain protected resources, as well as concern for vessel noise.

*Response:* Vineyard Northeast did not request authorization for take incidental to vessel traffic during their marine site characterization survey. Nevertheless, NMFS analyzed the potential for vessel strikes to occur during the survey, and determined that the potential for vessel strike is so low as to be discountable. NMFS does not authorize any take of marine mammals incidental to vessel strike resulting from the survey. If Vineyard Northeast were to strike a marine mammal with a vessel, this would be an unauthorized take in violation of the MMPA. This gives Vineyard Northeast a strong incentive to operate its vessels with all due caution and to effectively implement the suite of vessel strike avoidance measures required by the IHA. Vineyard Northeast proposed a very conservative suite of mitigation measures related to vessel

strike avoidance, including measures specifically designed to avoid impacts to North Atlantic right whale (NARWs). Section 4(f) in the IHA contains a suite of non-discretionary requirements pertaining to vessel strike avoidance, including vessel operation protocols and monitoring. To date, NMFS is not aware of any site characterization vessel from surveys reporting a vessel strike within the United States. When considered in the context of low overall probability of any vessel strike by Vineyard Northeast vessels, given the limited additional survey-related vessel traffic relative to existing traffic in the survey area, the comprehensive visual monitoring, and other additional mitigation measures described herein, NMFS believes these measures are sufficiently protective to avoid vessel strike. These measures are described fully in the Description of Mitigation, Monitoring, and Reporting section below, and include, but are not limited to: training for all vessel observers and captains, daily monitoring of NARW Sighting Advisory System, WhaleAlert app, and USCG Channel 16 for situational awareness regarding NARW presence in the survey area, communication protocols if whales are observed by any Vineyard Northeast personnel, vessel operational protocol should any marine mammal be observed, and visual monitoring.

The potential for impacts related to an overall increase in the amount of vessel traffic due to offshore wind development is separate from the aforementioned analysis of potential for vessel strike during Vineyard Northeast's specified survey activities. For more information, please see the response to comment 5 discussing cumulative impacts.

*Comment 3:* Oceana and COA stated that NMFS must utilize the best available science and suggested that NMFS has not done so, specifically referencing information regarding the NARW such as updated population estimates, habitat usage in the survey area, and seasonality information. Oceana and COA specifically assert that NMFS is not using the best available science with regards to the NARW population estimate.

*Response:* NMFS agrees that the best available science must be used in determining whether a request for incidental take of marine mammals will have a negligible impact on species or stocks of marine mammals and, where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. NMFS considered all relevant information regarding NARW

abundance estimates, including the commenter's cited information, and determined that the abundance estimate (338; 95 percent with a confidence interval of 325–350) included in the 2022 draft Stock Assessment Reports (SARs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>), is the best available NARW abundance estimate (88 FR 32735, May 22, 2023).

NMFS also considered the best available science regarding both recent habitat usage patterns for the study area and up-to-date seasonality information in the notice of the proposed IHA, including consideration of existing Biologically Important Areas (BIAs) and densities provided by Roberts *et al.* (2023). While the commenter suggested that NMFS consider best available information for recent habitat usage patterns and seasonality, they did not offer any additional information for NMFS to consider in place of what NMFS considered the best available science in its notice of proposed IHA (88 FR 40212, June 21, 2023).

*Comment 4:* Oceana noted that chronic stressors are an emerging concern for NARW conservation and recovery and stated that chronic stress may result in energetic effects for NARW. Oceana suggested that NMFS has not fully considered both the use of the area and the effects of both acute and chronic stressors on the health and fitness of NARW, as disturbance responses in NARW could lead to chronic stress or habitat displacement, leading to an overall decline in their health and fitness.

*Response:* NMFS agrees with Oceana that both acute and chronic stressors are of concern for NARW conservation and recovery. We recognize that acute stress from acoustic exposure is one potential impact of these surveys, and that chronic stress can have fitness and reproductive impacts at the population-level scale. NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals and recognizes that the surveys have the potential to impact marine mammals through behavioral effects, stress responses, and auditory masking. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Vineyard Northeast will create conditions of acute or chronic acoustic exposure leading to long-term physiological stress responses in marine mammals. NMFS has also prescribed a robust suite of mitigation measures, including extended distance shutdowns

for NARW, that are expected to further reduce the duration and intensity of acoustic exposure while limiting the potential severity of any possible behavioral disruption. The potential for chronic stress was evaluated in making the determinations presented in NMFS' negligible impact analyses. NARW generally use this location in a transitory manner, specifically for migration, and any potential impacts from these surveys are lessened for other behaviors due to the brief periods where exposure is possible. In context of these expected low-level impacts, which are not expected to meaningfully affect important behavior, we refer to the large size of the migratory corridor (269,488 km<sup>2</sup>) compared with the approximately 33,814 km<sup>2</sup> survey area. Thus, the transitory nature of NARW at this location means it is unlikely for any exposure to cause chronic effects, as Vineyard Northeast's planned survey area and ensonified zones are much smaller than the overall migratory corridor. As such, NMFS does not expect acute or cumulative stress to be a detrimental factor to NARW from Vineyard Northeast's described survey activities.

*Comment 5:* Several commenters asserted that NMFS must deny all actions until the cumulative impacts of every incidental take authorization on marine mammals are considered. Oceana and COA asserted that NMFS must fully consider the discrete effects of each activity and the cumulative effects of the suite of approved, proposed, and potential offshore wind activities on marine mammals and NARW, in particular, and ensure that the cumulative effects are not excessive before issuing or renewing an IHA.

*Response:* NMFS is required to authorize the requested incidental take if it finds the incidental take by harassment of small numbers of marine mammals by U.S. citizens "while engaging in that [specified] activity" within a specified geographic region will have a negligible impact on such species or stock and where appropriate, will not have an unmitigable adverse impact on the availability of such species or stock for subsistence uses. 16 U.S.C. 1371(a)(5)(D). Negligible impact is defined 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). Neither the MMPA nor NMFS' implementing regulations require consideration of other unrelated activities and their impacts on marine mammal populations in the negligible

impact determination. Additionally, NMFS' implementing regulations require applicants to include in their request a detailed description of the specified activity or class of activities that can be expected to result in incidental taking of marine mammals (50 CFR 216.104(a)(1)). Thus, the "specified activity" for which incidental take coverage is being sought under Section 101(a)(5)(D) is generally defined and described by the applicant. Consistent with the preamble of NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are factored into the baseline, which is used in the negligible impact analysis. Here, NMFS has factored into its negligible impact analysis the impacts of other past and ongoing anthropogenic activities via their impacts on the baseline (e.g., as reflected in the density, distribution and status of the species, population size and growth rate, and other relevant stressors).

The preamble of NMFS' implementing regulations (54 FR 40338, September 29, 1989) also addresses cumulative effects from future, unrelated activities. Such effects are not considered in making the negligible impact determination under MMPA Section 101(a)(5). NMFS considers (1) cumulative effects that are reasonably foreseeable when preparing a National Environmental Policy Act (NEPA) analysis, and (2) reasonably foreseeable cumulative effects under section 7 of the Endangered Species Act (ESA) for ESA-listed species, as appropriate. Accordingly, NMFS has written Environmental Assessments (EA) that addressed cumulative impacts related to substantially similar activities in similar locations (e.g., the 2019 Avangrid EA for survey activities offshore North Carolina and Virginia; the 2017 Ocean Wind, LLC EA for site characterization surveys off New Jersey; and the 2018 Deepwater Wind EA for survey activities offshore Delaware, Massachusetts, and Rhode Island). Cumulative impacts regarding issuance of IHAs for site characterization survey activities such as those planned by Vineyard Northeast have been adequately addressed under NEPA in prior environmental analyses that support NMFS' determination that this action is appropriately categorically excluded from further NEPA analysis. NMFS independently evaluated the use of a categorical exclusion (CE) for issuance of Vineyard Northeast's IHA, which included consideration of extraordinary circumstances.

Separately, the cumulative effects of substantially similar activities in the

northwest Atlantic Ocean have been analyzed in the past under section 7 of the ESA when NMFS has engaged in formal intra-agency consultation, such as the 2013 programmatic Biological Opinion for BOEM Lease and Site Assessment Rhode Island, Massachusetts, New York, and New Jersey Wind Energy Areas (<https://repository.library.noaa.gov/view/noaa/29291>). Analyzed activities include those for which NMFS issued previous IHAs (82 FR 31562, July 7, 2017; 83 FR 28808, June 21, 2018; 83 FR 36539, July 30, 2018; and 86 FR 26465, May 10, 2021), which are similar to those planned by Vineyard Northeast under this current IHA request. This Biological Opinion (BiOp) determined that NMFS' issuance of IHAs for site characterization survey activities associated with leasing, individually and cumulatively, are not likely to adversely affect listed marine mammals. NMFS notes that, while issuance of this IHA is covered under a different consultation, this BiOp remains valid.

*Comment 6:* COA is concerned regarding the number of species that could be impacted by the activities, as well as a lack of baseline data available for species in the area, specifically for harbor seals.

*Response:* We appreciate the concern expressed by COA. NMFS utilizes the best available science when analyzing which species may be impacted by an applicant's proposed activities. Based on information found in the scientific literature, as well as based on density models developed by Duke University, all marine mammal species included in the proposed **Federal Register** Notice have some likelihood of occurring in Vineyard Northeast's survey areas. Furthermore, the MMPA requires us to evaluate the effects of the specified activities in consideration of the best scientific evidence available and, if the necessary findings are made, to issue the requested take authorization. The MMPA does not allow us to delay decision making in hopes that additional information may become available in the future.

Regarding the lack of baseline information cited by COA, with specific concern pointed out for harbor seals, NMFS points to two sources of information for marine mammal baseline information: the Ocean/Wind Power Ecological Baseline Studies, January 2008—December 2009 completed by the New Jersey Department of Environmental Protection in July 2010 (<https://dspace.njstatelib.org/xmlui/handle/10929/68435>) and the Atlantic Marine Assessment Program for Protected

Species (AMAPPS; <https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/atlantic-marine-assessment-program-protected>) with annual reports available from 2010 to 2020 (<https://www.fisheries.noaa.gov/resource/publication-database/atlantic-marine-assessment-program-protected-species>) that cover the areas across the Atlantic Ocean. NMFS has duly considered this and all available information.

Based on the information presented, NMFS has determined that no new information has become available, nor do the commenters present additional information, that would change our determinations since the publication of the proposed notice.

*Comment 7:* Several commenters expressed concern that the proposed IHA and its associated specified activities would lead to mortality (death) of marine mammals.

*Response:* NMFS emphasizes that there is no credible scientific evidence available suggesting that mortality and/or serious injury is a potential outcome of the planned survey activity. Additionally, NMFS cannot authorize mortality or serious injury via an IHA, and such taking is prohibited under Condition 3(c) of the IHA and may result in modification, suspension, or revocation of the IHA. NMFS notes there has never been a report of any serious injuries or mortalities of a marine mammal associated with site characterization surveys. The best available science indicates that Level B harassment, or disruption of behavioral patterns, may occur as a result of Vineyard Northeast's specified activities. We also refer to the Greater Atlantic Regional Fisheries Office (GARFO) 2021 Programmatic Consultation, which finds that these survey activities are in general not likely to adversely affect marine mammal species listed under the ESA (i.e., GARFO's analysis conducted pursuant to the ESA finds that marine mammals are not likely to be taken at all (as that term is defined under the ESA), much less be taken by serious injury or mortality). That document is found at <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation>.

*Comment 8:* Oceana states that NMFS must make an assessment of which activities, technologies and strategies are truly necessary to achieve site characterization to inform development of the offshore wind projects and which are not critical, asserting that NMFS

should prescribe the appropriate survey techniques. In general, Oceana stated that NMFS must require the IHA applicant to avoid adverse effects on NARWs in and around the survey site, and then minimize and mitigate the impacts of underwater noise to the fullest extent feasible, including through the use of best available technology and methods to minimize sound levels from geophysical surveys such as through the use of technically and commercially feasible and effective noise reduction and attenuation measures.

*Response:* The MMPA requires that an IHA include measures that will effect the least practicable adverse impact on the affected species and stocks and, in practice, NMFS agrees that the IHA should include conditions for the survey activities that will first avoid adverse effects on NARWs in and around the survey site, where practicable, and then minimize the effects that cannot be avoided. NMFS has determined that the IHA meets this requirement to effect the least practicable adverse impact. As part of the analysis for all marine site characterization survey IHAs, NMFS evaluated the effects expected as a result of the specified activity, made the necessary findings, and prescribed mitigation requirements sufficient to achieve the least practicable adverse impact on the affected species and stocks of marine mammals. It is not within NMFS' purview to set the activities, technologies, and strategies that applicants may employ to meet their objectives. As explained above, the "specified activity" for which incidental take coverage is being sought under section 101(a)(5)(D) is generally defined and described by the applicant, not by NMFS.

*Comment 9:* Oceana suggests that NMFS require the use of Protected Species Observers (PSOs) and that PSOs complement their survey efforts using additional technologies, such as infrared detection devices when in low-light conditions.

*Response:* NMFS agrees with Oceana regarding these suggestions and requirements to utilize PSOs for monitoring and for PSOs to use a thermal (infrared) device during low-light conditions were included in the proposed **Federal Register** Notice. That requirement is included in the issued IHA.

*Comment 10:* Oceana recommended that NMFS restrict all vessels of all sizes associated with the proposed survey activities to speeds less than 10 knots (kn) (18.5 kilometers (km)/hour) at all times due to the risk of vessel strikes to NARWs and other large whales.

*Response:* While NMFS acknowledges that vessel strikes can result in injury or mortality, we have analyzed the potential for vessel strike resulting from Vineyard Northeast's activity and have determined that based on the nature of the activity and the required mitigation measures specific to vessel strike avoidance included in the IHA, potential for vessel strike is so low as to be discountable. The required mitigation measures, all of which were included in the proposed IHA and are now required in the final IHA, include: A requirement that all vessel operators comply with 10 kn (18.5 km/hour) or less speed restrictions in any Seasonal Management Area (SMA), Dynamic Management Area (DMA), or Slow Zone while underway, and check daily for information regarding the establishment of mandatory or voluntary vessel strike avoidance areas (SMAs, DMAs, Slow Zones) and information regarding NARW sighting locations; a requirement that all vessels greater than or equal to 19.8 meters (m) in overall length operating from November 1 through April 30 operate at speeds of 10 kn (18.5 km/hour) or less; a requirement that all vessel operators reduce vessel speed to 10 kn (18.5 km/hour) or less when any large whale, any mother/calf pairs, pods, or large assemblages of non-delphinid cetaceans are observed near the vessel; a requirement that all survey vessels maintain a separation distance of 500 m or greater from any ESA-listed whales or other unidentified large marine mammals visible at the surface while underway; a requirement that, if underway, vessels must steer a course away from any sighted ESA-listed whale at 10 kn (18.5 km/hour) or less until the 500 m minimum separation distance has been established; a requirement that, if an ESA-listed whale is sighted in a vessel's path, or within 500 m of an underway vessel, the underway vessel must reduce speed and shift the engine to neutral; a requirement that all vessels underway must maintain a minimum separation distance of 100 m from all non-ESA-listed baleen whales; and a requirement that all vessels underway must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (e.g., for animals that approach the vessel). We have determined that the vessel strike avoidance measures in the IHA are sufficient to ensure the least practicable adverse impact on species or stocks and their habitat. Furthermore, no documented vessel strikes have

occurred for any marine site characterization surveys which were issued IHAs from NMFS during the survey activities themselves or while transiting to and from survey sites.

*Comment 11:* Oceana suggests that NMFS require vessels maintain a separation distance of at least 500 m from NARWs at all times.

*Response:* NMFS agrees with Oceana regarding this suggestion and a requirement to maintain a separation distance of at least 500 m from NARWs at all times was included in the proposed **Federal Register** Notice and was included as a requirement in the issued IHA.

*Comment 12:* Oceana recommended that the IHA should require all vessels supporting site characterization to be equipped with and using Class A Automatic Identification System (AIS) devices at all times while on the water. Oceana suggested this requirement should apply to all vessels, regardless of size, associated with the survey.

*Response:* NMFS is generally supportive of the idea that vessels involved with survey activities be equipped with and using Class A Automatic Identification System (devices) at all times while on the water. Indeed, there is a precedent for NMFS requiring such a stipulation for geophysical surveys in the Atlantic Ocean (38 FR 63268, December 7, 2018); however, these activities carried the potential for much more significant impacts than the marine site characterization surveys to be carried out by Vineyard Northeast, with the potential for both Level A and Level B harassment take. Given the small isopleths and small numbers of take authorized by this IHA, NMFS does not agree that the benefits of requiring AIS on all vessels associated with the survey activities outweighs and warrants the cost and practicability issues associated with this requirement and therefore the agency has not included this within the issued IHA.

*Comment 13:* Oceana asserts that the IHA must include requirements to hold all vessels associated with site characterization surveys accountable to the IHA requirements, including vessels owned by the developer, contractors, employees, and others regardless of ownership, operator, and contract. They state that exceptions and exemptions will create enforcement uncertainty and incentives to evade regulations through reclassification and redesignation. They recommend that NMFS simplify this by requiring all vessels to abide by the same requirements, regardless of size, ownership, function, contract or other specifics.

*Response:* NMFS agrees with Oceana and required these measures in the proposed IHA and final IHA. The IHA requires that a copy of the IHA must be in the possession of Vineyard Northeast, the vessel operators, the lead PSO, and any other relevant designees of Vineyard Northeast operating under the authority of this IHA. The IHA also states that Vineyard Northeast must ensure that the vessel operator and other relevant vessel personnel, including the PSO team, are briefed on all responsibilities, communication procedures, marine mammal monitoring protocols, operational procedures, and IHA requirements prior to the start of survey activity, and when relevant new personnel join the survey operations.

*Comment 14:* Oceana stated that the IHA must include a requirement for all phases of the site characterization to subscribe to the highest level of transparency, including frequent reporting to Federal agencies. Oceana recommended requirements to report all visual and acoustic detections of NARWs and any dead, injured, or entangled marine mammals to NMFS or the Coast Guard as soon as possible and no later than the end of the PSO shift. Oceana states that to foster stakeholder relationships and allow public engagement and oversight of the permitting, the IHA should require all reports and data to be accessible on a publicly available website.

*Response:* NMFS agrees with the need for reporting and indeed, the MMPA calls for IHAs to incorporate reporting requirements. As included in the proposed IHA, the final IHA includes requirements for reporting that supports Oceana's recommendations. Vineyard Northeast is required to submit a monitoring report to NMFS within 90 days after completion of survey activities that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring. PSO datasheets or raw sightings data must also be provided with the draft and final monitoring report.

Further, the draft IHA and final IHA stipulate that if a NARW is observed at any time by any survey vessels, during surveys or during vessel transit, Vineyard Northeast must immediately report sighting information to the NMFS NARW Sighting Advisory System within 2 hours of occurrence, when practicable, or no later than 24 hours after occurrence. Vineyard Northeast may also report the sighting to the U.S. Coast Guard. Additionally, Vineyard Northeast must report any discoveries of injured or dead marine mammals to the Office of Protected Resources, NMFS,

and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. This includes entangled animals. All reports and associated data submitted to NMFS are included on the website for public inspection.

Daily visual and acoustic detections of NARWs and other large whale species along the Eastern Seaboard, as well as Slow Zone locations, are publicly available on WhaleMap (<https://whalemap.org/WhaleMap/>). Further, recent acoustic detections of NARWs and other large whale species are available to the public on NOAA's Passive Acoustic Cetacean Map website <https://apps-nefsc.fisheries.noaa.gov/pacm/#/narw>.

*Comment 15:* Oceana recommends a shutdown requirement if a NARW or other ESA-listed species is detected in the clearance zone as well as a publicly available explanation of any exemptions allowing the applicant not to shut down in these situations.

*Response:* NMFS reiterates that use of the planned sources is not expected to have any potential to cause injury of any species, including NARW, even in the absence of mitigation. Consideration of the anticipated effectiveness of the mitigation measures (*i.e.*, clearance zones and shutdown measures) discussed below and in the Mitigation section of this notice further strengthens the conclusion that injury is not a reasonably anticipated outcome of the survey activity. Nevertheless, there are several shutdown requirements described in the **Federal Register** notice of the proposed IHA (88 FR 40212, June 21, 2023), and which are included in the final IHA, including the stipulation that geophysical survey equipment must be immediately shut down if any marine mammal is observed within or entering the relevant Clearance Zone while geophysical survey equipment is operational. There is no exemption for the shutdown requirement for NARW and ESA-listed species.

Vineyard Northeast is required to implement a 30-minute pre-start clearance period prior to the initiation of ramp-up of specified HRG equipment. During this period, clearance zones will be monitored by the PSOs using the appropriate visual technology. Ramp-up may not be initiated if any marine mammal(s) is within its respective clearance zone. If a marine mammal is observed within a clearance zone during the pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting its respective exclusion zone or until an additional time period has elapsed with no further sighting (*i.e.*, 15 minutes for small odontocetes and seals, and 30 minutes

for all other species). If the acoustic source is shut down for reasons other than mitigation (*e.g.*, mechanical difficulty) for less than 30 minutes, it may be activated again without ramp-up if PSOs have maintained constant observation and no detections of any marine mammal have occurred within the respective clearance zones.

In regards to reporting, Vineyard Northeast must notify NMFS if a NARW is observed at any time by any survey vessels during surveys or during vessel transit. Additionally, Vineyard Northeast is required to report the relevant survey activity information, such as the type of survey equipment in operation, acoustic source power output while in operation, and any other notes of significance (*i.e.*, pre-clearance survey, ramp-up, shutdown, end of operations, *etc.*) as well as the estimated distance to an animal and its heading relative to the survey vessel at the initial sighting and survey activity information. We note that if a NARW is detected within the Clearance Zone before a shutdown is implemented, the NARW and its distance from the sound source, including if it is within the Level B harassment zone, would be reported in Vineyard Northeast's final monitoring report and made publicly available on NMFS' website. Vineyard Northeast is required to immediately notify NMFS of any sightings of NARWs and report upon survey activity information. NMFS believes that these requirements address the commenter's concerns.

NMFS does not require acoustic monitoring for the reasons stated in our response to Comment 23.

*Comment 16:* COA asserts that Level A harassment may occur, and that this was not accounted for in the proposed Notice.

*Response:* NMFS acknowledges the concerns brought up regarding the potential for Level A harassment of marine mammals. However, no Level A harassment is expected to result, even in the absence of mitigation, given the characteristics of the sources planned for use. This is additionally supported by the required mitigation, which further reduces the unlikely potential for any Level A harassment to occur, and very small estimated Level A harassment zones described in Vineyard Northeast's 2022 **Federal Register** notice (87 FR 52913, August 30, 2022) and carried through to the 2023 IHA (88 FR 40212, June 21, 2023). Furthermore, the commenter does not provide any support for the apparent contention that Level A harassment is a potential outcome of these activities.

As discussed in the notice of proposed IHA, NMFS considers this category of survey operations to be near *de minimis*, with the potential for Level A harassment for any species to be discountable.

*Comment 17:* COA expressed concern regarding ocean noise and the interference it has on communication between whales.

*Response:* NMFS has carefully reviewed the best available scientific information in assessing impacts to marine mammals and determined that the surveys have the potential to impact marine mammals through behavioral effects and auditory masking. NMFS agrees that noise pollution in marine waters is an issue and is affecting marine mammals, including their ability to communicate when noise reaches certain thresholds. However, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Vineyard Northeast will create conditions of acute or chronic acoustic exposure leading to long-term physiological impacts in marine mammals. NMFS' prescribed mitigation measures are expected to further reduce the duration and intensity of acoustic exposure while limiting the potential severity of any possible behavioral disruption.

*Comment 18:* COA and SLC do not agree with NMFS' small numbers and negligible impact determination for the numbers of marine mammals taken by Level B harassment under Vineyard Northeast's planned activities.

*Response:* NMFS disagrees with the commenters' arguments on the topic of small numbers and negligible impact findings, and the commenters do not provide a reasoned basis for finding that the effects of the specified activity would be greater than negligible on any species or stock. The Negligible Impact Analysis and Determination section of the proposed and final 2022 IHA (87 FR 30872, 87 FR 52913) provides a detailed qualitative discussion supporting NMFS' determination that any anticipated impacts from this action would be negligible. The section contains a number of factors that were considered by NMFS based on the best available scientific data and why we concluded that impacts resulting from the specified activity are not reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Although there is limited legislative history available to guide NMFS and an apparent lack of biological underpinning to the concept, we have

worked to develop a reasoned approach to small numbers. NMFS explains the concept of "small numbers" in recognition that there could also be quantities of individuals taken that would correspond with "medium" and "large" numbers. As such, NMFS considers that one-third of the most appropriate population abundance number—as compared with the assumed number of individuals taken—is an appropriate limit with regard to "small numbers." This relative approach is consistent with the statement from the legislative history that "[small numbers] is not capable of being expressed in absolute numerical limits" (H.R. Rep. No. 97–228, at 19 (September 16, 1981)), and relevant case law (*Center for Biological Diversity v. Salazar*, 695 F.3d 893, 907 (9th Cir. 2012) (holding that the U.S. Fish and Wildlife Service reasonably interpreted "small numbers" by analyzing take in relative or proportional terms)). NMFS has made the necessary small numbers finding for all affected species and stocks in this case.

*Comment 19:* SLC states its opposition to the use of a categorical exclusion under NEPA.

*Response:* NMFS does not agree with SLC's comment. A CE is a category of actions that an agency has determined does not individually or cumulatively have a significant effect on the quality of the human environment, and is appropriately applied for such categories of actions so long as there are no extraordinary circumstances present that would indicate that the effects of the action may be significant. Extraordinary circumstances are situations for which NOAA has determined further NEPA analysis is required because they are circumstances in which a normally excluded action may have significant effects. A determination of whether an action that is normally excluded requires additional evaluation because of extraordinary circumstances focuses on the action's potential effects and considers the significance of those effects in terms of both context (consideration of the affected region, interests, and resources) and intensity (severity of impacts). Potential extraordinary circumstances relevant to this action include (1) adverse effects on species or habitats protected by the MMPA that are not negligible; (2) highly controversial environmental effects; (3) environmental effects that are uncertain, unique, or unknown; and (4) the potential for significant cumulative impacts when the proposed action is combined with other past, present, and reasonably foreseeable future actions.

The relevant NOAA CE associated with issuance of incidental take authorizations is CE B4, "Issuance of incidental harassment authorizations under Section 101(a)(5)(A) and (D) of the MMPA for the incidental, but not intentional, take by harassment of marine mammals during specified activities and for which no serious injury or mortality is anticipated." This action falls within CE B4. In determining whether a CE is appropriate for a given incidental take authorization, NMFS considers the applicant's specified activity and the potential extent and magnitude of takes of marine mammals associated with that activity along with the extraordinary circumstances listed in the Companion Manual for NOAA Administrative Order (NAO) 216–6A and summarized above. The evaluation of whether extraordinary circumstances (if present) have the potential for significant environmental effects is limited to the decision NMFS is responsible for, which is issuance of the incidental take authorization. While there may be environmental effects associated with the underlying action, potential effects of NMFS' action are limited to those that would occur due to the authorization of incidental take of marine mammals. NMFS prepared numerous EAs analyzing the environmental impacts of the categories of activities encompassed by CE B4 which resulted in Findings of No Significant Impacts (FONSI) and, in particular, numerous EAs prepared in support of issuance of IHAs related to similar survey actions are part of NMFS' administrative record supporting CE B4. These EAs demonstrate the issuance of a given incidental harassment authorization does not affect other aspects of the human environment because the action only affects the marine mammals that are the subject of the incidental harassment authorization. These EAs also addressed factors in 40 CFR 1508.27 regarding the potential for significant impacts and demonstrate the issuance of incidental harassment authorization for the categories of activities encompassed by CE B4 do not individually or cumulatively have a significant effect on the human environment.

Specifically for this action, NMFS independently evaluated the use of the CE for issuance of Vineyard Northeast's IHA, which included consideration of extraordinary circumstances. As part of that analysis, NMFS considered whether this IHA issuance would result in cumulative impacts that could be significant. In particular, the issuance of an IHA to Vineyard Northeast is

expected to result in minor, short-term behavioral effects on marine mammal species due to exposure to underwater sound from site characterization survey activities. Behavioral disturbance is possible to occur intermittently in the vicinity of Vineyard Northeast's survey area during the 1-year timeframe. Level B harassment will be reduced through use of mitigation measures described herein. Additionally, as discussed elsewhere, NMFS has determined that Vineyard Northeast's activities fall within the scope of activities analyzed in GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021), which concluded surveys such as those planned by Vineyard Northeast are not likely to adversely affect endangered listed species or adversely modify or destroy critical habitat. Accordingly, NMFS has determined that the issuance of this IHA will result in no more than negligible (as that term is defined by the Companion Manual for NAO 216-6A) adverse effects on species protected by the ESA and the MMPA.

Further, the issuance of this IHA will not result in highly controversial environmental effects or result in environmental effects that are uncertain, unique, or unknown because numerous entities have been engaged in site characterization surveys that result in Level B harassment of marine mammals in the United States. This type of activity is well documented; prior authorizations and analysis demonstrates issuance of an IHA for this type of action only affects the marine mammals that are the subject of the specific authorization and, thus, no potential for significant cumulative impacts are expected, regardless of past, present, or reasonably foreseeable actions, even though the impacts of the action may not be significant by itself. Based on this evaluation, we concluded that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

*Comment 20:* SLC asserts that NMFS is permitting the proposed activities without any empirically-determined benchmark for what is the injury-causing sound pressure level ("SPL") against which to measure the proposed activities. In addition, SLC indicates that basing the shutdown and clearance distances on permanent threshold shift (PTS) thresholds is insufficient as PTS thresholds are modeled from temporary threshold shift (TTS) data and threshold for tissue injury may occur at a lower level than TTS.

*Response:* NMFS does not agree with the commenter that shutdown and clearance distances based upon PTS thresholds are insufficient due to thresholds being modeled from TTS data. Marine mammal PTS thresholds are appropriately extrapolated from marine mammal TTS data and data from terrestrial mammals, as described in NMFS' 2018 Technical Guidance. We refer the commenter to that guidance. Further, TTS is not considered injury, as defined for Level A harassment under the MMPA, because it is fully recoverable.

*Comment 21:* SLC asserts that the spreading models used for assessing noise levels from the proposed activities do not adequately account for sound bouncing off the underside of the water's surface and other surface reflection.

*Response:* NMFS does not agree with the commenter regarding the use of spreading models for assessing noise levels. While the transmission loss models used for HRG sources are fairly simplistic and do not directly account for reflections at the surface, the models are designed to account for how sound would propagate through the environment, including accounting for beamwidth and frequency absorption, and thus provide realistic approximations of how sounds from these sources are believed to travel through the environment. Accounting for scattering at the surface is heavily dependent on the roughness of the sea surface, with rougher surfaces resulting in more propagation loss (dB) per bounce as the sound hits the water surface (*i.e.*, this additional dB loss is not accounted for in more simple models). Only flat surfaces would allow for complete reflection of sound. In addition, most HRG sources are designed to focus sound downwards towards the bottom, thus, accounting for surface reflections associated with these sources is unnecessary.

*Comment 22:* SLC asserted that the ability for a developer to detect and report whether it has exceeded the levels of take authorized by NMFS is limited as not all marine mammals may be detected and recommended additional reporting requirements.

*Response:* NMFS reviews required reporting (see Description of Mitigation, Monitoring, and Reporting) and uses the information to evaluate the mitigation measure effectiveness. Additionally, the mitigation measures included in Vineyard Northeast's IHA are not unique, and data from prior IHAs support the effectiveness of these mitigation measures. NMFS finds the level of reporting currently required is

sufficient for managing the issued IHA and monitoring the affected stocks of marine mammals.

*Comment 23:* SLC recommended that NMFS should require Passive Acoustic Monitoring (PAM) at all times, both day and night, to maximize the probability of detection for North Atlantic right whales.

*Response:* NMFS does not agree that a measure to require PAM at all times is warranted, as it is not expected to be effective for use in detecting the species of concern. It is generally accepted that, even in the absence of additional acoustic sources, using a towed passive acoustic sensor to detect baleen whales (including NARWs) is not typically effective because the noise from the vessel, the flow noise, and the cable noise are in the same frequency band and will mask the vast majority of baleen whale calls. Vessels produce low-frequency noise, primarily through propeller cavitation, with main energy in the 5–300 Hertz (Hz) frequency range. Source levels range from about 140 to 195 decibel (dB) re 1  $\mu$ Pa (micropascal) at 1 m (NRC, 2003; Hildebrand, 2009), depending on factors such as ship type, load, and speed, and ship hull and propeller design. Studies of vessel noise show that it appears to increase background noise levels in the 71–224 Hz range by 10–13 dB (Hatch *et al.*, 2012; McKenna *et al.*, 2012; Rolland *et al.*, 2012). PAM systems employ hydrophones towed in streamer cables approximately 500 m behind a vessel. Noise from water flow around the cables and from strumming of the cables themselves is also low-frequency and typically masks signals in the same range. Experienced PAM operators participating in a recent workshop (Thode *et al.*, 2017) emphasized that a PAM operation could easily report no acoustic encounters, depending on species present, simply because background noise levels rendered any acoustic detection impossible. The same workshop report stated that a typical eight-element array towed 500 m behind a vessel could be expected to detect delphinids, sperm whales, and beaked whales at the required range, but not baleen whales, due to expected background noise levels (including seismic noise, vessel noise, and flow noise).

*Comment 24:* SLC asserts that NMFS' assessment of the potential for, and the impacts of, masking is insufficient.

*Response:* NMFS disagrees that the potential impacts of masking were not properly considered. NMFS acknowledges our understanding of the scientific literature that SLC cited but, fundamentally, the masking effects to

any one individual whale from one survey are expected to be minimal. Masking is referred to as a chronic effect because one of the key harmful components of masking is its duration—the fact that an animal would have reduced ability to hear or interpret critical cues becomes much more likely to cause a problem the longer it is occurring. Also, inherent in the concept of masking is the fact that the potential for the effect is only present during the times that the animal and the source are in close enough proximity for the effect to occur (and further this time period would need to coincide with a time that the animal was utilizing sounds at the masked frequency) and, as our analysis (both quantitative and qualitative components) indicates, because of the relative movement of whales and vessels, we do not expect these exposures with the potential for masking to be of a long duration within a given day. Further, because of the relatively low density of mysticetes, and relatively large area over which the vessels travel, we do not expect any individual whales to be exposed to potentially masking levels from these surveys for more than a few days in a year.

As noted above, any masking effects of this survey are expected to be limited and brief, if present. Given the likelihood of significantly reduced received levels beyond even short distances from the survey vessel, combined with the short duration of potential masking and the lower likelihood of extensive additional contributors to background noise offshore and within these short exposure periods, we believe that the incremental addition of the survey vessel is unlikely to result in more than minor and short-term masking effects, likely occurring to some small number of the same individuals captured in the estimate of behavioral harassment.

*Comment 25:* COA and SLC urged NMFS to deny the proposed project and/or postpone any offshore wind activities until NMFS determines effects of all offshore wind-related activities on marine mammals in the region and determines that the recent whale deaths are not related to offshore wind activities. Commenters provided general concerns regarding recent whale stranding events on the Atlantic Coast, including speculation that the strandings may be related to wind energy development activities. In addition, SLC urged NMFS to investigate whether wind energy development activities may have physiological or mortality-inducing effects on whales.

*Response:* NMFS authorizes take of marine mammals incidental to marine site characterization surveys but does not authorize the surveys themselves. Therefore, while NMFS has the authority to modify, suspend, or revoke an IHA if the IHA holder fails to abide by the conditions prescribed therein (including, but not limited to, failure to comply with monitoring or reporting requirements), or if NMFS determines that (1) the authorized taking is having or is likely to have more than a negligible impact on the species or stocks of affected marine mammals, or (2) the prescribed measures are likely not or are not effecting the least practicable adverse impact on the affected species or stocks and their habitat, it is not within NMFS' jurisdiction to impose a moratorium on offshore wind development or to require surveys to cease on the basis of unsupported speculation.

NMFS reiterates that there is no evidence that noise resulting from offshore wind development-related site characterization surveys could potentially cause marine mammal stranding, and there is no evidence linking recent large whale mortalities and currently ongoing surveys. The commenters offer no such evidence. NMFS will continue to gather data to help us determine the cause of death for these stranded whales. We note the Marine Mammal Commission's recent statement: "There continues to be no evidence to link these large whale strandings to offshore wind energy development, including no evidence to link them to sound emitted during wind development-related site characterization surveys, known as HRG surveys. Although HRG surveys have been occurring off New England and the mid-Atlantic coast, HRG devices have never been implicated or causatively associated with baleen whale strandings." (Marine Mammal Commission Newsletter, Spring 2023). Furthermore, NMFS does not expect that the generally short-term, intermittent, and transitory marine site characterization survey activities planned by Vineyard Northeast will create conditions of acute or chronic acoustic exposure leading to long-term physiological impacts in whales.

There is an ongoing Unusual Mortality Event (UME) for humpback whales along the Atlantic coast from Maine to Florida, which includes animals stranded since 2016. Partial or full necropsy examinations were conducted on approximately half of the whales. Necropsies were not conducted on other carcasses because they were too decomposed, not brought to land, or

stranded on protected lands (e.g., national and state parks) with limited or no access. Of the whales examined (roughly 90), about 40 percent had evidence of human interaction, either vessel strike or entanglement. Vessel strikes and entanglement in fishing gear are the greatest human threats to large whales. The remaining 50 necropsied whales either had an undetermined cause of death (due to a limited examination or decomposition of the carcass), or had other causes of death including parasite-caused organ damage and starvation. As discussed herein, HRG sources may behaviorally disturb marine mammals (e.g., avoidance of the immediate area). These HRG surveys are very different from seismic airguns used in oil and gas surveys or tactical military sonar. They produce much smaller impact zones because, in general, they have lower source levels and produce output at higher frequencies. The area within which HRG sources might behaviorally disturb a marine mammal is orders of magnitude smaller than the impact areas for seismic airguns or military sonar. Any marine mammal exposure would be at significantly lower levels and shorter duration, which is associated with less severe impacts to marine mammals.

#### *Description of Marine Mammals*

A description of the marine mammals in the survey area can be found in the previous documents and notices for the 2022 IHA (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022), which remains applicable to this IHA. NMFS reviewed the most recent draft SARs, found on NMFS' website at <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments>, up-to-date information on relevant UMEs; <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-unusual-mortality-events>, and recent scientific literature and determined that no new information affects our original analysis of impacts under the 2022 IHA. More general information about these species (e.g., physical and behavioral descriptions) may be found on NMFS's website (<https://www.fisheries.noaa.gov/find-species>).

NMFS notes that, since issuance of the 2022 IHA, a new SAR was made available with new information presented for the NARW (see <https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports>). We note that the estimated abundance for the species declined from 368 to 338.

However, this change does not affect our analysis of impacts, as described under the 2022 IHA.

**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. Current data indicate that 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) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.*, low-frequency

cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in Table 1.

**TABLE 1—MARINE MAMMAL HEARING GROUPS (NMFS, 2018)**

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, <i>Kogia</i> , river dolphins, Cephalorhynchid, <i>Lagenorhynchus cruciger</i> & <i>L. australis</i> ).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 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 are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.*, 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.*, 2006; Kastelein *et al.*, 2009; Reichmuth and Holt, 2013). For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Nineteen marine mammal species (comprising 20 total stocks; 17 cetacean (18 stocks) and 2 pinniped (both phocid) species) have the reasonable potential to co-occur with the survey activities. Of the cetacean species that may be present, 6 are classified as low-frequency cetaceans (*i.e.*, all mysticete species), 10 are classified as mid-frequency cetaceans (*i.e.*, all delphinid species and the sperm whale), and 1 is classified as a high-frequency cetacean (*i.e.*, harbor porpoise).

**Potential Effects on Marine Mammals and Their Habitat**

A description of the potential effects of the specified activities on marine mammals and their habitat can be found in the documents supporting the 2022 IHA (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022). At present, there is no new information on potential effects that would influence our analysis.

**Estimated Take**

A detailed description of the methods used to estimate take anticipated to occur incidental to the project is found in the previous **Federal Register** notices (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022). The methods of estimating take are identical to those used in the 2022 IHA. Vineyard Northeast updated the marine mammal densities based on new information (Roberts *et al.*, 2016; Roberts *et al.*, 2023), available online at: <https://seamap.env.duke.edu/models/Duke/EC/>. We refer the reader to Table 8 in Vineyard Northeast's 2023 IHA request for the specific density values used in the analysis. The IHA request is available online at: <https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable>.

The take that NMFS has authorized can be found in Table 2, which presents the results of Vineyard Northeast's density-based calculations for the survey area. For comparative purposes, we have provided the 2022 IHA authorized Level B harassment take (87 FR 52913, August 30, 2022). NMFS notes that take by Level A harassment was not requested, nor does NMFS anticipate that it could occur. Therefore, NMFS has not authorized any take by Level A harassment. Mortality or serious injury is neither anticipated to occur nor authorized.

**TABLE 2—TOTAL AUTHORIZED TAKE, BY LEVEL B HARASSMENT ONLY, RELATIVE TO POPULATION SIZE**

Species	Scientific name	Stock	Abundance	2022 IHA authorized take	2023 IHA	
					Authorized take <sup>1</sup>	Max percent population
Blue whale	<i>Balaenoptera musculus</i>	Western North Atlantic	402	1	1	0.25
North Atlantic Right Whale	<i>Eubalaena glacialis</i>	Western North Atlantic	338	40	12	3.6
Humpback Whale	<i>Megaptera novaeangliae</i>	Gulf of Maine	1,396	47	12	0.86
Fin Whale	<i>Balaenoptera physalus</i>	Western North Atlantic	6,802	77	20	0.29
Sei Whale	<i>Balaenoptera borealis</i>	Nova Scotia	6,292	5	5	0.08

TABLE 2—TOTAL AUTHORIZED TAKE, BY LEVEL B HARASSMENT ONLY, RELATIVE TO POPULATION SIZE—Continued

Species	Scientific name	Stock	Abundance	2022 IHA authorized take	2023 IHA	
					Authorized take <sup>1</sup>	Max percent population
Minke whale	<i>Balaenoptera acutorostrata</i>	Canadian Eastern Coastal	21,968	42	46	0.21
Sperm whale	<i>Physeter macrocephalus</i>	North Atlantic	4,349	12	2	0.05
Long-finned pilot whale <sup>1</sup>	<i>Globicephala melas</i>	Western North Atlantic	39,215	405	17	0.04
Killer whale <sup>2</sup>	<i>Orcinus orca</i>	Western North Atlantic	UNK	2	<sup>3</sup> 4	45.9
False killer whale <sup>2</sup>	<i>Pseudorca crassidens</i>	Western North Atlantic	1,791	5	5	0.28
Atlantic spotted dolphin <sup>3</sup>	<i>Stenella frontalis</i>	Western North Atlantic	39,921	29	29	0.07
Atlantic white-sided dolphin	<i>Lagenorhynchus acutus</i>	Western North Atlantic	93,233	1,124	129	0.14
Bottlenose dolphin	<i>Tursiops truncatus</i>	Western North Atlantic North-ern Migratory Coastal.	6,639	151	45	0.68
		Western North Atlantic Off-shore.	62,851	569	169	0.27
Common dolphin	<i>Delphinus delphis</i>	Western North Atlantic	172,974	13,904	7,472	4.3
Risso's dolphin	<i>Grampus griseus</i>	Western North Atlantic	35,215	101	9	0.03
White-beaked dolphin	<i>Lagenorhynchus albirostris</i>	Western North Atlantic	536,016	30	30	0.006
Harbor porpoise	<i>Phocoena phocoena</i>	Gulf of Maine/Bay of Fundy	95,543	2,033	347	0.36
Harbor seal <sup>5</sup>	<i>Phoca vitulina</i>	Western North Atlantic	61,336	939	939	1.5
Gray seal <sup>5</sup>	<i>Halichoerus grypus</i>	Western North Atlantic	<sup>6</sup> 27,300	418	418	1.5

<sup>1</sup> Roberts *et al.* (2023) only provides density estimates for pilot whales as a guild. Given the project's location, NMFS assumes that all take will be of long-finned pilot whales.

<sup>2</sup> Rare (or unlikely to occur) species.

<sup>3</sup> Adjusted according to average group size (Kraus *et al.*, 2016; Palka *et al.*, 2017).

<sup>4</sup> Based upon minimum population estimate of 67 individual killer whales identified in the Northwestern Atlantic Ocean (Lawson and Stevens, 2014).

<sup>5</sup> Roberts *et al.* (2023) only provides density estimates for seals without differentiating by species. In order to determine the species-specific density-based exposure estimates for seals, Vineyard Northeast used the following approach. Vineyard Northeast summed the SAR N<sub>best</sub> abundance estimates (Hayes *et al.*, 2022) for the 2 seal species and divided the total by the estimate for each species to get the proportion of the total for each species. Vineyard Northeast then multiplied these proportions by the total estimated exposure for the seal guild density (Roberts *et al.*, 2023) to get the species-specific density-based exposure estimates. NMFS accepts this approach.

<sup>6</sup> NMFS' stock abundance estimate (and associated potential biological removal (PBR) value) applies to U.S. population only. Total stock abundance (including animals in Canada) is approximately 451,600.

**Description of Mitigation, Monitoring and Reporting Measures**

The required mitigation, monitoring, and reporting measures are identical to those included in the **Federal Register** notice announcing the final 2022 IHA and the discussion of the least practicable adverse impact included in that document remains accurate. The measures are found below.

Vineyard Northeast must also abide by all the marine mammal relevant conditions in the NOAA Fisheries GARFO programmatic consultation (specifically Project Design Criteria (PDC) 4, 5, and 7) regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (NOAA GARFO, 2021; <https://www.fisheries.noaa.gov/new-england-mid-atlantic/consultations/section-7-take-reporting-programmatics-greater-atlantic#offshore-wind-site-assessment-and-site-characterization-activities-programmatic-consultation>), pursuant to Section 7 of the Endangered Species Act.

Additionally, on August 1, 2022, NMFS announced proposed changes to the existing NARW vessel speed regulations to further reduce the likelihood of mortalities and serious injuries to endangered NARWs from vessel collisions, which are a leading cause of the species' decline and a primary factor in an ongoing Unusual Mortality Event (87 FR 46921). Should a final vessel speed rule be issued and

become effective during the effective period of this IHA (or any other MMPA incidental take authorization), the authorization holder would be required to comply with any and all applicable requirements contained within the final rule. Specifically, where measures in any final vessel speed rule are more protective or restrictive than those in this or any other MMPA authorization, authorization holders would be required to comply with the requirements of the rule. Alternatively, where measures in this or any other MMPA authorization are more restrictive or protective than those in any final vessel speed rule, the measures in the MMPA authorization must be followed. The responsibility to comply with the applicable requirements of any vessel speed rule would become effective immediately upon the effective date of any final vessel speed rule and, when notice is published of the effective date, NMFS would also notify Vineyard Northeast if the measures in the speed rule were to supersede any of the measures in the MMPA authorization.

*Establishment of Shutdown Zones (SZ)*—Marine mammal SZs must be established around the HRG survey equipment and monitored by NMFS-approved PSOs as follows:

- 500-m SZ for NARWs during use of specified acoustic sources (impulsive: sparkers and boomers; non-impulsive: non-parametric sub-bottom profilers); and,

- 100-m SZ for all other marine mammals (excluding NARWs) during operation of the sparker and boomer. The only exception for this is for pinnipeds (seals) and small delphinids (*i.e.*, those from the genera *Delphinus*, *Lagenorhynchus*, *Stenella* or *Tursiops*).

If a marine mammal is detected approaching or entering the SZs during the HRG survey, the vessel operator will adhere to the shutdown procedures described below to minimize noise impacts on the animals. During use of acoustic sources with the potential to result in marine mammal harassment (sparkers, boomers, and non-parametric sub-bottom profilers; *i.e.*, anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the monitoring zone (but outside the SZs) must be communicated to the vessel operator to prepare for potential shutdown of the acoustic source.

*Visual Monitoring*—Monitoring must be conducted by qualified PSOs who are trained biologists, with minimum qualifications described in the **Federal Register** notices for the 2022 project (87 FR 30872, May 20, 2022; 87 FR 52913, August 30, 2022). Vineyard Northeast must have one PSO on duty during the day and a minimum of two NMFS-approved PSOs must be on duty and conducting visual observations when HRG equipment is in use at night. Visual monitoring must begin no less than 30 minutes prior to ramp-up of

HRG equipment and continue until 30 minutes after use of the acoustic source. PSOs must establish and monitor the applicable clearance zones, SZs, and vessel separation distances as described in the 2022 IHA (87 FR 52913, August 30, 2022). PSOs must coordinate to ensure 360-degree visual coverage around the vessel from the most appropriate observation posts, and must conduct observations while free from distractions and in a consistent, systematic, and diligent manner. PSOs are required to estimate distances to observed marine mammals. It is the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate.

**Pre-Start Clearance**—Marine mammal clearance zones (CZs) must be established around the HRG survey equipment and monitored by NMFS-approved PSOs prior to use of boomers, sparkers, and non-parametric sub-bottom profilers as follows:

- 500-m CZ for all Endangered Species Act-listed species; and
- 100-m CZ for all other marine mammals.

Prior to initiating HRG survey activities, Vineyard Northeast must implement a 30-minute pre-start clearance period. The operator must notify a designated PSO of the planned start of ramp-up where the notification time should not be less than 60 minutes prior to the planned ramp-up to allow the PSOs to monitor the CZs for 30 minutes prior to the initiation of ramp-up. Prior to ramp-up beginning, Vineyard Northeast must receive confirmation from the PSO that the CZs are clear prior to preceding. Any PSO on duty has the authority to delay the start of survey operations if a marine mammal is detected within the applicable pre-start clearance zones.

During this 30-minute period, the entire CZ must be visible. The exception to this would be in situations where ramp-up must occur during periods of poor visibility (inclusive of nighttime) as long as appropriate visual monitoring has occurred with no detections of marine mammals in 30 minutes prior to the beginning of ramp-up.

If a marine mammal is observed within the relevant CZs during the pre-start clearance period, initiation of HRG survey equipment must not begin until the animal(s) has been observed exiting the respective CZ, or, until an additional period has elapsed with no further sighting (*i.e.*, minimum 15 minutes for small odontocetes and seals; 30 minutes for all other species). The pre-start

clearance requirement includes small delphinids. PSOs must also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded.

**Ramp-Up of Survey Equipment**—When technically feasible, a ramp-up procedure must be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure must be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the project area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment must not begin until the relevant SZs have been cleared by the PSOs, as described above. HRG equipment operators must ramp up acoustic sources to half power for 5 minutes and then proceed to full power. If any marine mammals are detected within the SZs prior to or during ramp-up, the HRG equipment must be shut down (as described below).

**Shutdown Procedures**—If an HRG source is active and a marine mammal is observed within or entering a relevant SZ (as described above), an immediate shutdown of the HRG survey equipment is required. When shutdown is called for by a PSO, the acoustic source must be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty has the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a marine mammal is detected within the applicable SZ. The vessel operator must establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment may only occur after the marine mammal has been observed exiting the relevant SZ, or, until an additional period has elapsed with no further sighting of the animal within the relevant SZ.

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable SZ or, following a clearance period of 15 minutes for small odontocetes (*i.e.*, harbor porpoise) and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant SZ. If the HRG equipment is shut down for brief periods (*i.e.*, less than 30 minutes) for

reasons other than mitigation (*e.g.*, mechanical or electronic failure) the equipment may be reactivated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable SZs during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement is waived for pinnipeds (seals) and certain genera of small delphinids (*i.e.*, *Delphinus*, *Lagenorhynchus*, *Stenella*, or *Tursiops*) under certain circumstances. If a delphinid(s) from these genera is visually detected within the SZ, shutdown will not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.*, whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs must use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth (178 m), shutdown must occur.

**Vessel Strike Avoidance**—Vineyard Northeast must comply with vessel strike avoidance measures as described in the **Federal Register** notice for the 2022 IHA (87 FR 52913, August 30, 2022). This includes speed restrictions (10 kn (18.5 km/hour) or less) when mother/calf pairs, pods, or large assemblages of cetaceans are spotted near a vessel; species-specific vessel separation distances; appropriate vessel actions when a marine mammal is sighted (*e.g.*, avoid excessive speed, remain parallel to animal's course, *etc.*); and monitoring of the NMFS NARW reporting system and WhaleAlert daily.

Throughout all phases of the survey activities, Vineyard Northeast must monitor NOAA Fisheries NARW reporting systems for the establishment of a dynamic management area (DMA). If NMFS establishes a DMA in the surrounding area, including the project area or export cable routes being surveyed, Vineyard Northeast is required to abide by the 10-kn (5.14 m/s) speed restriction.

**Training**—Project-specific training is required for all vessel crew prior to the start of survey activities.

**Reporting**—PSOs must record specific information as described in the **Federal Register** notice of the issuance of the 2022 IHA (87 FR 52913, August 30, 2022). Within 90 days after completion of survey activities, Vineyard Northeast must provide NMFS with a monitoring report, which must include summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

In the event of a ship strike or discovery of an injured or dead marine mammal, Vineyard Northeast must report the incident to the Office of Protected Resources (OPR), NMFS and to the New England/Mid-Atlantic Regional Stranding Coordinator as soon as feasible. The report must include the information listed in the **Federal Register** notice of the issuance of the initial IHA (87 FR 52913, August 30, 2022).

#### Determinations

Vineyard Northeast's HRG survey activities are a subset but otherwise unchanged from those analyzed in support of the 2022 IHA. The effects of the activity, taking into consideration the mitigation and related monitoring measures, remain unchanged from those evaluated in support of the 2022 IHA, regardless of the minor increase in estimated take for one species (minke whale). NMFS expects that all potential takes will be short-term Level B behavioral harassment in the form of temporary avoidance of the area or decreased foraging, reactions that are considered to be of low severity and with no lasting biological consequences (e.g., Southall *et al.*, 2007). In addition to being temporary, the maximum harassment zone around a survey vessel is 178 m from use of the Applied Acoustics AA251 Boomer. Although this distance is assumed for all survey activity evaluated here and in estimating take numbers authorized, in reality, much of the survey activity will involve use of acoustic sources with a reduced acoustic harassment zone (4 m for the Edge Tech Chirp 216 or 141 m for the GeoMarine Geo Spark 2000), producing expected effects of particularly low severity. Therefore, the ensounded area surrounding each vessel is relatively small compared to the overall distribution of the animals in the area and the available habitat.

The survey area overlaps or is in close proximity to feeding BIAs for NARWs (Cape Cod Bay and Massachusetts Bay BIA, February-April/Great South Channel and Georges Bank Shelf Break BIA, April-June), humpback whales (March-December), fin whales (year-round/March-October), sei whales (May-

November), and minke whales (March-November), as well as overlaps the migratory BIA for NARWs (November 1-April 30) (LaBrecque *et al.*, 2015). In addition, the survey area overlaps with the area south of Martha's Vineyard and Nantucket, referred to as "South of the Islands," which has been identified as relatively new year-round core NARW foraging habitat (Oleson *et al.*, 2020; Quintana-Rizzo *et al.*, 2021). As prey species are mobile and broadly distributed throughout the survey area, marine mammals that are temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise, thus we do not expect biologically significant impacts to feeding behavior. In addition, most of these feeding BIAs are extensive and sufficiently large (e.g., 3,149 km<sup>2</sup> and 12,247 km<sup>2</sup> for NARWs; 47,701 km<sup>2</sup> for humpback whales; 18,015 km<sup>2</sup> and 2,933 km<sup>2</sup> for fin whales; 56,609 km<sup>2</sup> for sei whales; 54,341 km<sup>2</sup> for minke whales), and the acoustic footprint of the survey is sufficiently small that feeding opportunities for these species will not be reduced appreciably. Due to the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Even considering the increased estimated take for one species (minke whales), the impacts of these lower severity exposures are not expected to accrue to a degree that the fitness of any individuals will be impacted and, therefore, no impacts on the annual rates of recruitment or survival will result.

As previously discussed in the 2022 IHA (87 FR 52913, August 30, 2022), impacts from the survey are expected to be localized to the specific area of activity and only during periods when Vineyard Northeast's acoustic sources are active. There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the survey area.

As noted for the 2022 IHA (87 FR 52913, August 30, 2022), the survey area overlaps a migratory corridor BIA and migratory route SMAs (Port of New Jersey/New York and Block Island) for NARWs. As the survey activities will be temporary and the spatial acoustic footprint produced by the survey will be very small relative to the spatial extent of the available migratory habitat in the BIA (269,448 km<sup>2</sup>), NMFS does not

expect NARW migration to be impacted by the survey. Required vessel strike avoidance measures will also decrease risk of ship strike during migration; no ship strike is expected to occur during Vineyard Northeast's planned activities. Vineyard Northeast will be required to comply with seasonal speed restrictions of these SMAs, and in any DMA, should NMFS establish one (or more) in the survey area. Additionally, Vineyard Northeast requested and NMFS has authorized only 12 takes by Level B harassment of NARWs. This amount is less than the 40 Level B harassment takes authorized in the 2022 IHA due to the updated Duke University density data (Roberts *et al.*, 2023) and reduced survey area.

Although take by Level B harassment of NARWs has been authorized by NMFS, we anticipate a very low level of harassment, should it occur at all, because Vineyard Northeast is required to maintain a shutdown zone of 500 m if a NARW is observed. The takes that are authorized account for any missed animals wherein the survey equipment is not shut down immediately. As shutdown will be called for immediately upon detection (if the whale is within 500 m), it is likely the exposure time will be very limited and received levels will not be much above the harassment threshold. Further, the 500-m shutdown zone for right whales is conservative, considering the distance to the Level B harassment isopleth for the most impactful acoustic source (*i.e.*, Applied Acoustics AA251 Boomer—which may not be used on all survey days) is estimated to be 178 m, and thereby minimizes the potential for behavioral harassment of this species. As noted previously, Level A harassment is not expected due to the small PTS zones associated with HRG equipment types planned for use. NMFS does not anticipate NARW takes that will result from Vineyard Northeast's activities will impact annual rates of recruitment or survival. Thus, any takes that occur will not result in population level impacts.

We also note that our findings for other species with active UMEs that were previously described for the 2022 IHA (87 FR 52913, August 30, 2022) remain applicable to this project. In addition, our analysis of survey effects on species with BIAs that overlap with the survey area remains unchanged. Therefore, in conclusion, there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will

effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) Vineyard Northeast's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and (5) appropriate monitoring and reporting requirements are included.

### Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 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 OPR consults internally whenever we propose to authorize take for endangered or threatened species.

NMFS has authorized the incidental take of five species of marine mammals which are listed under the ESA, including the North Atlantic right, fin, sei, blue, and sperm whale, and has determined that this activity falls within the scope of activities analyzed in NMFS GARFO's programmatic consultation regarding geophysical surveys along the U.S. Atlantic coast in the three Atlantic Renewable Energy Regions (completed June 29, 2021; revised September 2021).

### 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 NOAA Administrative Order 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 determined that the issuance

of the IHA qualifies to be categorically excluded from further NEPA review.

### Authorization

NMFS has issued an IHA to Vineyard Northeast for the potential harassment of small numbers of 19 marine mammal species incidental to marine site characterization surveys offshore of Massachusetts to southern New Jersey provided the previously mentioned mitigation, monitoring, and reporting requirements are followed.

Dated: July 27, 2023.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

[FR Doc. 2023-16292 Filed 7-31-23; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Public Wireless Supply Chain Innovation Fund Grant Program

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 April 17, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Telecommunications and Information Administration (NTIA), Commerce.

*Title:* Public Wireless Supply Chain Innovation Fund Grant Program.

*OMB Control Number:* 0660-XXXX.

*Form Number(s):* None.

*Type of Request:* Regular. New information collection.

*Number of Respondents:* 22.

*Average Hours per Response:* 20.

*Burden Hours:* 440.

*Needs and Uses:* With this information collection, NTIA will be able to monitor the grant recipients' spending habits and activities. In the absence of collecting this information, NTIA would fail to evaluate the grant

recipients' progress toward the grant program priority areas and program goals. Moreover, without these reports, the grants could be the subject of waste, fraud, and abuse of Federal funds. Therefore, it is necessary for the Agencies to collect information using the Baseline Report form.

*Affected Public:* Grant award recipients.

*Frequency:* Once at the beginning of the award period.

*Respondent's Obligation:* Mandatory.  
*Legal Authority:* Section 9202(a)(1) of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, 134 stat. 3388 (Jan. 1, 2021).

This information collection request may be viewed at [www.reginfo.gov](http://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](http://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,**

*Department PRA Clearance Officer, Office of the Under Secretary of Economic Affairs, Commerce Department.*

[FR Doc. 2023-16285 Filed 7-31-23; 8:45 am]

**BILLING CODE 3510-60-P**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

[Docket No. ARH-221221A-PL]

#### Notice of Intent To Grant a Partially Exclusive Patent License

**AGENCY:** Department of the Air Force, Department of Defense.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to the Bayh-Dole Act and implementing regulations, the Department of the Air Force hereby gives notice of its intent to grant a partially exclusive (the field to include outdoor recreation) patent license agreement to Bowerbags, LLC, a corporation of the State of Ohio, having a place of business at 601 East 3rd St., Dayton, Ohio 45402.

**DATES:** Written objections must be filed no later than fifteen (15) calendar days after the date of publication of this Notice.

**ADDRESSES:** Submit written objections to Jaelyn Lauren Williams, Technology Business Specialist, 2510 Fifth Street, Bldg. 840, Room 413.30, Wright-Patterson AFB, OH 45433; Phone: (702) 715-4402; or Email: [jaelyn.williams.2@us.af.mil](mailto:jaelyn.williams.2@us.af.mil). Include Docket No. ARH-221221A-PL in the subject line of the message.

**FOR FURTHER INFORMATION CONTACT:**

Jaelyn Lauren Williams, Technology Business Specialist, 2510 Fifth Street, Bldg. 840, Room 413.30, Wright-Patterson AFB, OH 45433; Phone: (702) 715-4402; or Email: [jaelyn.williams.2@us.af.mil](mailto:jaelyn.williams.2@us.af.mil).

**SUPPLEMENTARY INFORMATION:** The Department of the Air Force intends to grant the partially exclusive patent license agreement for the invention described in: U.S. Patent No. 8,857,681 B2, entitled, "Load Carriage Connector and System," filed March 8, 2013, and issued October 14, 2014.

**Abstract of Patent**

A load carriage connector and system for rapid mounting and demounting of a user-carried load. The connector utilizes two mating halves comprising a male connector half and a female connector half. The connector is configured to allow mating under various angles of approach, allowing the user to reliably couple the system even under conditions in which the user is unable to view the orientation of the connectors. Additionally, the configuration of the connector system allows the user to quickly and efficiently decouple the connector halves, even while under tensile or shear load.

The Department of the Air Force may grant the prospective license unless a timely objection is received that sufficiently shows the grant of the license would be inconsistent with the Bayh-Dole Act or implementing regulations. A competing application for a patent license agreement, completed in compliance with 37 CFR 404.8 and received by the Air Force within the period for timely objections, will be treated as an objection and may be considered as an alternative to the proposed license.

*Authority:* 35 U.S.C. 209; 37 CFR 404.

**Tommy W. Lee,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2023-16250 Filed 7-31-23; 8:45 am]

**BILLING CODE 5001-10-P**

**DEPARTMENT OF DEFENSE**

**Department of the Army, Corps of Engineers**

[Docket ID: COE-2023-0009]

Z-RIN 0710-ZA19

**Water Resources Development Act 2020, Section 128 Harmful Algal Bloom Demonstration Program Draft Environmental Assessment**

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of availability; request comments.

**SUMMARY:** The Department of the Army is publishing this notice to solicit comment on an environmental assessment of implementation of section 128 of the Water Resources Development Act of 2020 which directs the Secretary of the Army to implement a demonstration program to determine the causes of, and implement measures to effectively detect, prevent, treat, and eliminate, harmful algal blooms associated with water resources development projects.

**DATES:** Comments must be received by August 31, 2023.

**ADDRESSES:** You may submit comments, identified by docket number COE-2023-0009, using any of these methods:

1. *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.
2. *Email:* [usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil](mailto:usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil) and include the docket number, COE-2023-0009, in the subject line of the message.
3. *Mail:* HQ, U.S. Army Office of the Assistant secretary of the Army, ATTN: Mr. Gib Owen, at U.S. Army, 108 Army Pentagon, Washington, DC 20310-0108.

4. *Hand Delivery/Courier:* Due to security requirements, we cannot receive comments by hand delivery or courier.

*Instructions:* Direct your comments to docket number COE-2023-0009. The public docket will include all comments exactly as submitted and without change and may be made available online at <http://www.regulations.gov>. This will include any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information where disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through [regulations.gov](https://www.regulations.gov) or email. The [regulations.gov](https://www.regulations.gov) website is an anonymous access system, which means

we 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 the U.S. Army without going through [regulations.gov](https://www.regulations.gov), your email address will be automatically captured and included as part of the comment placed in the public docket and made available on the internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment. No alternative media thumb drive or CD-ROM can be submitted. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

*Docket:* For access to the docket to read background documents or comments received, go to <https://www.regulations.gov>. All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as 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.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gib Owen at [usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil](mailto:usarmy.pentagon.hqda-asa-cw.mbx.asa-cw-reporting@army.mil) or 571-274-1929.

**SUPPLEMENTARY INFORMATION:** The Department of the Army is publishing this notice to solicit comment on an environmental assessment prepared to support the implementation of a demonstration program to determine the causes of, and implement measures to effectively detect, prevent, treat, and eliminate, harmful algal blooms associated with water resources development projects. Section 128 requires the Secretary to consult with and leverage data from Federal and State agencies, and leverage activities of the Secretary carried out through the Engineer Research and Development Center pursuant to section 1109 of the Water Resources Development Act of 2018 (33 U.S.C. 610 note). The Secretary is directed to undertake program activities in the Great Lakes, tidal and inland waters of New Jersey, coastal and tidal waters of Louisiana, waterways of Sacramento-San Joaquin Delta in California, Allegheny Reservoir Watershed in New York, and Lake Okeechobee, Florida. Section 128 directs the Secretary to undertake

program activities related to harmful algal blooms at any Federal reservoir located in the Upper Missouri River Basin or the North Platte River Basin, at the request and expense of another Federal agency. A copy of the draft environmental assessment can be found at: <https://www.usace.army.mil/Missions/Civil-Works/Water-Resources-Development-Act/>.

The contents of the documents 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 departmental policies.

### Procedural Requirements

a. *Review under the National Environmental Policy Act.* As required by the National Environmental Policy Act (NEPA), the Department of Army prepares appropriate environmental analysis for its activities affecting the quality of the human environment. We have preliminarily determined that this proposed Section 128 Harmful Algal Bloom Demonstration Program if finalized, would not constitute a major Federal Action significantly affecting the quality of the human environment because actions, while temporary in nature, will be taken, during the implementation of the program to avoid and minimize any adverse impacts that could occur as a result of the implementation of the recommended plan. The preliminary determination that an Environmental Impact Statement (EIS) will not be required for the issuance of this significant guidance will be reviewed in consideration of the comments received.

b. *Unfunded Mandates Reform Act.* The Unfunded Mandates Reform Act does not apply to the Section 128 Harmful Algal Bloom Demonstration Program because the guidance associated with this action provides policy for the Commanding General of the U.S. Army Corps of Engineers to conduct a Harmful Algal Bloom Demonstration Program at 100% Federal expense. The Assistant Secretary of the Army for Civil Works has found that small governments will not be significantly and uniquely affected by this guidance.

c. *National Technology Transfer and Advancement Act.* This Section 128 Harmful Algal Bloom Demonstration Program does not involve technical standards and as such there are no anticipated requirements under this Act.

d. *Executive Order 12866.* Executive Order 12866 (58 FR 51735, October 4,

1993), defines “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$200 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Tribal, or local 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 impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in the Executive Order.

In addition, per 32 CFR 339.7 (85 FR 32299), the same tests for significance also apply to guidance documents. This proposed Section 128 Harmful Algal Bloom Demonstration Program has been found not to be a significant guidance action.

e. *Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).* The proposed Section 128 Harmful Algal Bloom Demonstration Program does not impose any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act is required.

f. *Executive Order 13132: Federalism.* This proposed Section 128 Harmful Algal Bloom Demonstration Program will not have substantial direct effects on the states, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

g. *Regulatory Flexibility Act.* The Regulatory Flexibility Act (RFA), as amended (5 U.S.C. 601 et seq.) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of the proposed rule on small entities, a small entity is defined as: (1) A small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or

special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Although this is not a rulemaking action, the Assistant Secretary of the Army for Civil Works nonetheless certifies that this proposed Section 128 Harmful Algal Bloom Demonstration Program does not have a significant economic impact on a substantial number of small entities. The proposed Section 128 Harmful Algal Bloom Demonstration Program does not place any regulatory burdens on small entities or have a significant economic impact on such entities.

h. *Congressional Review Act (5 U.S.C. 801 et seq.).* Pursuant to the Congressional Review Act, this proposed Section 128 Harmful Algal Bloom Demonstration Program has not been designated a major rule, as defined by 5 U.S.C. 804(2), as it is not a rulemaking action. However, analyzing the same parameters for this proposed significant guidance, the Assistant Secretary of the Army for Civil Works has determined that this proposed Section 128 Harmful Algal Bloom Demonstration Program is not considered “major” as defined by 5 U.S.C. 804(2), because it is not likely to result in: (1) An annual effect on the economy of \$200,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

i. *Executive Order 13175, Consultation and Coordination With Indian Tribal Governments.* Under Executive Order 13175, the Federal Government may not issue a regulation that has substantial, direct effects on one or more Tribal Nation, on the relationship between the Federal Government and Tribal Nation, or on the distribution of powers and responsibilities between the Federal Government and Tribal Nations, and imposes substantial direct compliance costs on those communities, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance cost incurred by the Tribal Nation governments, or we consult with those

governments. If complying by consulting, Executive Order 13175 requires us to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of prior consultation with representatives of affected Tribal Nation governments, a summary of the nature of Tribal Nation concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13175 requires that agencies develop an effective process permitting elected officials and other representatives of Tribal Nation governments an opportunity to provide timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities. This proposed Section 128 Harmful Algal Bloom Demonstration Program does not impose significant compliance costs on any Tribal Nation or otherwise have substantial direct effects on the same. The proposed Section 128 Harmful Algal Bloom Demonstration Program would not have any adverse physical impacts to human environment as the expected result of the Assistant Secretary of the Army for Civil Works actions will be the implementation of temporary harmful algal bloom demonstration projects. In the event that any Tribal Nations may have concerns with the proposed Section 128 Harmful Algal Bloom Demonstration Program, the Assistant Secretary of the Army for Civil Works encourages them to submit comments through the public comment process and/or to request government-to-government consultation.

**Michael L. Connor,**  
*Assistant Secretary of the Army (Civil Works).*  
 [FR Doc. 2023-16257 Filed 7-31-23; 8:45 am]

**BILLING CODE 3720-58-P**

**ELECTION ASSISTANCE COMMISSION**

**Agency Information Collection Activities**

**AGENCY:** Election Assistance Commission.

**ACTION:** Notice; request for public comment.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the U.S. Election Assistance Commission (EAC) gives notice that it is requesting from the Office of Management and Budget (OMB) a modification of the previously approved information collection OMB Control Number 3265-0021 EAC Progress Report (EAC-PR).

**DATES:** Comments must be received by 5 p.m. Eastern on Monday, October 2, 2023.

**ADDRESSES:** To view the proposed EAC-PR format, see: <https://www.eac.gov/payments-and-grants/financial-progress-reports>. For information on the EAC-PR, contact Risa Garza, Office of Grants, Election Assistance Commission, [Grants@eac.gov](mailto:Grants@eac.gov). Written comments and recommendations for the proposed information collection should be sent directly to [Grants@eac.gov](mailto:Grants@eac.gov). All requests and submissions should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:** Previously filed under Title and OMB Number: EAC Progress Report; 86 FR 73747 (Page 73747-73748, Document Number: 2021-28199).

**Purpose**

The EAC Office of Grants Management (EAC/OGM) is responsible for distributing, monitoring, and providing technical assistance to States and grantees on the use of Federal funds. EAC/OGM also reports on how the funds are spent, negotiates indirect

cost rates with grantees, and resolves audit findings on the use of HAVA funds.

The EAC-PR is employed for both interim and final progress reports for grants issued under HAVA authority. This revised format builds upon that report for the various grant awards given by EAC. A "For Comment" version of the draft format for use in submission of grant progress reports is posted on the EAC website at: <https://www.eac.gov/payments-and-grants/financial-progress-reports>. The PR will directly benefit award recipients by making it easier for them to administer Federal grant and cooperative agreement programs through standardization of the types of information required in financial reporting—thereby reducing their administrative effort and costs.

After obtaining and considering public comment, the EAC will prepare the format for final clearance. Comments are invited on (a) ways to enhance the quality, utility, and clarity of the information collected from respondents, including through the use of automated collection techniques or other forms of information technology; and (b) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

*Description:* The EAC proposes to collect progress activity data for HAVA. EAC will use this data to ensure grantees are proceeding in a satisfactory manner in meeting the approved goals and purpose of the project.

The requirement for grantees to report on performance is OMB grants policy. Specific citations are contained in Code of Federal Regulations TITLE 2, PART 200—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS.

*Respondents:* All EAC grantees and State governments.

**ANNUAL BURDEN ESTIMATES**

EAC grant	Instrument	Total number of respondents	Total number of responses per year	Average burden hours per response	Annual burden hours
251 .....	EAC-PR .....	29	2	1	58
101 .....	EAC-PR .....	12	2	1	24
Election Security .....	EAC-PR .....	56	2	1	112
<b>Total</b> .....	.....	.....	.....	.....	<b>194</b>

The estimated cost of the annualized cost of this burden is: \$4,677.34, which is calculated by taking the annualized burden (194 hours) and multiplying by an hourly rate of \$24.11 (GS-8/Step 5 hourly basic rate).

**Camden Kelliher,**

Senior Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2023-16268 Filed 7-31-23; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF ENERGY**

[Docket Nos. 11-128-LNG and 22-22-LNG]

**Change in Control: Cove Point LNG, LP**

**AGENCY:** Office of Fossil Energy and Carbon Management, Department of Energy.

**ACTION:** Notice of change in control.

**SUMMARY:** The Office of Fossil Energy and Carbon Management (FECM) of the Department of Energy (DOE) gives notice of receipt of a Notification in Accordance with Procedures for Changes in Control (Notification) filed by Cove Point LNG, LP (CPLNG) on July 11, 2023. The Notification describes an expected change in CPLNG's upstream ownership. The Notification was filed under the Natural Gas Act (NGA).

**DATES:** Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed as detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, August 16, 2023.

**ADDRESSES:**

*Electronic Filing by email (Strongly encouraged):* [fergas@hq.doe.gov](mailto:fergas@hq.doe.gov).

*Postal Mail, Hand Delivery, or Private Delivery Services (e.g., FedEx, UPS, etc.)* U.S. Department of Energy (FE-34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E-056, 1000 Independence Avenue SW, Washington, DC 20585.

Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit filings electronically to ensure timely receipt.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Wade or Peri Ulrey, U.S. Department of Energy (FE-34) Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability, Office of Fossil Energy and Carbon Management, Forrestal Building, Room 3E-042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-4749 or (202) 586-7893, [jennifer.wade@hq.doe.gov](mailto:jennifer.wade@hq.doe.gov) or [peri.ulrey@hq.doe.gov](mailto:peri.ulrey@hq.doe.gov).

Cassandra Bernstein, U.S. Department of Energy (GC-76), Office of the Assistant General Counsel for Energy Delivery and Resilience, Forrestal Building, Room 6D-033, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586-9793, [cassandra.bernstein@hq.doe.gov](mailto:cassandra.bernstein@hq.doe.gov).

**SUPPLEMENTARY INFORMATION:**

**Summary of Change in Control**

CPLNG states that, on July 9, 2023, Berkshire Hathaway Energy Company (BHE), Eastern MLP Holding Company II, LLC (Eastern MLP II), DECP Holdings, Inc. (DECP Holdings), and Dominion Energy, Inc. (DEI) entered into a Purchase and Sale Agreement (PSA) affecting CPLNG's upstream ownership. CPLNG states that it is a Delaware limited partnership that owns and operates the Cove Point Terminal, located in Lusby, Maryland, along with an 88-mile natural gas pipeline corridor connecting the Cove Point Terminal to the interstate pipeline grid. According to CPLNG, Eastern MLP II, a Virginia limited liability company, is a wholly owned indirect subsidiary of BHE, which is an Iowa corporation and a subsidiary of Berkshire Hathaway Inc., a Delaware corporation, and DECP Holdings, a Virginia corporation, is a wholly owned indirect subsidiary of DEI, a Virginia corporation. Prior to the PSA, DECP Holdings held a 50% limited partnership interest in CPLNG, and Eastern MLP II held a 25% limited partnership interest in CPLNG. Under the PSA, DECP Holdings would transfer all of its limited partnership interest in CPLNG to Eastern MLP II. The transaction would increase Eastern MLP II's limited partnership interest in CPLNG (and therefore BHE's indirect ownership) from 25% to 75% and would end DEI's ownership of any interest in CPLNG. CPLNG states that Berkshire Hathaway Inc. indirectly owns 100% of the general partnership interest in CPLNG through its wholly owned indirect subsidiary Cove Point GP Holding Company, LLC, and that the transaction would not affect this ownership stake. CPLNG further states that "[t]he parties anticipate closing the transaction upon receipt of all regulatory approvals."

Charts illustrating the ownership structure of CPLNG before and after the PSA are attached to the Notification as Attachments A-1 and A-2, respectively. Additional details can be found in the Notification, posted on the DOE website at: [www.energy.gov/sites/default/files/2023-07/Final%20BHE%20Cove%20Point%20DOE%20CIC%20Filing%20%287.11.2023%29.pdf](http://www.energy.gov/sites/default/files/2023-07/Final%20BHE%20Cove%20Point%20DOE%20CIC%20Filing%20%287.11.2023%29.pdf).

**DOE Evaluation**

DOE will review the Notification in accordance with its Procedures for Changes in Control Affecting Applications and Authorizations to Import or Export Natural Gas (CIC Procedures).<sup>1</sup> Consistent with the CIC Procedures, this notice addresses CPLNG's existing authorizations to export liquefied natural gas (LNG) to countries with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas (FTA countries) and with which trade is not prohibited by United States law or policy (non-FTA countries), granted in DOE/FE Order No. 3331-A, as amended, and DOE/FECM Order No. 4849.<sup>2</sup> If no interested person protests the change in control and DOE takes no action on its own motion, the proposed change in control will be deemed granted 30 days after publication in the **Federal Register**. If one or more protests are submitted, DOE will review any motions to intervene, protests, and answers, and will issue a determination as to whether the proposed change in control has been demonstrated to render the underlying authorizations inconsistent with the public interest.

**Public Comment Procedures**

Interested persons will be provided 15 days from the date of publication of this notice in the **Federal Register** to move to intervene, protest, and answer CPLNG's Notification.<sup>3</sup> Protests, motions to intervene, notices of intervention, and written comments are invited in response to this notice only as to the change in control described in the Notification. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by DOE's regulations in 10 CFR part 590, including the service requirements.

Filings may be submitted using one of the following methods:

- (1) Submitting the filing electronically at [fergas@hq.doe.gov](mailto:fergas@hq.doe.gov);
- (2) Mailing the filing to the Office of Regulation, Analysis, and Engagement at the address listed in the **ADDRESSES** section; or
- (3) Hand delivering the filing to the Office of Regulation, Analysis, and

<sup>1</sup> 79 FR 65541 (Nov. 5, 2014).

<sup>2</sup> CPLNG's Notification also applies to its existing authorizations to export LNG to FTA countries in Docket No. 11-115-LNG and to import LNG from various international sources for two years in Docket No. 22-155-LNG. DOE will respond to those portions of the filing separately pursuant to the CIC Procedures, 79 FR 65542.

<sup>3</sup> Intervention, if granted, would constitute intervention only in the change in control portion of these proceedings, as described herein.

Engagement at the address listed in the **ADDRESSES** section.

For administrative efficiency, DOE prefers filings to be filed electronically. All filings must include a reference to “Docket No. 11–128–LNG” in the title line, or “Cove Point LNG, LP Change in Control” in the title line.

For *electronic submissions*: Please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner.

The Notification, and any filed protests, motions to intervene, notices of intervention, and comments will be available electronically on the DOE website at [www.energy.gov/fecm/regulation](http://www.energy.gov/fecm/regulation).

Signed in Washington, DC, on July 27, 2023.

**Amy R. Sweeney,**

*Director, Office of Regulation, Analysis, and Engagement, Office of Resource Sustainability.*

[FR Doc. 2023–16271 Filed 7–31–23; 8:45 am]

**BILLING CODE 6450–01–P**

Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, and the rules and regulations in implementation of that Act.

#### **Signing Authority**

This document of the Department of Energy was signed on July 26, 2023, by Sarah E. Butler, Committee Management Officer, 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 July 27, 2023.

**Treena V. Garrett,**

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

[FR Doc. 2023–16258 Filed 7–31–23; 8:45 am]

**BILLING CODE 6450–01–P**

result that the facilities currently are required to be made available for service by September 28, 2023.<sup>2</sup>

In its 2023 Extension of Time Request, Delfin states that it has made significant progress in developing the Project. Delfin states that the Project remains commercially viable with a binding LNG sale and purchase agreement with Vitol Spa for 0.5 million metric tonnes per annum (mtpa) of LNG delivered free on-board at the Delfin LNG deepwater port, for 15 years. Second, Delphin in April 2023, entered into a binding SPA with an affiliate of Hartree Partners, another leading trading firm, for a 20 year term to supply 0.6 MTPA of LNG. Third, on July 11, 2023, Delfin and Centrica the parent company of British Gas, Scottish Gas, and Bord Gais entered a binding agreement for a SPA of 1.0 mtpa of LNG for a 15 year term. Fourth, Delfin expects to execute a binding agreement in late 2023 for 1.0 mtpa to Devon Energy Corporation. Lastly, Delfin states that the four LNG agreements will provide revenue of about 18 billion over the contracted terms.

Delfin explains that since it's July 2022 extension order, it has modular project consisting of 4 separate Floating LNG vessels (FLNGV) and only requires 2.0 to 2.5 mtpa of LNG for the long-term off-take contracts to support a final investment (FID) and begin construction of the first FLNGV. Moreover, Delfin affirms that FID for the first FLNGV is on schedule for the end of the year. Additionally, Delfin states it is in agreement with major infrastructure investors to provide the needed equity for its first two FLNGVs and has begun discussions with a consortium of banks to provide the project debt financing. Accordingly, Delfin requests an extension of time until September 28, 2027, to complete construction of the onshore facilities and place them into service.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Delfin's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of

<sup>2</sup>Delfin LNG LLC, Docket No. CP15–490–000 (July 8, 2019) (delegated order) (July 2019 Extension Order), Delfin LNG LLC, Docket No. CP15–490–000 (July 15, 2020) (delegated order) (July 2020 Extension Order), Delfin LNG LLC, Docket No. CP15–490–000 (June 30, 2021) (delegated order) (July 21 Extension Order) (July 22 Extension Order).

## **DEPARTMENT OF ENERGY**

### **Basic Energy Sciences Advisory Committee; Charter Renewal**

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of renewal.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, and the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee's (BESAC) charter will be renewed for a two-year period.

**FOR FURTHER INFORMATION CONTACT:** Dr. Linda Horton at (301) 903–3081 or email: [linda.horton@science.doe.gov](mailto:linda.horton@science.doe.gov).

**SUPPLEMENTARY INFORMATION:** The Committee will provide advice and recommendations to the Office of Science on the Basic Energy Sciences program.

Additionally, the renewal of the BESAC has been determined to be essential to conduct business of the Department of Energy (DOE) and to be in the public interest in connection with the performance of duties imposed upon the DOE, by law and agreement. The

## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

**[Docket No. CP15–490–004]**

#### **Delfin LNG LLC; Notice of Request for Extension of Time**

Take notice that on July 21, 2023, Delfin LNG LLC (Delfin) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time (2023 Extension of Time Request), until September 28, 2027, to construct and place into service the facilities that were authorized in the original certificate authorization issued on September 28, 2017 (Certificate Order).<sup>1</sup> The Certificate Order authorized certain “onshore facilities” that would be used exclusively to transport natural gas to Delfin's deepwater port “offshore facilities” (collectively, the Project) in federal waters offshore Louisiana. The onshore facilities would be used to meet the requirements of the customers of the offshore facilities. The Commission subsequently has granted four, successive one-year extensions of this in-service timing condition, with the

<sup>1</sup> *Delfin LNG LLC*, 160 FERC ¶ 61,130 (2017).

the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,<sup>3</sup> the Commission will aim to issue an order acting on the request within 45 days.<sup>4</sup> The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.<sup>5</sup> The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.<sup>6</sup> At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.<sup>7</sup> The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file

electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

*Comment Date:* 5:00 p.m. Eastern Time on, August 9, 2023.

Dated: July 25, 2023.

**Kimberly D. Bose,**  
*Secretary.*

[FR Doc. 2023-16237 Filed 7-31-23; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project Nos. 2375-123 & 8277-072]

#### Andro Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Non-capacity Amendment of License.
- b. *Project Nos:* 2375-123 & 8277-072.
- c. *Date Filed:* June 15, 2023.
- d. *Applicant:* Andro Hydro, LLC (licensee).
- e. *Name of Projects:* Riley-Jay-Livermore Hydroelectric Project and Otis Hydroelectric Project.
- f. *Location:* The projects are located on the Androscoggin River in Oxford, Franklin, and Androscoggin counties in Maine.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.
- h. *Applicant Contact:* David Fox, Senior Director, Regulatory Affairs; Andro Hydro, LLC; c/o Eagle Creek Renewable Energy, LLC; 7315 Wisconsin Avenue, Suite 1100W; Bethesda, MD 20814; (240) 482-2700; [david.fox@eaglecreekre.com](mailto:david.fox@eaglecreekre.com).
- i. *FERC Contact:* Chris Chaney, (202) 502-6778, [christopher.chaney@ferc.gov](mailto:christopher.chaney@ferc.gov).
- j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your

name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. The first page of any filing should include the docket numbers P-2375-123 & P-8277-072. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee proposes to change both points of interconnection for the projects' transmission lines from the Androscoggin Mill (Mill) to an existing switchyard adjacent to the Mill. The licensee states the change is necessary due to the Mill ceasing operations as of April 2023, which caused the projects to lose their interconnection with the utility grid. For the Riley-Jay-Livermore Project: the Riley Development's transmission line would shorten from one mile to approximately 2,200 feet long, the Jay Development's transmission line would lengthen from 6,000 feet long to 1.7 miles long, and the Livermore Development's transmission line would connect at the Jay Development's switchyard. For the Otis Project, the transmission line would lengthen from 3 miles long to 3.8 miles long. To interconnect at the new point, the licensee would also make changes to appurtenant transmission equipment.

The licensee states all work would be along existing disturbed areas, including dirt roads, driveways, and paved areas in rights of way, which are regularly disturbed due to maintenance of existing poles and lines, parking areas, and driveways. The application includes revised Exhibit G drawings to reflect the addition of approximately 3.9

<sup>3</sup> Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

<sup>4</sup> *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

<sup>5</sup> *Id.* at P 40.

<sup>6</sup> Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

<sup>7</sup> *Algonquin Gas Transmission, LLC*, 170 FERC ¶ 61,144, at P 40 (2020).

acres of land to the Riley-Jay-Livermore Project boundary, and approximately 5.3 acres of land to the Otis Project boundary due the change in interconnection point. The licensee is not proposing any changes to project operations, recreation facilities, or public access.

l. *Locations of the Application:* This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

p. 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](mailto:OPP@ferc.gov).

Dated: July 25, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023-16238 Filed 7-31-23; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP23-515-000]

#### Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on July 17, 2023 Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Route 56, Owensboro, Kentucky 42301., filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216(b) of the Commission's regulations under the Natural Gas Act (NGA), and Southern Star's blanket certificate issued in Docket No. CP82-479-000, for authorization to abandon two wells in Southern Star's South Welda Storage Field in Anderson County, Kansas and one well in Southern Star's Piqua Storage Field in Woodson County, Kansas. (South Welda and Piqua Well Abandonment Project). The Project will allow Southern Star to comply with its Storage Integrity Management Plan implementing the storage integrity regulations of the Pipeline and Hazardous Materials Administration. The estimated cost for the project is \$153,902, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page

([www.ferc.gov](http://www.ferc.gov)) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY (202) 502-8659.

Any questions concerning this request should be directed to Cindy Thompson, Director, Regulatory, Compliance, and Information Governance, Southern Star Central Gas Pipeline, Inc., 4700 State Route 56, Owensboro, Kentucky 42301, by phone at 270-852-4655, or by email to [cindy.thompson@southernstar.com](mailto:cindy.thompson@southernstar.com).

### Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on September 25, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

#### Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,<sup>1</sup> any person<sup>2</sup> or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days

<sup>1</sup> 18 CFR 157.205.

<sup>2</sup> Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,<sup>3</sup> and must be submitted by the protest deadline, which is September 25, 2023. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

#### Interventions

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure<sup>4</sup> and the regulations under the NGA<sup>5</sup> by the intervention deadline for the project, which is September 25, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

#### Comments

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before September 25, 2023. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

#### How To File Protests, Interventions, and Comments

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP23-515-000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or<sup>6</sup>

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP23-515-000.

*To file via USPS:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

*To file via any other method:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov).

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Cindy Thompson, Director, Regulatory, Compliance, and Information Governance, Southern Star Central Gas Pipeline, Inc., 4700 State Route 56, Owensboro, Kentucky 42301, or by email to [cindy.thompson@](mailto:cindy.thompson@)

<sup>6</sup> Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at [www.ferc.gov](http://www.ferc.gov) under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

[southernstar.com](http://southernstar.com). Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

#### Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at [www.ferc.gov](http://www.ferc.gov) using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

Dated: July 26, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023-16301 Filed 7-31-23; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

#### Filings Instituting Proceedings

*Docket Numbers:* RP23-910-000.  
*Applicants:* Sea Robin Pipeline Company, LLC.

*Description:* § 4(d) Rate Filing; Update to GT&C Section 6 to be effective 6/1/2023.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5094.

*Comment Date:* 5 p.m. ET 8/7/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be

<sup>3</sup> 18 CFR 157.205(e).

<sup>4</sup> 18 CFR 385.214.

<sup>5</sup> 18 CFR 157.10.

considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

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](mailto:OPP@ferc.gov).

Dated: July 25, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023-16233 Filed 7-31-23; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

*Docket Numbers:* EC23-113-000.

*Applicants:* GPS Cabazon Wind, LLC, Salka Cabazon HoldCo LLC.

*Description:* Joint Application for Authorization Under section 203 of the Federal Power Act of GPS Cabazon Wind, LLC, et al.

*Filed Date:* 7/24/23.

*Accession Number:* 20230724-5228.

*Comment Date:* 5 p.m. ET 8/14/23.

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG23-239-000.

*Applicants:* 7V Solar Ranch, LLC.

*Description:* 7V Solar Ranch, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 7/21/23.

*Accession Number:* 20230721-5177.

*Comment Date:* 5 p.m. ET 8/11/23.

*Docket Numbers:* EG23-240-000.

*Applicants:* Crystal Hill Solar, LLC.

*Description:* Crystal Hill Solar, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5108.

*Comment Date:* 5 p.m. ET 8/15/23.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER23-22-002.

*Applicants:* Puget Sound Energy, Inc.

*Description:* Compliance filing: PSE Compliance Filing to be effective 9/8/2023.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5112.

*Comment Date:* 5 p.m. ET 8/15/23.

*Docket Numbers:* ER23-841-002.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Compliance filing: Compliance Filing Revising Att V Section 8 in Response to June 27 Order to be effective 4/1/2023.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5025.

*Comment Date:* 5 p.m. ET 8/15/23.

*Docket Numbers:* ER23-2334-001.

*Applicants:* Southwest Power Pool, Inc.

*Description:* Tariff Amendment: 2198R34 Kansas Power Pool NITSA NOA to be effective 9/1/2023.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5084.

*Comment Date:* 5 p.m. ET 8/15/23.

*Docket Numbers:* ER23-2477-000.

*Applicants:* ISO New England Inc., Central Maine Power Company.

*Description:* § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii) CMP; Request for Approval of Updated Depreciation Rates to be effective 7/1/2023.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5067.

*Comment Date:* 5 p.m. ET 8/15/23.

*Docket Numbers:* ER23-2478-000.

*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2023-07-25 Attachment FF Removal of MVP Limited Review to be effective 9/24/2023.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5071.

*Comment Date:* 5 p.m. ET 8/15/23.

*Docket Numbers:* ER23-2479-000.

*Applicants:* American Electric Power Service Corporation, PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: American Electric Power Service

Corporation submits tariff filing per 35.13(a)(2)(iii) AEP submits update to Attachment 1 of ILDSA, SA No. 1336 (07/01/23) to be effective 7/1/2023.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5088.

*Comment Date:* 5 p.m. ET 8/15/23.

*Docket Numbers:* ER23-2480-000.

*Applicants:* Southern California Edison Company.

*Description:* § 205(d) Rate Filing: First Amendment GIA, Portal Ridge Solar A-Cancel eTariff Record (WDT1517/SA1048) to be effective 7/26/2023.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5095.

*Comment Date:* 5 p.m. ET 8/15/23.

*Docket Numbers:* ER23-2481-000.

*Applicants:* Crystal Hill Solar, LLC.

*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 9/24/2023.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5111.

*Comment Date:* 5 p.m. ET 8/15/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502-6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

Dated: July 25, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023–16236 Filed 7–31–23; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER23–2404–000]

#### **Bronco Plains Wind II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization**

This is a supplemental notice in the above-referenced proceeding of Bronco Plains Wind II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 15, 2023.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal**

**Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

Dated: July 26, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023–16294 Filed 7–31–23; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### **Combined Notice of Filings**

Take notice that the Commission has received the following Natural Gas and Oil Pipeline Rate and Refund Report filings:

#### **Filings Instituting Proceedings**

*Docket Numbers:* RP23–911–000.

*Applicants:* Transcontinental Gas Pipe Line Company, LLC.

*Description:* Compliance filing: Transcontinental Gas Pipeline Company, LLC submits tariff filing per 154.203: Rate Schedules GSS and LSS EGTS Penalty Flow Through Refund Report to be effective N/A.

*Filed Date:* 7/26/23.

*Accession Number:* 20230726–5012.

*Comment Date:* 5 p.m. ET 8/7/23.

*Docket Numbers:* RP23–912–000.

*Applicants:* MountainWest Overthrust Pipeline, LLC.

*Description:* Annual Fuel Gas Reimbursement Report of MountainWest Overthrust Pipeline, LLC.

*Filed Date:* 7/26/23.

*Accession Number:* 20230726–5047.

*Comment Date:* 5 p.m. ET 8/7/23.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

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](mailto:OPP@ferc.gov).

Dated: July 26, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023–16299 Filed 7–31–23; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. CP23–511–000]

#### **Golden Triangle Storage, LLC; Notice of Application and Establishing Intervention Deadline**

Take notice that on July 14, 2023, Golden Triangle Storage, LLC (GTS), 919 Milam Street, Suite 2425, Houston,

Texas 77002, filed an application under section 7(c) of the Natural Gas Act (NGA), and Part 157 of the Commission's regulations requesting authorization to increase the authorized maximum rate at which GTS may withdraw natural gas from its storage facility and may inject natural gas into its storage facility, (the Application). Specifically, GTS proposes its certificate be amended to provide that GTS may: (1) withdraw natural gas from storage at a rate of as much as 680 million cubic feet (MMcf) per day; and (2) inject natural gas into storage at a rate of as much as 765 MMcf per day. Further, GTS requests reaffirmation of its market-based rate authority and related authorizations and waivers, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page ([www.ferc.gov](http://www.ferc.gov)) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room. For assistance, contact the Federal Energy Regulatory Commission at [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY (202) 502-8659.

Any questions regarding the proposed project should be directed to James F. Bowe, Jr., King & Spalding LLP, 1700 Pennsylvania Ave, Suite 900, Washington, DC 20006, by phone at (202) 626-9601, or by email at [jbowe@kslaw.com](mailto:jbowe@kslaw.com).

Pursuant to Section 157.9 of the Commission's Rules of Practice and Procedure,<sup>1</sup> within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state

agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

### Public Participation

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on August 15, 2023. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502-6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

### Comments

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

### Protests

Pursuant to sections 157.10(a)(4)<sup>2</sup> and 385.211<sup>3</sup> of the Commission's regulations under the NGA, any person<sup>4</sup> may file a protest to the application. Protests must comply with the requirements specified in section 385.2001<sup>5</sup> of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before August 15, 2023.

There are three methods you can use to submit your comments or protests to

the Commission. In all instances, please reference the Project docket number CP23-511-000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at [www.ferc.gov](http://www.ferc.gov) under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Comment on a Filing"; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP23-511-000).

To file via USPS: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502-8258 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov).

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

### Interventions

Any person, which includes individuals, organizations, businesses,

<sup>1</sup> 18 CFR (Code of Federal Regulations) 157.9.

<sup>2</sup> 18 CFR 157.10(a)(4.)

<sup>3</sup> 18 CFR 385.211.

<sup>4</sup> Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

<sup>5</sup> 18 CFR 385.2001.

municipalities, and other entities,<sup>6</sup> has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure<sup>7</sup> and the regulations under the NGA<sup>8</sup> by the intervention deadline for the project, which is August 15, 2023. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as the your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at <https://www.ferc.gov/resources/guides/how-to-intervene.asp>.

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP23-511-000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website ([www.ferc.gov](http://www.ferc.gov)) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Intervention." The eFiling feature includes a document-less intervention option; for more information, visit <https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf>; or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP23-511-000.

*To file via USPS:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

*To file via any other courier:* Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or [FercOnlineSupport@ferc.gov](mailto:FercOnlineSupport@ferc.gov).

Protests and motions to intervene must be served on the applicant either by mail or email at: James F. Bowe, Jr., 1700 Pennsylvania Avenue, Suite 900, Washington, DC 20006 or at [jbowe@kslaw.com](mailto:jbowe@kslaw.com). Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed<sup>9</sup> motions to intervene are automatically granted by operation of Rule 214(c)(1).<sup>10</sup> Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.<sup>11</sup> A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

#### Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at [www.ferc.gov](http://www.ferc.gov) using the "eLibrary" link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to [www.ferc.gov/docs-filing/esubscription.asp](http://www.ferc.gov/docs-filing/esubscription.asp).

*Intervention Deadline:* 5:00 p.m. Eastern Time on August 15, 2023.

<sup>9</sup> The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

<sup>10</sup> 18 CFR 385.214(c)(1).

<sup>11</sup> 18 CFR 385.214(b)(3) and (d).

Dated: July 25, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023-16232 Filed 7-31-23; 8:45 am]

BILLING CODE 6717-01-P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 2287-053, Project No. 2288-057, Project No. 2300-052, Project No. 2311-067, Project No. 2326-054, Project No. 2327-047, Project No. 2422-058, Project No. 2423-031]

#### Central Rivers Power NH, LLC, Great Lakes Hydro America, LLC; Notice of Applications Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Applications:* New Major Licenses

b. *Project Nos.:* 2287-053, 2288-057, 2300-052, 2311-067, 2326-054, 2327-047, 2422-058, 2423-031

c. *Dates filed:* 2287-053, 2288-057: July 28, 2022. Supplemented on April 12 and July 14, 2023.

2300-052, 2311-067, 2326-054, 2327-047, 2422-058, 2423-031: August 1, 2022. Supplemented on April 12 and July 14, 2023.

d. *Applicants:* Central Rivers Power NH, LLC and Great Lakes Hydro America, LLC

e. *Names of Projects:* J. Brodie Smith, Gorham, Shelburne, Upper Gorham, Cross Power, Cascade, Sawmill, and Riverside Hydroelectric Projects

f. *Location:* On the Androscoggin River, in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contacts:* Mr. Curtis R. Mooney, Project Manager, Central Rivers Power NH, LLC, 59 Ayers Island Road, Bristol, New Hampshire 03222, (603) 744-0846, Mr. Luke Anderson, Great Lakes Hydro America, LLC, Brookfield Renewable, 150 Main St., Lewiston, Maine, 04240, (207) 755-5613, [luke.anderson@brookfieldrenewable.com](mailto:luke.anderson@brookfieldrenewable.com).

i. *FERC Contact:* Ryan Hansen at (202) 502-8074 or email at [ryan.hansen@ferc.gov](mailto:ryan.hansen@ferc.gov).

j. *Deadline for filing motions to intervene and protests, comments,*

<sup>6</sup> 18 CFR 385.102(d).

<sup>7</sup> 18 CFR 385.214.

<sup>8</sup> 18 CFR 157.10.

recommendations, preliminary terms and conditions, and preliminary prescriptions: 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

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](mailto:OPP@ferc.gov).

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, comments, recommendations, preliminary terms and conditions, and preliminary fishway prescriptions using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. All filings must clearly identify the project name and docket number on the first page: J. Brodie Smith (2287-053), Gorham (2288-057), Shelburne (2300-052), Upper Gorham (2311-067), Cross Power (2326-054), Cascade (2327-047), Sawmill (2422-058), and/or Riverside (2423-031) Hydroelectric Projects.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files commentor documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they

must also serve a copy of the document on that resource agency.

k. These applications have been accepted for filing and are now ready for environmental analysis.

The Council on Environmental Quality (CEQ) issued a final rule on April 20, 2022, revising the regulations under 40 CFR parts 1502, 1507, and 1508 that Federal agencies use to implement the National Environmental Policy Act (NEPA) (see National Environmental Policy Act Implementing Regulations Revisions, 87 FR 23,453-70). The final rule became effective on May 20, 2022. Commission staff intends to conduct its NEPA review in accordance with CEQ's new regulations.

#### 1. Project Descriptions:

*J. Brodie Smith:* The existing J. Brodie Smith Hydroelectric Project consists of: (1) a 500-foot-long masonry and concrete U-shaped gravity dam with a maximum height of 24 feet that includes: (a) a 170-foot-long spillway with a crest elevation of 1003 feet and topped with 6.7-foot-high hinged steel flashboards and two 17-foot-high, 25-foot-wide steel roller-type sluice gates with a sill elevation of 993 feet; (b) a 256-foot-long spillway with a crest elevation of 1006.7 feet and topped with 3-foot-high pin supported wooden flashboards; and (c) two waste gates located immediately to the west of an opening in the flashboards; (2) an impoundment with a surface area of 8 acres at a normal headwater elevation of 1009.7 feet; (3) an intake structure consisting of a 500-foot-long by 100-foot-wide power canal fitted with trashracks; (4) a 1,440-foot-long, 18-foot-diameter steel penstock; (5) a 1.15 million gallon steel surge tank; (6) a 65-foot-long, 53-foot-wide powerhouse containing one generating unit with a rated capacity of 15 MW; (7) a 400-foot-long tailrace; (8) a 1,500-foot-long, 115-kV transmission line conveying power from the powerhouse to the regional grid; and (9) appurtenant facilities. The project creates an approximately 0.5-mile-long bypassed reach of the Androscoggin River.

*Gorham:* The existing Gorham Hydroelectric Project consists of: (1) a 417-foot-long, 20-foot-high timber crib, L-shaped dam that includes: (a) a 90-foot-long spillway topped with a 12-inch-long, 12-inch-wide wooden flashboard with a crest elevation of 772.2 feet (b) a 252-foot-long spillway topped with 5.4-foot-high hinged wooden flashboards; (c) a 15-foot-wide sluice gate; and (d) a 75-foot-long reinforced concrete sluiceway topped with 5.33 foot-high hinged wooden flashboards; (2) an impoundment with a surface area of 32 acres; (3) a 415-foot-

long, 60-foot-wide, 20-foot-deep earthen power canal conveying flow from the impoundment to the powerhouse; (4) a 37.8-foot-long, 27.1-foot-wide powerhouse containing two vertical Francis turbines and two generators with a total installed capacity of 2.15 MW; (5) an 850-foot-long tailrace; (6) a 200-foot-long, 33-kV transmission line that transmits power from the powerhouse to a nearby substation; and (6) appurtenant facilities. The project creates an approximately 850-foot-long bypassed reach of the Androscoggin River.

*Shelburne:* The existing Shelburne Hydroelectric Project consists of: (1) a 51-foot-long concrete gravity dam that includes: (a) a 70-foot-long, 3-foot-wide concrete retaining wall along the northern shore of the Androscoggin River; (b) a 171-foot-long gated spillway section comprised of an 83-foot-long section with 9-foot-high hinged steel and wood flashboards; (c) an 88-foot-long section containing three 25-foot-long, 10-foot-high wastegates separated by 5-foot-wide concrete piers; and (d) a 27-foot-wide sluiceway; (2) an impoundment with a surface area of approximately 250 acres at the normal full pond elevation of 734.2 feet; (3) 259 feet of dikes along the south shore of the impoundment; (4) a 17-foot-long by 14-foot-wide gate controller building located on the island adjacent to the sluiceway housing; (5) a 15-foot-long by 112-foot-high intake conveying flow from the impoundment to the powerhouse fitted with a steel bar trashrack with 3-inch clear spacing; (6) a 110-foot-long, 48.6-foot-wide powerhouse integral with the dam containing three turbines and generators a total installed capacity of 3.72 MW; (7) a 130-foot-long tailrace; (8) a 5.5-mile-long, 22-kV transmission line conveying power from the powerhouse to the regional grid; and (9) appurtenant facilities.

*Upper Gorham:* The existing Upper Gorham Hydroelectric Project consists of: (1) a 775-foot-long timber crib and earthen dam that includes: (a) a western 133-foot-long, earthen dike with concrete core wall and a crest elevation of 820.0 feet USGS; (b) a 300-foot-long, 18-foot-high rock-filled timber crib spillway section with 5-foot-high flashboards; (c) a 122-foot-long headgate section that regulates flow into the power canal; (d) a 113-foot-long by 16-foot-wide gatehouse integral with dam; (e) an eastern 220-foot-long earthen dike with concrete core wall; and (f) a headgate section containing ten 7.5-foot-wide stoplog gates fitted with trashracks; (2) an impoundment that is approximately 45 acres at a normal full

pond elevation of 812.3 feet USGS; (3) a 3,350-foot-long, 220-foot-wide, 18-foot-deep excavated earthen power canal with riprap lining; (4) a 126-foot-long by 18-foot-wide gatehouse with 14 operable gates and trashracks with 3-inch clear spacing; (5) a 127-foot-long, 74-foot-wide, 26-foot-high powerhouse containing four horizontal shaft Francis turbines and four generators with a total installed capacity of 4.8 MW; (6) a 370-foot-long tailrace; (7) a 22-kV, 50-foot-long transmission line transmits power from the powerhouse to three 2500 kVA transformers sitting on a 46-foot long by 20-foot-wide transformer pad; and (8) appurtenant facilities. The project creates an approximately 1-mile-long bypassed reach of the Androscoggin River.

**Cross Power:** The existing Cross Power Hydroelectric Project consists of: (1) an approximately 467-foot-long concrete and rock fill dam that includes: (a) two concrete non-overflow sections, separated by an outcropping ledge; (b) a stoplog opening; (c) a 276-foot-long, 25-foot-high spillway with a crest elevation that ranges from 918.2 feet to 921.7 feet and topped with 42-inch-high flashboards; (d) a 19-foot-wide, 124-foot-long gatehouse equipped with a 21.6-foot-wide, 18.4-foot-high trashrack in each bay; and (e) a concrete retaining wall; (2) an impoundment with a surface area of 22 acres at a normal full pond elevation of 921.7 feet USGS; (3) an original 47-foot-wide, 146-foot-long concrete and brick powerhouse with a 47-foot-wide, 50-foot-long addition on the downstream shore side that contains five propeller turbines and five horizontal generators with a combined installed capacity of 3.22 MW; (4) a 50-foot-long tailrace; (5) a 20-foot-long transmission line transmitting power from the powerhouse to a 3,750 kVA transformer located adjacent to the eastern side of the powerhouse; and (6) appurtenant facilities.

**Cascade:** The existing Cascade Hydroelectric Project consists of: (1) a 583-foot-long concrete gravity dam with a maximum height of 53 feet consisting of: (a) a 313-foot-long spillway section with a crest elevation of 898.4 feet fitted with 3-foot-high flashboards for a total elevation of 901.4 feet, and (b) three non-overflow abutment sections located between the spillway and forebay gate structure on each side of the dam; (2) an impoundment with a surface area of 28 acres at a normal full pond elevation of 901.4 feet; (3) an approximately 168-foot long, 15-foot-wide forebay gate structure with fourteen 9-foot-wide, 11-foot-high wooden forebay gates; (4) a 300-foot-long and 240-foot-wide forebay with a normal water surface elevation of 901.2

feet; (5) a 4-foot-wide, 2-inch-long, 6-inch-high sluiceway; (6) a 135-foot-long, 43-foot-wide, 67-foot-high powerhouse with a 41-foot-long, 16-foot-wide addition containing three Francis turbines and three generators with a combined installed capacity of 7.92 MW; (7) a 40-foot-long tailrace; (8) a 430-foot-long, 22-kV transmission line transmitting power from the powerhouse to the regional grid; and (9) appurtenant facilities. The project creates an approximately 350-foot-long bypassed reach of the Androscoggin River.

**Sawmill:** The existing Sawmill Hydroelectric Project consists of: (1) an approximately 720-foot-long concrete dam with a maximum height of 15 feet that includes: (a) a 169-foot-long spillway section with a crest elevation of 1094.1 feet USGS; (b) a 134-foot-long, 22-foot-wide wastegate section, topped with five 18-foot-wide, 13-foot-high wooden gates; (c) a 99.4-foot-long, 2-foot-high spillway section with a crest elevation of 1094.2 feet; (d) a 145-foot-long, 11-foot-high spillway section topped with permanent 21-inch-high steel flashboards and a crest elevation of 1093.2 feet; (e) a 36-foot-long, 2-foot-high spillway section with crest elevation of 1094.2 feet; and (f) a 137-foot-long spillway section topped with hinged 7.5-foot-high flashboards and a crest elevation of 1087.0 feet; (2) an impoundment with a surface area of 72.5 acres at a normal full pond elevation of 1094.5 feet; (3) a headwork structure including four 9.5-foot-wide, 12-foot-high steel wheeled gates conveying flow from the impoundment to the powerhouse; (4) a 115-foot-long, 65-foot-wide, 27-foot-high powerhouse integral to the western side of the dam containing four turbines and generators with a total installed capacity of 3.2 MW; (5) a 120-foot-long tailrace at an elevation of 1077.3 feet conveying flow from the powerhouse back to the Androscoggin River; (6) a substation located approximately 25 feet west of the powerhouse; (7) an 1,800-foot-long, 22-kilovolt (kV) transmission line connecting the substation to the regional grid; and (8) appurtenant facilities. The project creates an approximately 550-foot-long bypassed reach of the Androscoggin River.

**Riverside:** The existing Riverside Hydroelectric Project consists of: (1) an approximately 846-foot-long, 21-foot-high rock-filled timber and concrete dam that includes: (a) a 660-foot-long spillway consisting of a 248-foot-long concrete gravity section with 30-inch-high flashboards and a crest elevation of 1076.8 feet; (b) a 235-foot-long concrete gravity section with a maximum height

of 20 feet and a crest elevation of 1076.6 feet; (c) a 177-foot-long timber crib section with 29-inch-high flashboards and a crest elevation of 1076.9 feet; and (d) an integral 91-foot-long, 33-foot-wide, 54-foot-high gatehouse; (2) an impoundment with a surface area of 7 acres at a normal full pond elevation of 1076.8 feet; (3) two 9-foot-high, 16-foot-wide headgates with trashracks with 2.5 inch spacing; (4) two 1,400-foot-long, 11-foot-diameter steel penstocks; (5) a 104-foot-long, 51-foot-wide, 80-foot-tall concrete and brick powerhouse containing two vertical Francis turbines and accompanying generators rated at 3.8 and 4.1 MW for a total installed capacity of 7.9 MW; (6) a 40-foot-long tailrace; (7) a 400-foot-long, 22-kV transmission line transmitting power from the powerhouse to the regional grid; and (8) appurtenant facilities. The project creates an approximately 2,350-foot-long bypassed reach of the Androscoggin River.

m. The application filings may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the application.

All filings must (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "PRELIMINARY TERMS AND CONDITIONS," or "PRELIMINARY FISHWAY PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person

protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from

the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b) and 385.2010.

o. Procedural Schedule: The application will be processed according to the following schedule. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Filing of Comments, Recommendations, Preliminary Terms and Conditions, and Preliminary Fishway Prescriptions .....	September 25, 2023.
Filing of Reply Comments .....	November 8, 2023.

p. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of this notice.

q. The applicants must file no later than 60 days following the date of issuance of this notice: (1) a copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification. Please note that the certification request must comply with 40 CFR 121.5(b), including documentation that a pre-filing meeting request was submitted to the certifying authority at least 30 days prior to submitting the certification request. Please also note that the certification request must be sent to the certifying authority and to the Commission concurrently.

Dated: July 26, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023-16303 Filed 7-31-23; 8:45 am]

BILLING CODE 6717-01-P

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Combined Notice of Filings # 1**

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG23-241-000.

*Applicants:* EnerSmart Los Coches BESS LLC.

*Description:* EnerSmart Los Coches BESS LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5192.

*Comment Date:* 5 p.m. ET 8/15/23.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

*Docket Numbers:* EL23-85-000.

*Applicants:* National Grid Renewables Development, LLC, et al. v. Midcontinent Independent System Operator, Inc.

*Description:* Complaint of National Grid Renewables Development, LLC, et al. v. Midcontinent Independent System Operator, Inc.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5179.

*Comment Date:* 5 p.m. ET 8/14/23.

*Docket Numbers:* EL23-86-000.

*Applicants:* NineDot Energy, LLC.  
*Description:* Petition for Declaratory Order of The Carlyle Group Inc. and NineDot Energy, LLC.

*Filed Date:* 7/25/23.

*Accession Number:* 20230725-5191.

*Comment Date:* 5 p.m. ET 8/24/23.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER23-1816-001.

*Applicants:* New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

*Description:* Tariff Amendment: New York State Electric & Gas Corporation submits tariff filing per 35.17(b): NYSEG Deficiency Response re: Rate Schedule 19 Formula Rate Filing to be effective 7/3/2023.

*Filed Date:* 7/26/23.

*Accession Number:* 20230726-5079.

*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23-1817-001.

*Applicants:* New York Independent System Operator, Inc., New York State Electric & Gas Corporation.

*Description:* Tariff Amendment: Rochester Gas and Electric Corporation submits tariff filing per 35.17(b): RG&E Deficiency Response re: Rate Schedule 19 Formula Rate Filing to be effective 7/3/2023.

*Filed Date:* 7/26/23.

*Accession Number:* 20230726-5077.

*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23-2113-000.

*Applicants:* ETEM Remediation Two LLC.

*Description:* Supplement to June 9, 2023 ETEM Remediation Two LLC tariff filing.

*Filed Date:* 7/24/23.

*Accession Number:* 20230724-5230.

*Comment Date:* 5 p.m. ET 7/28/23.

*Docket Numbers:* ER23-2409-000.

*Applicants:* The Potomac Edison Company.

*Description:* The Potomac Edison Company submits notice of cancellation of its reactive power tariff from The Potomac Edison Company Rate Schedule FERC No. 2.

*Filed Date:* 7/14/23.

*Accession Number:* 20230714-5212.

*Comment Date:* 5 p.m. ET 8/4/23.

*Docket Numbers:* ER23-2482-000.

*Applicants:* Midcontinent

Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2023-07-26\_SA 3475 ATXI-City of Roses Wind Energy 2nd Rev GIA (J848) to be effective 7/20/2023.

*Filed Date:* 7/26/23.

*Accession Number:* 20230726-5024.

*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23-2483-000.

*Applicants:* ISO New England Inc., Versant Power.

*Description:* § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): Versant Power—Changes to Versant Power Depreciation Rates to be effective 1/1/2025.

*Filed Date:* 7/26/23.

*Accession Number:* 20230726-5033.

*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23-2484-000.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Revisions on Market Participation of Hybrid Resources to be effective 11/1/2023.

*Filed Date:* 7/26/23.

*Accession Number:* 20230726-5042.

*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23-2485-000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 3552R3 TEA and MEAN Meter Agent Agreement to be effective 7/1/2023.

*Filed Date:* 7/26/23.  
*Accession Number:* 20230726–5043.  
*Comment Date:* 5 p.m. ET 8/16/23.  
*Docket Numbers:* ER23–2486–000.  
*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Amendment to ISA, SA No. 4963; Queue No. V4–027 (amend) to be effective 9/25/2023.

*Filed Date:* 7/26/23.  
*Accession Number:* 20230726–5048.  
*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23–2487–000.  
*Applicants:* Midcontinent Independent System Operator, Inc., Ameren Services Company.

*Description:* § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 2023–07–26\_Ameren Companies Request for Transmission Rate Incentives to be effective 9/25/2023.

*Filed Date:* 7/26/23.  
*Accession Number:* 20230726–5063.  
*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23–2488–000.  
*Applicants:* Luz Solar Partners Ltd., VIII.

*Description:* Tariff Amendment: Notice of Cancellation to be effective 7/27/2023.

*Filed Date:* 7/26/23.  
*Accession Number:* 20230726–5069.  
*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23–2489–000.  
*Applicants:* Alabama Power Company, Georgia Power Company, Mississippi Power Company.

*Description:* § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii): Cooperative Energy NITSA Amendment Filing (Remove Maxie DP) to be effective 6/26/2023.

*Filed Date:* 7/26/23.  
*Accession Number:* 20230726–5075.  
*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23–2490–000.  
*Applicants:* Midcontinent Independent System Operator, Inc.

*Description:* § 205(d) Rate Filing: 2023–07–26 SA 4137 Duke-Ratts 2-Ratts 1-Elliott MPFCA (J1027 J1028 J1074 J1189) to be effective 9/25/2023.

*Filed Date:* 7/26/23.  
*Accession Number:* 20230726–5089.  
*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23–2491–000.  
*Applicants:* ISO New England Inc., The Narragansett Electric Company.

*Description:* § 205(d) Rate Filing: ISO New England Inc. submits tariff filing per 35.13(a)(2)(iii): ISO-NE/The Narragansett Electric Company; 1st Rev LGIA-ISO-NE/NEP-21–01 to be effective 1/1/2023.

*Filed Date:* 7/26/23.  
*Accession Number:* 20230726–5095.  
*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23–2492–000.  
*Applicants:* Gunvor USA LLC.  
*Description:* Baseline eTariff Filing:

Baseline new to be effective 9/24/2023.  
*Filed Date:* 7/26/23.

*Accession Number:* 20230726–5103.  
*Comment Date:* 5 p.m. ET 8/16/23.

*Docket Numbers:* ER23–2493–000.  
*Applicants:* PJM Interconnection, L.L.C.

*Description:* § 205(d) Rate Filing: Original NSA, Service Agreement No. 7032; Queue No. AC2–060/AD1–073 to be effective 9/25/2023.

*Filed Date:* 7/26/23.  
*Accession Number:* 20230726–5104.  
*Comment Date:* 5 p.m. ET 8/16/23.

Take notice that the Commission received the following electric securities filings:

*Docket Numbers:* ES23–56–000; ES23–57–000; ES23–58–000; ES23–59–000; ES23–60–000; ES23–61–000.

*Applicants:* AEP Generating Company, AEP Texas Inc., Kentucky Power Company, Kingsport Power Company, Public Service Company of Oklahoma, Wheeling Power Company.

*Description:* Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of AEP Generating Company, et al.

*Filed Date:* 7/25/23.  
*Accession Number:* 20230725–5213.  
*Comment Date:* 5 p.m. ET 8/15/23.

*Docket Numbers:* ES23–62–000; ES23–63–000; ES23–64–000.

*Applicants:* Appalachian Power Company, Indiana Michigan Power Company, Southwestern Electric Power Company

*Description:* Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Appalachian Power Company, et al.

*Filed Date:* 7/25/23.  
*Accession Number:* 20230725–5214.  
*Comment Date:* 5 p.m. ET 8/15/23.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

Dated: July 26, 2023.

**Kimberly D. Bose,**  
 Secretary.

[FR Doc. 2023–16302 Filed 7–31–23; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER23–2481–000]

#### Crystal Hill Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Crystal Hill Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 15, 2023.

The Commission encourages electronic submission of protests and

interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TYY, (202) 502-8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or [OPP@ferc.gov](mailto:OPP@ferc.gov).

Dated: July 26, 2023.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2023-16300 Filed 7-31-23; 8:45 am]

BILLING CODE 6717-01-P

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2023-0095; FRL-11249-01-OMS]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Clean Water Act Water Quality Certification (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Clean Water Act Water Quality Certification (EPA ICR Number 2603.07, OMB Control Number 2040-0295) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through July 31, 2023. Public comments were previously requested via the **Federal Register** on April 5, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

**DATES:** Comments may be submitted on or before August 31, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OW-2023-0095, to EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://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:** Liana Prudencio, Oceans, Wetlands, and Communities Division, Office of Wetlands, Oceans, and Watersheds, (Mail Code 4504T), Environmental

Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-3351; email address: [cwa401@epa.gov](mailto:cwa401@epa.gov).

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through July 31, 2023. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on April 5, 2023 during a 60-day comment period (88 FR 20165). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

**Abstract:** This ICR describes the cost and burden associated with 40 CFR part 121, the regulations that implement Clean Water Act (CWA) section 401. Under section 401, a federal agency may not issue a permit or license that may result in any discharge into waters of the United States unless the certifying authority where the discharge would originate issues a section 401 water quality certification verifying that the discharge will comply with certain water quality requirements or waives the certification requirement. Certifying authorities are states, tribes with treatment as a state (TAS) authorization, and in limited circumstances, EPA. CWA section 401 requires project proponents to submit project-specific information to certifying authorities. Certifying authorities may act on project-specific information by either granting, granting with conditions, denying, or waiving section 401 certification. To demonstrate it has acted on the certification request, the certifying authority must provide a decision document to the relevant federal licensing or permitting agency. If the certifying authority fails or refuses to act on a certification request within a reasonable period of time (which shall not exceed one year) after receipt, the requirement to obtain certification is waived. EPA is also responsible for coordinating input from certain neighboring or downstream states and tribes affected by a discharge from a

federally licensed or permitted project under section 401(a)(2). Information collected directly collected by EPA under section 401 in support of the section 402 permit program is already captured under an existing ICR (OMB Control Number 2040–0004, EPA ICR Number 0229.22) and therefore is not included in this analysis.

*Form numbers:* None.

*Respondents/affected entities:* Project proponents, State, and tribal reviewers (certifying authorities).

*Respondent's obligation to respond:* Required to obtain 401 certification (33 U.S.C. 1341(a)(1)).

*Estimated number of respondents:* 154,000 responses from 77,140 respondents annually (total).

*Frequency of response:* One per federal application.

*Total estimated burden:* 860,500 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* \$48,000,000 (per year), includes \$0 annualized capital or operation and maintenance costs.

*Changes in the estimates:* There is a decrease of 70,500 annual hours in the total estimated respondent burden, a decrease of 19,979 respondents, and a decrease of 40,000 annual responses compared with the ICR currently approved by OMB. This decrease is due to refinements in how the estimates are calculated in addition to a decrease in the average number of annual licenses and permits issued that are used in the low estimate and a decrease in the high estimate of annual certification requests from incorporating values provided in pre-proposal input letters.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2023–16216 Filed 7–31–23; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2002–0091; FRL–11252–01–OMS]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Ambient Air Quality Surveillance (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), “Ambient Air Quality Surveillance

(EPA ICR Number 0940.30, OMB Control Number 2060–0084) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through July 31, 2023. Public comments were previously requested via the **Federal Register** on February 17, 2023, during a 60-day comment period. This notice allows for an additional 30 days for public comments. This notice allows for an additional 30 days for public comments.

**DATES:** Comments may be submitted on or before August 31, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2002–0091, to EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), by email to [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://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:**

Kevin Cavender, Air Quality Assessment Division, Office of Air Quality Planning and Standards, C304–06, Environmental Protection Agency, Research Triangle Park, NC 27711; telephone number: 919–541–2364; email address: [cavender.kevin@epa.gov](mailto:cavender.kevin@epa.gov).

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through July 31, 2023. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on February 17, 2023, during a 60-day comment period (88 FR 10315). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the

information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA’s public docket, visit <https://www.epa.gov/dockets>.

**Abstract:** This ICR includes ambient air monitoring data and other supporting measurements reporting and recordkeeping activities associated with the 40 CFR part 58 Ambient Air Quality Surveillance rule. These data and information are collected by various state and local air quality management agencies and reported to the EPA’s Office of Air Quality Planning and Standards within the Office of Air and Radiation.

The data collected through this information collection consist of ambient air concentration measurements for the seven air pollutants with national ambient air quality standards (*i.e.*, ozone, sulfur dioxide, nitrogen dioxide, lead, carbon monoxide, PM<sub>2.5</sub> and PM<sub>10</sub>), ozone precursors, air toxics, meteorological variables at a select number of sites, and other supporting measurements. Accompanying the pollutant concentration data are quality assurance/quality control data and air monitoring network design information.

The EPA and others (*e.g.*, state and local air quality management agencies, tribal entities, environmental groups, academic institutions, industrial groups) use the ambient air quality data for many purposes including informing the public and other interested parties of an area’s air quality, judging an area’s air quality in comparison with the established health or welfare standards, evaluating an air quality management agency’s progress in achieving or maintaining air pollutant levels below the national and local standards, developing and revising State Implementation Plans (SIPs), evaluating air pollutant control strategies, developing or revising national control policies, providing data for air quality model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, air quality trends assessment, and air pollution research.

The state and local agencies and tribal entities with responsibility for reporting ambient air quality data and information as requested in this ICR submit these data electronically to the EPA’s Air Quality System (AQS) database. Quality assurance/quality control records and

monitoring network documentation are also maintained by each state and local agency, in AQS electronic format where possible.

Although the state and local air pollution control agencies and tribal entities are responsible for the operation of the air monitoring networks, the EPA funds a portion of the total costs through federal grants. The costs shown in this renewal are the total costs incurred for the monitoring program regardless of the source of the funding. This practice of using the total cost is consistent with prior ICR submittals and renewals.

*Form numbers:* None.

*Respondents/affected entities:* State, Local, and Tribal Air Pollution Control Agencies.

*Respondent's obligation to respond:* Mandatory (40 CFR part 58).

*Estimated number of respondents:* 168 (total).

*Frequency of response:* Quarterly.

*Total estimated burden:* 1,449,968 hours (per year). Burden is defined at 5 CFR 1320.03(b)

*Total estimated cost:* \$181,278,444 (per year), includes \$70,147,486 annualized capital or operation & maintenance costs.

*Changes in the estimates:* This is a decrease of 321,694 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This decrease is due to the consolidation of monitors into fewer sites, consolidation of PAMS network burden estimates to avoid double counting, termination of unnecessary monitors, and more efficient automated procedures (e.g., moving from manual samplers to automated continuous samplers) for measuring and reporting data. The decrease is offset somewhat by the additional burden and cost estimates included for asset management and sensors.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2023-16215 Filed 7-31-23; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-R05-SFUND-2023-0334; FRL-11151-01-R8]

### Administrative Settlement Agreement for Response Action by Bona Fide Prospective Purchaser, Central City/Clear Creek Superfund Site, Four Points Funding, LLC, Clear Creek County, Colorado

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed agreement; request for public comment.

**SUMMARY:** Notice is hereby given by the U.S. Environmental Protection Agency (EPA), Region 8, of a prospective administrative settlement agreement for response action between the United States, the State of Colorado, and Four Points Funding, LLC, at the Central City/Clear Creek Superfund Site in Clear Creek County, Colorado (Agreement).

**DATES:** Comments must be submitted on or before August 31, 2023.

**ADDRESSES:** The proposed agreement and additional background information relating to the agreement will be available upon request and will be posted at <https://www.epa.gov/superfund/centralcity>. Comments and requests for an electronic copy of the proposed agreement should be addressed to Crystal Kotowski-Edmunds, Enforcement Specialist, Superfund and Emergency Management Division, Environmental Protection Agency—Region 8, Mail Code 8SEM-PAC, 1595 Wynkoop Street, Denver, Colorado 80202, or telephone number: (303) 312-6124, or email address: [edmunds.crystal@epa.gov](mailto:edmunds.crystal@epa.gov) and should reference the Central City/Clear Creek Superfund Site.

You may also send comments, identified by Docket ID No. EPA-R08-SFUND-2022-0281 to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Amelia Piggott, Assistant Regional Counsel, Office of Regional Counsel, Environmental Protection Agency, Region 8, Mail Code 8 ORC-LEC, 1595 Wynkoop, Denver, Colorado 80202, telephone number: (303) 312-6410, email address: [piggott.amelia@epa.gov](mailto:piggott.amelia@epa.gov).

**SUPPLEMENTARY INFORMATION:** The agreement provides that Purchaser shall characterize contamination at its Property and, as necessary, address the contamination.

In exchange, the United States and the State of Colorado will provide a covenant not to sue Four Points

Funding, LLC for Existing Contamination, work (including subsurface and surface sampling) conducted by Four Points Funding, LLC, and certain payments as defined in the agreement (oversight costs, defined in the agreement as “response costs.”)

For thirty (30) days following the date of publication of this document, the Agency will receive written comments relating to the agreement. The Agency will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations that indicate that the agreement is inappropriate, improper, or inadequate.

**Ben Bielenberg,**

*Acting Division Director, Superfund and Emergency Management Division, Region 8.*

[FR Doc. 2023-16219 Filed 7-31-23; 8:45 am]

**BILLING CODE 6560-50-P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPA-2007-0584; FRL-11248-01-OMS]

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Spill Prevention, Control, and Countermeasure Plans (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), “Spill Prevention, Control, and Countermeasure Plans (Renewal)” (EPA ICR Number 0328.19, OMB Control Number 2050-0021) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through July 31, 2023. Public comments were previously requested via the **Federal Register** on November 4, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

**DATES:** Additional comments may be submitted on or before August 31, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OPA-2007-0584, to EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW,

Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://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:**

Wendy Hoffman, Office of Emergency Management, Mail Code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-8794; email address: [hoffman.wendy@epa.gov](mailto:hoffman.wendy@epa.gov).

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through July 31, 2023. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on November 4, 2022 during a 60-day comment period (87 FR 66695). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

**Abstract:** The authority for EPA's oil pollution prevention requirements is derived from section 311(j)(1)(C) of the Clean Water Act, as amended by the Oil Pollution Act of 1990. EPA's regulation is codified at 40 CFR part 112. Although the owner or operator is the primary data user, EPA may also require the owner or operator to submit data to the Agency in certain situations to ensure facilities comply with the SPCC regulation and to help allocate response resources. State and local governments may use the data, which are not

generally available elsewhere and can assist local emergency preparedness planning efforts.

*Form numbers:* None.

*Respondents/affected entities:*

Owners or operators of facilities required to have Spill Prevention, Control, and Countermeasure (SPCC) plans under the Oil Pollution Prevention regulation (40 CFR part 112) and which, because of their location, could reasonably be expected to cause substantial harm to the environment.

*Respondent's obligation to respond:* Mandatory, pursuant to 40 CFR 112.3(e).

*Estimated number of respondents:* 549,362 (total).

*Frequency of response:* Facilities must prepare and implement an SPCC Plan before beginning operations and review, evaluate, and update the SPCC Plan every five years. In the event of certain discharges of oil into navigable waters, a facility owner or operator must submit certain information to the Regional Administrator within 60 days.

*Total estimated burden:* 6,625,194 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* \$893,604,697 (per year), which includes \$208,724,033 annualized capital or operation & maintenance (O&M) costs.

*Changes in the estimates:* There is an increase of 315,671 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to changes in the universe of regulated facilities after accounting for changes in the numbers and types of existing and newly regulated facilities in the new ICR period, as well as small adjustments in unit burden estimates for activities associated with SPCC Plan amendments. While the universe of regulated facilities decreases by less than one percent during the new ICR period; (549,362 vs. 549,785 respondents), a slightly higher proportion of this universe consists of regulated facilities with a relatively greater unit burden.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2023-16213 Filed 7-31-23; 8:45 am]

**BILLING CODE 6560-50-P**

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OAR-2020-0015; FRL-11251-01-OMS]

**Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; NSPS for the Graphic Arts Industry (Renewal)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for the Graphic Arts Industry (EPA ICR Number 0657.14, OMB Control Number 2060-0105) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through July 31, 2023. Public comments were previously requested via the **Federal Register** on July 22, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

**DATES:** Comments may be submitted on or before August 31, 2023.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA-HQ-OAR-2020-0015, to EPA online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), by email to [docket@epa.gov](mailto:docket@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Muntasir Ali, Sector Policies and Program Division (D243-05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina

27711; telephone number: (919) 541-0833; email address: [ali.muntasir@epa.gov](mailto:ali.muntasir@epa.gov).

**SUPPLEMENTARY INFORMATION:** This is a proposed extension of the ICR, which is currently approved through July 31, 2023. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public comments were previously requested via the **Federal Register** on July 22, 2022, during a 60-day comment period (87 FR 43843). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov), or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

**Abstract:** The New Source Performance Standards (NSPS) for the Graphic Arts Industry (40 CFR part 60, subpart QQ) were proposed on October 28, 1980; promulgated on November 8, 1982; and most recently amended on April 9, 2004. These regulations apply to each publication rotogravure printing press (not including proof presses) commencing either construction, or modification, or reconstruction after the date of proposal. New facilities include those that commenced either construction, or modification, or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart QQ.

**Form numbers:** None.

**Respondents/affected entities:** Owners or operators of graphic arts facilities.

**Respondent's obligation to respond:** Mandatory (40 CFR part 60, subpart QQ).

**Estimated number of respondents:** 6 (total).

**Frequency of response:** Initially, occasionally, and semiannually.

**Total estimated burden:** 470 hours (per year). Burden is defined at 5 CFR 1320.3(b).

**Total estimated cost:** \$56,200 (per year), which includes \$0 in annualized capital/startup and/or operation & maintenance costs.

**Changes in the estimates:** There is a decrease of 1,590 hours in the total estimated respondent burden compared

with the ICR currently approved by OMB. This decrease in burden is an adjustment based on a review of sources listed on the Enforcement Compliance History Online (ECHO) database and consultations with industry indicating that the estimated number of sources in this renewal should be lowered. The ECHO sources listed included 6 active respondents subject to subpart QQ. Additionally, consultations with Gravure Association of Americas identified two companies with operations using the publication rotogravure printing process, both of which owned facilities included in the ECHO list. Based on consultations, EPA's ECHO database, and comparisons with previous ICRs, the industry is currently declining. As a result, it is assumed no new respondents will be added over the next three years. Labor costs have also been adjusted to correct an error in the previous ICR's calculations resulting from managerial and technical labor rates being transposed and applied incorrectly to each other's labor hours.

**Courtney Kerwin,**

*Director, Regulatory Support Division.*

[FR Doc. 2023-16214 Filed 7-31-23; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-XXXX; FR ID 159828]

### 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 August 31, 2023.

**ADDRESSES:** Comments should be sent to [www.reginfo.gov/public/do/PRAMain](http://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](http://www.reginfo.gov) per the above instructions for it to be considered. In addition to submitting in [www.reginfo.gov](http://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](mailto:PRA@fcc.gov) and to [Nicole.Ongele@fcc.gov](mailto: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:* Incarcerated People’s Communications Services (IPCS), 2023 Mandatory Data Collection, WC Docket Nos. 23–62, 12–375, DA 23–638.

*Form Number(s):* FCC Form 2303(a) and FCC Form 2303(b).

*Type of Review:* New collection.

*Respondents:* Business or other for-profit.

*Number of Respondents and Responses:* 30 respondents; 30 responses.

*Estimated Time per Response:* 265 hours.

*Frequency of Response:* One-time reporting requirement.

*Obligation to Respond:* Required to obtain or retain benefits. Statutory authority for this collection of information is contained in sections 1, 2, 4(i)–4(j), 5(c), 201(b), 218, 220, 225, 255, 276, 403, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–(j), 155(c), 201(b), 218, 220, 225, 255, 276, 403, and 716.

*Total Annual Burden:* 7,950 hours.

*Total Annual Cost:* No cost.

*Needs and Uses:* On March 17, 2023, the Commission released the *Incarcerated People’s Communications Services; Implementation of the Martha Wright-Reed Act; Rates for Interstate Inmate Calling Services*, WC Docket Nos. 23–62, 12–375, Notice of Proposed Rulemaking and Order, FCC 23–19, 88 FR 20804 (Notice of Proposed Rule Making) and 88 FR 19001 (Order), in which it began the process of implementing the Martha Wright-Reed Just and Reasonable Communications Act of 2022, Public Law 117–338, 136 Stat. 6156 (the Act). The Act expands the Commission’s statutory authority to encompass “any audio or video communications service used by inmates . . . regardless of technology used.” The Act also amends section 2(b) of the Communications Act of 1934, as amended, to make clear that the Commission’s jurisdiction extends to intrastate as well as interstate and international communications services used by incarcerated people.

The Act directs the Commission to “promulgate any regulations necessary

to implement” the statutory provisions, including its mandate that the Commission establish a “compensation plan” ensuring that all rates and charges for IPCS “are just and reasonable,” not earlier than 18 months and not later than 24 months after its January 5, 2023 enactment. The Act also requires the Commission to consider, as part of its implementation, the costs of “necessary” safety and security measures, as well as “differences in costs” based on facility size, or “other characteristics.” It allows the Commission to “use industry-wide average costs of telephone service and advanced communications services and the average costs of service of a communications service provider” in determining just and reasonable rates.

To ensure that it has the data needed to meet its substantive and procedural responsibilities under the Act, the Commission delegated to the Wireline Competition Bureau (WCB) and the Office of Economics and Analytics (OEA) (collectively, WCB and OEA) authority to “update and restructure” the Commission’s latest mandatory data collection, the Third Mandatory Data Collection (OMB Control No. 3060–1300, Inmate Calling Services (ICS) 2022 One-Time Mandatory Data Collection), “as appropriate in light of the requirements of the new statute.” This delegation requires WCB and OEA to collect “data on all incarcerated people’s communications services from all providers of those services now subject to” the Commission’s expanded ratemaking authority, including, but not limited to, requesting “more recent data for additional years not covered by the most recent data collection.”

Pursuant to their delegated authority, WCB and OEA drafted proposed instructions, a template, and a certification form for the proposed 2023 Mandatory Data Collection. See 2023 IPCS Mandatory Data Collection—Proposed Instructions, available for download at: <https://www.fcc.gov/document/2023-ipcs-mandatory-data-collection-proposed-instructions>. Under WCB and OEA’s proposals, IPCS providers would be required to submit the required data using a reporting template that would be filed through the Commission’s electronic comment filing system (ECFS). The proposed template included a Word document (Appendix A to the instructions) for responses requiring narrative information and Excel spreadsheets (Appendix B to the instructions) for responses that require specific numbers or information. IPCS providers would also be required to submit an audited financial statement or report for 2022, and a signed

certification of truthfulness, accuracy, and completeness. The proposed instructions, template, and certification form would simplify compliance with, and reduce the burden of, this data collection.

On April 28, 2023, WCB and OEA released the 2023 IPCS Public Notice seeking comment on all aspects of the proposed instructions, template, and certification form. See 2023 IPCS Mandatory Data Collection Public Notice, WC Docket Nos. 23–62, 12–375, DA 23–355 (WCB/OEA Apr. 28, 2023), 88 FR 27850 (May 3, 2023). After considering the comments and reply comments filed in response to the Public Notice and the 60-Day Notice, WCB and OEA released an Order on July 26, 2023, adopting the Mandatory Data Collection, and issuing the related instructions, template, and certification form. See 2023 IPCS Mandatory Data Collection Order, WC Docket Nos. 23–62, 12–375, DA 23–638 (WCB/OEA July 26, 2023), available at <https://www.fcc.gov/document/2023-ipcs-mandatory-data-collection-order>. This Order largely implements the proposals set forth in the Public Notice, with refinements and reevaluations responsive to record comments. Under the Order, IPCS providers will be required to submit data using a reporting template to be filed through ECFS in accordance with the instructions adopted by WCB and OEA, available for download at: <https://www.fcc.gov/document/2023-ipcs-mdc-instructions>. The template consists of a Word document (Appendix A to the instructions) for responses requiring narrative information, and Excel spreadsheets (Appendix B to instructions) for responses that require specific numbers and information. IPCS providers would also be required to submit an audited financial statement or report for 2022, and a signed certification of truthfulness, accuracy, and completeness. These documents will be submitted for approval by the Office of Management and Budget as FCC Form 2303(a) and FCC Form 2303(b).

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 2023–16309 Filed 7–31–23; 8:45 am]

**BILLING CODE 6712–01–P**

**FEDERAL RESERVE SYSTEM****Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities**

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than August 30, 2023.

*A. Federal Reserve Bank of San Francisco:* (Joseph Cuenco, Assistant Vice President, Formations, Transactions & Enforcement) 101 Market Street, San Francisco, California 94105-1579. Comments can also be sent electronically to: [sf.fisc.comments.applications@sf.frb.org](mailto:sf.fisc.comments.applications@sf.frb.org).

1. *VB&T Holding Company, LLC, Scottsdale, Arizona;* through its wholly owned subsidiary, VB&T Wealth Management LLC dba Zenith Wealth Advisors, Scottsdale, Arizona, to engage in wealth management services, pursuant to section 225.28(b)(5) and (b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Erin M. Cayce,

*Assistant Secretary of the Board.*

[FR Doc. 2023-16234 Filed 7-31-23; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention**

[30Day-23-1072]

**Agency Forms Undergoing Paperwork Reduction Act Review**

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled "STD Surveillance Network (SSuN)" to the Office of Management and Budget (OMB) for review and approval. CDC previously published a "Proposed Data Collection Submitted for Public Comment and Recommendations" notice on March 10, 2023 to obtain comments from the public and affected agencies. CDC received two comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Enhance the quality, utility, and clarity of the information to be collected;

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy

of the information collection plan and instruments, call (404) 639-7570. 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](http://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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395-5806. Provide written comments within 30 days of notice publication.

**Proposed Project**

The STD Surveillance Network (SSuN), (OMB Control No. 0920-1072, Exp. 10/31/2023)—Revision—National Center for HIV/, Viral Hepatitis, STD, TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

*Background and Brief Description*

The National Center for HIV/AIDS, Viral Hepatitis, STD and TB Prevention (NCHSTP) is requesting a Revision of the Information Collection Request (ICR) titled, The STD Surveillance Network (SSuN). Revisions to this submission include addition of mpox-related data elements for monitoring mpox risk, vaccination, diagnoses, and laboratory testing as part of ongoing surveillance for this emergent public health issue. Additionally, this Revision ICR incorporates future expansion of SSuN to additional STD clinical facilities, addition of several new data elements to sentinel surveillance activities in STD clinical facilities related to Pre-Exposure Prophylaxis for HIV (PrEP), and enhanced investigations of a random sample syphilis cases reported to participating health departments. Multiple data elements associated with enhanced gonorrhea case investigations and provider reporting forms are also being retired. The estimate of annualized burden hours for this revised data collection increases from 5,863 hours to 7,487 hours.

The purpose of this project is to enhance national capacity for STD surveillance and to better meet CDC's disease surveillance mandate by: (1) addressing gaps in epidemiologically-relevant information by providing more complete behavioral and demographic data on reported cases of notifiable STDs to enhance the ability of public health authorities to interpret trends in case incidence, assess inequalities in the burden of disease by population

characteristics and to monitor STD treatment and selected adverse health outcomes of STDs; (2) monitoring STD and HIV co-infection, screening, uptake of STD and HIV prevention interventions and health care access trends among patients seeking care for, and those diagnosed with, STDs in specialty clinical settings; and (3) providing a robust sentinel monitoring system for newly emergent and/or re-emergent health threats such as mpox.

Routine STD case surveillance activities are ongoing in all US jurisdictions. Cases diagnosed in U.S. jurisdictions are voluntarily reported to CDC through the National Notifiable Diseases Surveillance System (NNDSS) and case data are collaboratively defined in cooperation with the Council of State and Territorial Epidemiologists (CSTE). However, case data received by CDC through NNDSS are increasingly missing required patient demographics and are extremely limited in scope with respect to risk behaviors, treatments prescribed, co-infection with other infections, preventive services, and sexual network characteristics. These data are needed to monitor incidence and prevalence and to inform prevention and control efforts.

Additionally, clinical information on patients seeking STD-specific care in specialty STD clinics is not available through any other national medical record abstracts or data sources. These data are critical to detecting emergent STD-related sequela or reemergence of mpox, appropriately informing local disease control activities and to inform analyses of national trends in the epidemiology of STD incidence. These data are also useful to monitor care services in essential safety-net STD clinics and evaluate local and national STD prevention and control measures. SSuN is the only surveillance infrastructure providing such comprehensive, representative information on patient and sex-partner characteristics, clinical presentation, STD screenings, uptake of HIV testing, screening for and uptake of mpox vaccine in STD clinics, curative and preventive treatment patterns, provider compliance with treatment recommendations, HIV co-infection among persons diagnosed with STDs and uptake of STD and HIV prevention interventions such as pre-exposure prophylaxis for HIV (PrEP) and/or Post-Exposure Prophylaxis (PEP) for bacterial STDs. These measures are key elements of the U.S. national strategy to End the HIV Epidemic (EHE) and support the Sexually Transmitted Infections, National Strategic Plan for the United States.

The STD Surveillance Network was established in 2005 as a network of six initially funded state and local public health agencies providing more comprehensive STD case-level and clinical facility information. In 2008, SSuN was expanded to 12 recipients to add important geographic diversity and to include visit-level data on a full census of patients being seen in categorical STD clinics. The network's activities were continued in a third funding cycle in 2013, with 10 recipients conducting core data collection activities in STD clinics and among a random sample of reported cases.

The current project, SSuN Cycle 4 (2019–2024), comprises 11 U.S. local/state health departments, including Baltimore City Health Department, California Department of Public Health, City of Columbus Public Health Department, Florida Department of Health, Indiana Department of Public Health, Multnomah County Health Department, New York City Department of Health & Mental Hygiene, Philadelphia Department of Public Health, San Francisco Department of Public Health, Utah Department of Public Health and Washington State Department of Health.

SSuN Cycle 4 continues to provide critical information addressing CDC's Division of Sexually Transmitted Disease (DSTDP) priorities as articulated in the STI National Strategic Plan, including contributing data to CDC's annual STD Surveillance Report, CDC's quarterly progress indicators and contributing to the body of literature related to STDs. Trend data across multiple cycles of SSuN are frequently used to inform policy discussions on prevention and treatment recommendations for common bacterial STDs. Of particular importance, SSuN provides data on use of pre- and post-exposure prophylaxis to prevent STDs and HIV infection (PEP and PrEP). SSuN also provides documentation of critical changes in clinical services provided by specialty STD clinics, and on the proportion of cases treated with appropriate antimicrobial regimens, an essential indicator of compliance with CDC treatment recommendations to combat the emergence of antimicrobial resistance (AMR). More recently, SSuN data have also been invaluable in assessing COVID-19 and mpox impacts on reported case incidence and patient access and care-seeking patterns and provides a reliable monitoring infrastructure for mpox re-emergence. STD clinics were the front-line provider of choice for persons suspecting mpox

infection or seeking preventive services such as mpox vaccination.

Data collection components of SSuN are grouped into two primary strategies, reflecting different sentinel and enhanced population-based surveillance methods and activities. Strategy A includes sentinel surveillance in STD clinics to monitor patient care, screening and diagnostic practices, HIV co-infection, treatment and STD-related HIV prevention services delivered to patients. In collaboration with participating local/state health departments and their clinical partners, SSuN implements consensus protocols to collect demographic, clinical and risk behavior data on patients presenting for care in selected specialty STD clinics. Records for patients presenting for care are also matched to the jurisdiction's HIV surveillance registry, providing data on HIV co-infection not currently available from any other multi-jurisdictional source. Data for these activities are abstracted from existing electronic medical records at participating STD clinics, leveraging information that is already collected in the provision of routine STD clinical care. All records are fully de-identified by collaborating facilities or health departments and transmitted to CDC through secure file transport mechanisms six times annually. The estimated time for the clinic data managers to abstract/encode data is four hours every two months. The current Revision anticipates expansion of this activity from the current 15 clinics to up to 40 STD clinics beginning in 2024 with a resulting burden of 960 hours (40 × 4 hours × 6 times/year). Previously approved clinic patient survey is no longer required and will only be implemented by clinics on a local use/need basis; number of responses are reduced to 1,000 with a corresponding reduction in burden hours.

The second core data collection activity, Strategy B, currently includes: (1) abstraction recoding and reporting of all gonorrhea and syphilis cases reported in the collaborating jurisdiction; (2) enhanced investigations on a random sample of all persons diagnosed with gonorrhea or syphilis; and (3) health department abstraction and registry matching for a complete census of reported gonorrhea and syphilis cases. For the first activity, a random sample of all gonorrhea cases diagnosed and reported to health departments within the participating jurisdictions are selected for enhanced investigations. Beginning in 2024, these investigations will be expanded to include a random sample of reported syphilis cases, include abstracting

clinical data from diagnosing providers, matching cases with existing health department disease registries and brief patient demographic and behavioral interviews (10 minutes per response). The population of interest includes all persons diagnosed and reported with gonorrhea and syphilis; existing case records are matched to other health department disease registries to determine co-infections and to document laboratory and treatment information known by the health department through routine case investigations and local laboratory reporting. In the proposed Revision, syphilis cases will also be selected for enhanced provider and patient investigations utilizing the same consensus protocols used for enhanced gonorrhea case investigations. Considering recent increases in syphilis cases in the U.S., especially congenital syphilis, these data are critical to informing local and national syphilis

prevention and control activities. SSuN recipients implement protocols providing uniformly coded data on demographic characteristics, behavioral risk factors, clinical care, laboratory data and health care seeking behaviors that are combined into a national dataset following data quality assurance at CDC.

In 2021, there were 211,791 cases of gonorrhea diagnosed and reported across the 11 current recipients of SSuN. Approximately 7.4%, or 15,715 cases were randomly sampled for enhanced investigation; full enhanced investigations were completed for 6,186 (39.4%). During the COVID-19 public health emergency, a slightly larger proportion of cases were lost to follow-up than in prior years due to local staffing shortages, issues with timely laboratory and case reporting, and higher than average patient refusals. No additional burden is anticipated from the future inclusion of early syphilis cases in Strategy B because of the

decrease in gonorrhea case investigations.

Data managers at each of the local/state health departments or clinical facilities receiving funding are responsible for transmitting validated datasets for these activities to CDC every other month. This reflects 5,280 burden hours for Strategy A and B data management (11 respondents x 12 data transmissions x 40 hours per data transmission), which includes automated HIV registry matching which was previously included as a separate activity; burden for this previously approved component as a separate activity is reduced to zero.

The total estimated annual burden hours are 7,487 for SSuN. Respondents from local/state health departments and/or clinical facilities receive federal funds to participate in this project. There are no costs to patients or respondents other than their time and no risk or penalty for non-participation.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average hours per response
Data managers at sentinel STD clinics .....	Electronic Clinical Record Abstraction .....	40	6	4
General Public—Adults (persons diagnosed with gonorrhea).	Patient interviews for a random sample of gonorrhea and syphilis cases.	7,000	1	10/60
Data Managers: local/state health departments (strategy A).	Data cleaning/validation, HIV registry matching and data transmissions for all activity components.	11	6	40
Data Managers: local/state health departments (strategy B).	Data cleaning/validation, HIV registry matching and data transmissions for all activity components.	11	6	40
General Public—Adults (persons presenting for care in STD Clinics).	Clinic waiting room surveys .....	1000	1	5/60

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Public Health Ethics and Regulations, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2023-16220 Filed 7-31-23; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day-23-0260; Docket No. CDC-2023-0065]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Health Hazard Evaluations/Technical Assistance and Emerging Problems. This data collection is designed to assist the National Institute for Occupational Safety and Health (NIOSH) in responding to requests for Health Hazard Evaluations (HHEs) to identify chemical, biological or physical hazards in workplaces throughout the United States.

**DATES:** CDC must receive written comments on or before October 2, 2023.

**ADDRESSES:** You may submit comments, identified by Docket No. CDC-2023-0065 by either of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](http://www.regulations.gov). Follow the instructions for submitting comments.
- **Mail:** Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329.

**Instructions:** All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to [www.regulations.gov](http://www.regulations.gov).

**Please note:** Submit all comments through the Federal eRulemaking portal ([www.regulations.gov](http://www.regulations.gov)) or by U.S. mail to the address listed above.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger,

Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21-8, Atlanta, Georgia 30329; Telephone: 404-639-7570; Email: [omb@cdc.gov](mailto:omb@cdc.gov).

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501-3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected;
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses; and
5. Assess information collection costs.

#### **Proposed Project**

Health Hazard Evaluations/Technical Assistance and Emerging Problems (OMB Control No. 0920-0260, Exp. 3/31/2024)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

#### *Background and Brief Description*

In accordance with its mandates under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, NIOSH responds to requests for Health Hazard Evaluations (HHE) to identify

chemical, biological or physical hazards in workplaces throughout the United States. Each year, NIOSH receives approximately 250 such requests although that number has been lower in the most recent years presumably due to the COVID-19 pandemic. Most HHE requests come from workplaces in the following industrial sectors: services, manufacturing, health and social services, transportation, and construction.

A printed HHE request form is available in English and in Spanish. The form is also available on the internet and differs from the printed version only in format and in the fact that it can be submitted directly from the website. The request form takes an estimated 12 minutes to complete. The form provides the mechanism for employees, employers, and other authorized representatives to supply the information required by the regulations governing the NIOSH HHE program (42 CFR 85.3-1). NIOSH then reviews the HHE request to determine if an on-site evaluation is needed. The primary purpose of an on-site evaluation is to help employers and employees identify and eliminate occupational health hazards. For approximately 25% of the requests received NIOSH determines an on-site evaluation is needed. In approximately 70% of these on-site evaluations, employees are interviewed in an informal manner to help further define concerns. Interviews may take approximately 15 minutes per respondent. The interview questions are specific to each workplace and its suspected diseases and hazards. However, interviews are based on standard medical practices. In approximately 30% of on-site evaluations, questionnaires are distributed or administered by NIOSH staff to employees. Questionnaires may require approximately 30 minutes to complete. The survey questions are specific to each workplace, and its suspected diseases and hazards; however, items in the questionnaires are derived from standardized or widely used medical and epidemiologic data collection instruments.

Approximately two (less than 1%) of the onsite evaluations involve medical tests or the collection of biological samples that would require informed consent. The estimated time to complete the informed consent process is 30 minutes. If 30 employees are monitored at each of the two work sites, the burden from this activity is 30 hours. Roughly 70% of the on-site evaluations involve employee exposure monitoring in the workplace. Employees participating in on-site evaluations by wearing a

sampling or monitoring device to measure personal workplace exposures are offered the opportunity to receive notification of their exposure results. To indicate their preference and, if interested, provide contact information, employees complete a contact information post card or form. Completing the contact card or form may take five minutes or less. The number of employees monitored for workplace exposures per on-site evaluation is estimated to be 25 per site.

NIOSH distributes interim and final reports of health hazard evaluations, excluding personal identifiers, to the following: requesters, employers, employee representatives; the Department of Labor (Occupational Safety and Health Administration or Mine Safety and Health Administration, as appropriate); state health departments; and, as needed, other state and federal agencies. NIOSH also administers a followback program to assess the effectiveness of its HHE program in reducing workplace hazards. This program entails the distribution of followback surveys to employer and employee representatives at all the workplaces where NIOSH conducted an on-site evaluation. In a small number of instances, a followback on-site evaluation may be completed. The first followback survey is sent shortly after the first visit for an on-site evaluation and takes about 10 minutes to complete. A second followback survey is sent after the final report is completed and requires about 20 minutes to complete. At 12 months, a third followback survey is sent, which takes about 15 minutes to complete.

For requests where NIOSH does not conduct an on-site evaluation, the requestor receives the first followback survey after our response letter is sent and a second one 12 months after our response. The first survey takes about 10 minutes to complete, and the second survey takes about 15 minutes to complete. Because of the number of investigations conducted each year, the need to respond quickly to requests for assistance, the diverse and unpredictable nature of these investigations, and its followback program to assess evaluation effectiveness, NIOSH requests a consolidated clearance for data collections performed within the domain of its HHE program. In consideration of this planned continuation, the program is submitting this Revision to include the next three years from the approval date. The total estimated burden hours are 1745 hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Employees and Representatives .....	Health Hazard Evaluation Request Form.	175	1	12/60	35
Employers .....	Health Hazard Evaluation Request Form.	75	1	12/60	15
Employees .....	Health Hazard Evaluation specific interview example.	1,470	1	15/60	368
Employees .....	Health Hazard Evaluation specific questionnaire example.	2,100	1	30/60	1,050
Employees .....	HHE specific informed consent form ...	60	1	30/60	30
Employees .....	Contact information post card .....	1,225	1	5/60	102
Employees and Representatives; Employers—Year 1 (on-site evaluation).	First Followback Survey .....	140	1	10/60	23
Employees and Representatives; Employers—Year 1 (on-site evaluation).	Second Followback Survey .....	140	1	20/60	47
Employees and Representatives; Employers—Year 2 (on-site evaluation).	Third Followback Survey .....	140	1	15/60	35
Employees and Representatives; Employers—Year 1 (without on-site evaluation).	First Followback Survey .....	94	1	10/60	16
Employees and Representatives; Employers—Year 2 (without on-site evaluation).	Second Followback Survey .....	94	1	15/60	24
Total .....	.....	.....	.....	.....	1,745

**Jeffrey M. Zirger,**  
*Lead, Information Collection Review Office,  
 Office of Public Health Ethics and  
 Regulations, Office of Science, Centers for  
 Disease Control and Prevention.*

[FR Doc. 2023-16221 Filed 7-31-23; 8:45 am]

**BILLING CODE 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

[Document Identifier: CMS-10241]

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS’ intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are

invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency’s functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by October 2, 2023.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://www.regulations.gov>. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4-26-05, 7500 Security Boulevard, Baltimore, Maryland 21244-1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing>.

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786-4669.

**SUPPLEMENTARY INFORMATION:**

**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection’s supporting statement and associated materials (see **ADDRESSES**).

**CMS-10241 Survey of Retail Prices**  
 Under the PRA (44 U.S.C. 3501-3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of

information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

### Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Survey of Retail Prices; *Use:* This information collection request provides for a survey of the average acquisition costs of all covered outpatient drugs purchased by retail community pharmacies. CMS may contract with a vendor to conduct monthly surveys of retail prices for covered outpatient drugs. Such prices represent a nationwide average of consumer purchase prices, net of discounts and rebates. The contractor shall provide notification when a drug product becomes generally available and that the contract includes such terms and conditions as the Secretary shall specify, including a requirement that the vendor monitor the marketplace. CMS has developed a National Average Drug Acquisition Cost (NADAC) for states to consider when developing reimbursement methodology. The NADAC is a pricing benchmark that is based on the national average costs that pharmacies pay to acquire Medicaid covered outpatient drugs. This pricing benchmark is based on drug acquisition costs collected directly from pharmacies through a nationwide survey process. This survey is conducted on a monthly basis to ensure that the NADAC reference file remains current and up-to-date. *Form Number:* CMS-10241 (OMB control number 0938-1041); *Frequency:* Monthly; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 72,000; *Total Annual Responses:* 72,000; *Total Annual Hours:* 36,000. (For policy questions regarding this collection contact: Robert Giles at 667-290-8626.)

Dated: July 27, 2023.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2023-16281 Filed 7-31-23; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### Statement of Organization, Functions, and Delegations of Authority

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare and Medicaid Services, Center for Medicare and Medicaid Innovation (CMMI), has modified its organizational structure.

**DATES:** These new organizational structures were approved by the Secretary of Health and Human Services and took effect on July 27, 2023.

**FOR FURTHER INFORMATION CONTACT:** Joe Kane at (410) 786-0655; 7500 Security Blvd., Baltimore, MD.

**SUPPLEMENTARY INFORMATION:** Part F of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) (last amended at **Federal Register**, Vol. 88, No. 107, pp. 36586-36587, dated June 5, 2023) is further amended to reflect the establishment of the Division of Drug Innovation within the Center for Medicare and Medicaid Innovation (CMMI). Part F, Section FC. 10 (Organization) is revised as follows: Center for Medicare and Medicaid Innovation (CMMI), Seamless Care Models Group, Seamless Care Models Group, Division of Health Plan Innovations

Part F, Section FC. 20 (Functions) for the new organization is as follows:

#### Centers for Medicare & Medicaid Services

##### Office of the Administrator

##### Center for Medicare and Medicaid Innovation

##### Seamless Care Models Group

##### Division of Drug Innovation

- Directs, designs and implements models to test alternative approaches to payment for drugs in Medicare Part B, Part D, and Medicaid to optimize access to high quality, affordable drugs.

- Seeks and develop opportunities to include Part B and Part D drugs in alternative payment models, including accountable care models, and addresses regulatory and operational issues that arise when trying to develop a model crossing different parts of the Medicare program.

- Builds relationships within CMS and HHS, with States and Medicaid agencies, and with both governmental and non-governmental entities to develop, implement, and operate innovative Medicare Part B, Part D, and Medicaid models.

- Meets with model participants and other interested parties, including relevant Government officials, representatives from the pharmaceutical industry, payers, providers, academia, and consumer advocates regarding their perspectives on innovative models, research, and ideas for new models.

- Conducts formative research studies to inform innovative payment models.

- Provides technical expertise to various CMS and non-Governmental entities on innovative Medicare Part B, Part D, and Medicaid payment and service delivery models to optimize access to affordable drugs.

*Authority:* 44 U.S.C. 3101.

**Xavier Becerra,**

*Secretary of Health and Human Services.*

[FR Doc. 2023-16280 Filed 7-31-23; 8:45 am]

**BILLING CODE 4150-28-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2023-P-1574]

#### Determination That Progesterone Injection, USP, 50 Milligrams/Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) has determined that Progesterone Injection, USP, 50 milligrams/milliliter (mg/mL), was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

**FOR FURTHER INFORMATION CONTACT:** Iris Masucci, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Silver Spring, MD 20993-0002, 301-796-3600, [Iris.Masucci@fda.hhs.gov](mailto:Iris.Masucci@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:** Section 505(j) of the Federal Food, Drug, and

Cosmetic Act (FD&C Act) (21 U.S.C. 355(j)) allows the submission of an ANDA to market a generic version of a previously approved drug product. To obtain approval, the ANDA applicant must show, among other things, that the generic drug product: (1) has the same active ingredient(s), dosage form, route of administration, strength, conditions of use, and (with certain exceptions) labeling as the listed drug, which is a version of the drug that was previously approved, and (2) is bioequivalent to the listed drug. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

Section 505(j)(7) of the FD&C Act requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the “Approved Drug Products With Therapeutic Equivalence Evaluations,” which is known generally as the “Orange Book.” Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug’s NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale but must be made prior to FDA’s approval of an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

Progesterone Injection, USP, 50 mg/mL, is the subject of NDA 017362, held by Actavis Laboratories UT, Inc., and initially approved on May 11, 1978. Progesterone Injection, USP, 50 mg/mL, is indicated in amenorrhea and abnormal uterine bleeding due to hormonal imbalance in the absence of organic pathology, such as submucous fibroids or uterine cancer. Progesterone Injection, USP, 50 mg/mL, is currently listed in the “Discontinued Drug Product List” section of the Orange Book.

Daré Bioscience, Inc., submitted a citizen petition dated April 19, 2023 (Docket No. FDA–2023–P–1574), under 21 CFR 10.30, requesting that the Agency determine whether Progesterone Injection, USP, 50 mg/mL (NDA 017362), was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that Progesterone Injection, USP, 50 mg/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that Progesterone Injection, USP, 50 mg/mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of Progesterone Injection, USP, 50 mg/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list Progesterone Injection, USP, 50 mg/mL, in the “Discontinued Drug Product List” section of the Orange Book. The “Discontinued Drug Product List” delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: July 26, 2023.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2023–16228 Filed 7–31–23; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Establishment of the Office of Long COVID Research and Practice

**AGENCY:** Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** Statement of Organization, Functions, and Delegations of Authority Part A, Office of the Secretary, Statement of Organization, Function, and Delegation of Authority for the U.S. Department of Health and Human Services (HHS) is being amended at

Chapter AC, Office of the Assistant Secretary for Health (OASH), as last amended June 1, 2022. This notice establishes the Office of Long COVID Research and Practice in OASH.

**SUPPLEMENTARY INFORMATION:** The April 5, 2022, Presidential Memorandum (at <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/04/05/memorandum-on-addressing-the-long-term-effects-of-covid-19/>) on Addressing the Long-term Effects of COVID–19 charged the Secretary of the Department of Health and Human Services (the Secretary) with coordinating a government-wide response to the longer-term effects of COVID–19 and associated conditions. The Secretary in turn directed the Assistant Secretary for Health to serve as the Long COVID Coordinator. The Memorandum specified development and publication of two reports. The two reports were drafted under the leadership of OASH and with the input of 14 federal agencies and published on August 3, 2022. One of the reports, the National Research Action Plan on Long COVID (at <https://www.covid.gov/assets/files/National-Research-Action-Plan-on-Long-COVID-08012022.pdf>), called for the establishment of the Office of Long COVID Research and Practice (the “Office,” abbreviated as OLC) given the widespread effects of Long COVID. The Office will be charged with the implementation of the National Research Action Plan on Long COVID (<https://www.covid.gov/assets/files/National-Research-Action-Plan-on-Long-COVID-08012022.pdf>), promotion of the Services and Supports for Longer-Term Impacts of COVID–19 (<https://www.covid.gov/assets/files/Services-and-Supports-for-Longer-Term-Impacts-of-COVID-19-08012022.pdf>), and coordinating the whole-of-government response to the longer-term effects of COVID–19, including Long COVID and associated conditions. Currently 14 federal departments engage on Long COVID, including over a dozen HHS Operating and Staff Divisions. The coordination by the Office will strengthen current work and identify and fill needs in areas such as clinical guidance, partner engagement, public education and communications, and services and supports.

Specifically, the changes to Part A, Chapter AC are as follows:

A. Under Part A, Chapter AC, under Office of the Assistant Secretary for Health, add the following:

1. The Office of Long COVID Research and Practice (OLC) is headed by a Director, who reports to the Assistant Secretary for Health.

2. OLC will focus on
- Leading government-wide coordination of Long COVID strategy, planning, and activities to address the consequences of the COVID-19 pandemic, integrated into the HHS mission to improve health in disadvantaged communities and vulnerable populations across the nation.
  - Supporting senior leadership at OASH and HHS on Long COVID.
  - Developing implementation plans on Long COVID to drive strategy and communicate to the public.
  - Establish, support, and manage a Federal Advisory Committee on Long COVID and associated conditions to facilitate perspectives from outside the government to inform federal actions.
  - Providing expertise and support to federal agencies related to Long COVID deliverables and activities.

**Xavier Becerra,**  
Secretary.

[FR Doc. 2023-16251 Filed 7-31-23; 8:45 am]

BILLING CODE 4150-03-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

#### Notice of Proposed Purchased/ Referred Care Delivery Area Redesignation for the Mid-Atlantic Tribes

**AGENCY:** Indian Health Service, Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** This Notice advises the public that the Indian Health Service (IHS) proposes to view the seven Mid-Atlantic Tribes in the Commonwealth of Virginia collectively and to expand the geographic boundaries of their current Purchased/Referred Care Delivery Areas (PRCDA). The seven Mid-Atlantic Tribes include the Pamunkey Indian Tribe, Chickahominy Indian Tribe, Chickahominy Indian Tribe—Eastern Division, Upper Mattaponi Tribe, Rappahannock Tribe, Monacan Indian Nation, and Nansemond Indian Tribe. The IHS previously designated a PRCDA for each of the seven Tribes, which include counties and/or independent cities in the Commonwealth of Virginia. The IHS is now proposing to expand those individual PRCDA by creating a collective PRCDA for the seven Tribes. The collective PRCDA will include all of the counties and independent cities in each of the current PRCDA, plus additional contiguous counties and

independent cities in the Commonwealth of Virginia, the State of Maryland, and the State of North Carolina.

**DATES:** Comments must be submitted August 31, 2023.

**ADDRESSES:** In commenting, please refer to file code [Federal Register insert file code number]. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to <http://www.regulations.gov>. Follow the “Submit a Comment” instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Carl Mitchell, Director, Division of Regulatory and Policy Coordination Indian Health Service, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, Maryland 20857.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the above address.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to the address above.

If you intend to deliver your comments to the Rockville address, please call telephone number (301) 443-1116 in advance to schedule your arrival with a staff member.

**SUPPLEMENTARY INFORMATION:** The current PRCDA for the seven Mid-Atlantic Tribes are:

*Pamunkey Indian Tribe*—Caroline, Hanover, Henrico, King William, King and Queen, and New Kent Counties; and the independent city of Richmond in the Commonwealth of Virginia.

*Chickahominy Indian Tribe*—New Kent, James City, Charles City, and Henrico Counties in the Commonwealth of Virginia.

*Chickahominy Indian Tribe—Eastern Division*—New Kent, James City, Charles City, and Henrico Counties in the Commonwealth of Virginia.

*Upper Mattaponi Tribe*—Richmond, Middlesex, Essex, King and Queen, King William, New Kent, Hanover, Caroline, Henrico, Charles City, and James City Counties; and the independent city of Richmond in the Commonwealth of Virginia.

*Rappahannock Tribe, Inc.*—King and Queen, Caroline, Essex, and King William Counties in the Commonwealth of Virginia.

*Monacan Indian Nation*—Amherst, Nelson, Albemarle, Buckingham, Appomattox, Campbell, Bedford, Botetourt, Rockbridge, and Augusta Counties; and the independent cities of Lynchburg, Lexington, Buena Vista, Staunton, Waynesboro, and Charlottesville in the Commonwealth of Virginia.

*Nansemond Indian Tribe*—the independent cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Suffolk, and Virginia Beach in the Commonwealth of Virginia.

The IHS is proposing to create a collective PRCDA for the seven Mid-Atlantic Tribes that will include the following counties and independent cities:

*Counties in the Commonwealth of Virginia:* Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Botetourt, Buckingham, Campbell, Caroline, Charlotte, Chesterfield, Clarke, Cumberland, Culpeper, Dinwiddie, Essex, Fauquier, Floyd, Fluvanna, Gloucester, Greene, Greensville, Goochland, Hanover, Henrico, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Montgomery, Nelson, New Kent, Newport News, Norfolk, Nottoway, Orange, Page, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski, Richmond, Rockbridge, Rockingham, Southampton, Spotsylvania, Stafford, Warren, Westmoreland, and York.

*Independent Cities in the Commonwealth of Virginia:* Alexandria, Buena Vista, Charlottesville, Chesapeake, Colonial Heights, Covington, Emporia, Fairfax, Falls Church, Franklin, Fredericksburg, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas Park, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Radford, Richmond, Roanoke, Salem, Staunton, Suffolk, Virginia Beach, Waynesboro, and Williamsburg.

*Counties in the State of Maryland:* Allegany, Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Howard, Kent, Montgomery, Prince George's, Queen Anne's, St. Mary's, and Washington.

*Independent Cities in the State of Maryland:* Baltimore City.

*Counties in the State of North Carolina:* Alexander, Camden, Catawba, Chowan, Currituck, Davidson, Davie, Durham, Forsyth, Franklin, Gates, Granville, Guilford, Johnston, Orange, Pasquotank, Randolph, Rowan, Stanly, Stokes, and Wake.

Members of the seven Mid-Atlantic Tribes residing outside of the current PRCDA are eligible for direct care services, however, they are not eligible for Purchased/Referred Care (PRC) services. The sole purpose of this expansion would be to authorize additional Tribal members and beneficiaries to receive PRC services.

*Inspection of Public Comments:* All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment.

**FOR FURTHER INFORMATION CONTACT:**

CAPT John Rael, Director, Office of Resource Access and Partnerships, Indian Health Service, 5600 Fishers Lane, Mail Stop: 10E85C, Rockville, Maryland 20857. Telephone (301) 443-0969. (This is not a toll free number).

*Background:* The IHS provides services under regulations in effect as of September 15, 1987, and republished at 42 CFR part 136, subparts A–C. Subpart C defines a Contract Health Service Delivery Area (CHSDA), now referred to as a PRCDA, as the geographic area within which PRC will be made available by the IHS to members of an identified Indian community who reside in the PRCDA. Residence within a PRCDA by a person who is within the scope of the Indian health program, as set forth in 42 CFR 136.12, creates no legal entitlement to PRC, but only potential eligibility for services. Services needed, but not available at an IHS/Tribal facility, are provided under the PRC program depending on the availability of funds, the relative medical priority of the services to be provided, and the actual availability and accessibility of alternate resources in accordance with the regulations.

The regulations at 42 CFR part 136, subpart C provide that, unless otherwise designated, a PRCDA shall consist of a county which includes all or part of a reservation and any county or counties which have a common boundary with the reservation—42 CFR 136.22(a)(6). The regulations also provide that after consultation with the Tribal governing body or bodies on those reservations included within the PRCDA, the Secretary may from time to time, redesignate areas within the United States for inclusion in or exclusion from a PRCDA—42 CFR 136.22(b). The regulations require that certain criteria must be considered before any redesignation is made. The criteria are as follows:

(1) The number of Indians residing in the area proposed to be so included or excluded;

(2) Whether the Tribal governing body has determined that Indians residing in the area near the reservation are socially and economically affiliated with the Tribe;

(3) The geographic proximity to the reservation of the area whose inclusion or exclusion is being considered; and

(4) The level of funding which would be available for the provision of PRC.

Additionally, the regulations require that any redesignation of a PRCDA must be made in accordance with the procedures of the Administrative Procedure Act (5 U.S.C. 553)—42 CFR 136.22(c). In compliance with this requirement, the IHS is publishing this Notice and requesting public comments.

The Pamunkey Indian Tribe was the first federally recognized Tribe in the Commonwealth of Virginia, recognized through the Department of the Interior's Federal Acknowledgement of American Indian Tribes administrative process effective January 28, 2016. The Pamunkey Indian Tribe does not have a reservation land base within the meaning of 42 CFR 136.22(a)(6). As a result, the Director, IHS, exercised reasonable administrative discretion to designate a PRCDA for the Pamunkey Indian Tribe, effective August 28, 2017, 82 FR 35227.

On January 29, 2018, the President signed into law H.R. 984, the “Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act of 2017,” which provided Federal recognition to six additional Tribes in the Commonwealth of Virginia, and identified geographical (e.g., county or city) service delivery areas for each. These service delivery areas included overlapping areas for many of the Tribes, and also overlapped the Pamunkey Indian Tribe's designated PRCDA. The IHS designated the PRCDA for each of these six Tribes, effective February 21, 2020, in accordance with Congressional intent. The IHS has historically established PRCDA in accordance with Congressional intent while preserving regulatory flexibility to re-designate areas as appropriate for inclusion in or exclusion from a PRCDA under PRC regulations. Expansion of the PRCDA for the seven Mid-Atlantic Tribes would extend these already existing and overlapping PRCDA, to create a collective PRCDA for these seven Tribes, for the sole purpose of authorizing additional Tribal members and beneficiaries to receive PRC services. Representatives from all seven Mid-Atlantic Tribes unanimously sought to move forward collectively to request re-designation of their PRCDA to include the entire Commonwealth of

Virginia. Following consultation with those Tribes, the IHS also considered portions of Maryland and North Carolina that are close to the border of Virginia. Since all seven of the Mid-Atlantic Tribes requested the same PRCDA, the IHS is proposing to consider these Tribes collectively for purposes of the PRCDA expansions. This includes considering their Tribal members collectively under the criteria set forth in 42 CFR 136.22(b), as described above. In doing so, the IHS has determined which portions of the Commonwealth of Virginia, Maryland, and North Carolina would meet the necessary criteria for one or more of the seven Mid-Atlantic Tribes. For example, the IHS is not proposing to add any counties where no members of any Mid-Atlantic Tribe reside, or counties that are not contiguous with the existing or proposed PRCDA. Accordingly, the IHS proposes to expand the individual PRCDA for these seven Mid-Atlantic Tribes to create a collective PRCDA that includes sixty-six (66) counties and thirty-two (32) independent cities in the Commonwealth of Virginia; twenty-one (21) counties in North Carolina; and sixteen (16) counties and one (1) independent city in Maryland.

Under 42 CFR 136.23, those otherwise eligible Indians who do not reside on a reservation, but reside within a PRCDA, must be either members of the Tribe or other IHS beneficiaries who maintain close economic and social ties with the Tribe. In this case, applying the aforementioned PRCDA redesignation criteria required by operative regulations codified at 42 CFR part 136, subpart C, the following findings are made:

1. By expanding each Tribe's PRCDA and creating one collective PRCDA, the seven Mid-Atlantic Tribes estimate the current eligible population will collectively increase by 1006 individuals.

2. The seven Mid-Atlantic Tribes have determined that these 1006 individuals are members of the federally recognized Tribes in the Commonwealth of Virginia and that these members are socially and economically affiliated with these Mid-Atlantic Tribes.

3. The existing PRCDA for these seven Mid-Atlantic Tribes, consisting of twenty-one (21) counties and fourteen (14) independent cities collectively, will be expanded to include sixty-six (66) counties and thirty-two (32) independent cities in the Commonwealth of Virginia; twenty-one (21) counties in North Carolina; and sixteen (16) counties, and one (1) independent city in Maryland. Members of one or more of the Tribes reside in

each county that is included in the proposed expansion, and those members live near enough to their Tribe's seat of government to maintain close social and economic ties with their Tribe. According to the leadership for each of the Tribes, those members live close enough to regularly participate in-person in Tribal affairs, events, activities, or other functions held by or carried out by the Tribe within its current PRCDA. Furthermore, the proposed counties and independent cities form a contiguous area with the existing PRCDA. Considering the Tribes collectively, the IHS has determined the additional counties and independent cities proposed for inclusion herein to be geographically proximate, meaning "on or near," to the area analogous to reservations for the seven Mid-Atlantic Tribes.

4. PRC programs operated by/for the seven Mid-Atlantic Tribes will use their existing Federal allocation for PRC funds to provide services to the expanded population. No additional financial resources will be allocated by the IHS to these programs to provide services to members residing in the expanded counties and independent cities in the Commonwealth of Virginia, State of Maryland, or State of North Carolina.

This Notice does not contain reporting or recordkeeping requirements subject to prior approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

**Roselyn Tso,**

*Director, Indian Health Service.*

[FR Doc. 2023-16275 Filed 7-31-23; 8:45 am]

BILLING CODE 4165-16-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Submission for OMB Review; 30-Day Comment Request; Generic Clearance for the Collection of Customer Participation and Performance Management With NIH Programs, Processes, Products, and Services (National Institutes of Health)

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has

submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

**DATES:** Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this 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](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or using the search function.

**FOR FURTHER INFORMATION CONTACT:** Diane Kreinbrink, Program Manager, Office of Management Policy and Compliance, National Cancer Institute, 9609 Medical Center Drive, Room 2W446, Bethesda, Maryland, 20892 or call non-toll-free number (240) 276-7283 or email your request, including your address to: [diane.kreinbrink@nih.gov](mailto:diane.kreinbrink@nih.gov). Formal requests for additional plans and instruments must be requested in writing.

**SUPPLEMENTARY INFORMATION:** This proposed information collection was previously published in the **Federal Register** on May 8, 2023, page 29681 (Vol. 88, No. 88 FR 29681) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Cancer Institute (NCI), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

*Proposed Collection Title:* Generic Clearance for the Collection of Customer Participation and Performance Management with NIH Programs, Processes, Products, and Services (NIH), 0925-XXXX; Expiration Date XX/XX/XXXX, NEW, National Institutes of Health (NIH).

*Need and Use of Information Collection:* Evaluating the effectiveness of leadership, programs, and services is essential for the vitality of any institution. Leadership review at NIH focuses on the productivity of the IC, management of resources and budget allocations, training activities, and influence on dimensions of diversity, accessibility, inclusion, promotion of investigators and staff (including NIH Equity Committee (NEC) reports), and positive workforce culture.

Program and service reviews may focus on operational performance; outputs, outcomes, and impacts; policy compliance, stewardship, diversity, equity, accessibility, and inclusion. Reviews and evaluations may solicit input from IC staff and leadership (IC Director, Deputy Director, E.O.) and relevant program participants and stakeholders about the program's effectiveness, leader, or process. They may include comparisons with other ICs or programs, external benchmarks, and outcome metrics where appropriate and applicable. This input should provide meaningful information that can be used to identify strengths and areas that need improvement. Reports developed from the review or evaluation may be presented and shared as needed by the program when necessary. Such reports may include recommendations and proposed actions to address areas for improvement. In public or broadly shared reports, any sensitive information in the reviews or evaluations will be summarized and presented in aggregate.

This clearance will allow direct assessment and measurement of the customer/respondent base for participation in and satisfaction with NIH programs, processes, products, and services. The clearance will also enable offices to assess participants' experience and accomplishments during or since participation and their preferences for existing and future programming, products, and services. The information collected using these tools informs and supports budgeting, program management and design, program planning, results reporting, information dissemination, process improvement, and outreach initiatives.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,833.

## ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hour
Individuals, Households, Private Sector, State Government, Local Government, Tribal Government, or Federal Government.	Performance Measurement.	500	1	30/60	250
	Program Monitoring.	500	1	15/60	125
	Program Evaluations.	500	1	45/60	375
	Grantee Effectiveness.	1,000	1	15/60	250
	Resource Management.	500	1	10/60	83
	Feedback .....	5,000	1	15/60	1,250
	Forms .....	3,000	1	30/60	1,500
Totals .....	.....	.....	11,000	.....	3,833

Dated: July 27, 2023.

**Diane Kreinbrink,**

*Project Clearance Liaison, National Cancer Institute, National Institutes of Health.*

[FR Doc. 2023-16315 Filed 7-31-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The 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 purpose of this meeting is to evaluate requests for preclinical development resources for potential new therapeutics for the treatment of cancer. The outcome of the evaluation will provide information to internal NCI committees that will decide whether NCI should support requests and make available contract resources for development of the potential therapeutic to improve the treatment of various forms of cancer. The research proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposed research projects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel; June 2023 Cycle 44 NExT SEP Committee Meeting.

*Date:* August 17, 2023.

*Time:* 10:00 a.m. to 3:00 p.m.

*Agenda:* To evaluate the NCI Experimental Therapeutics Program Portfolio.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Room 3A44, Bethesda, Maryland 20852 (Virtual Meeting).

*Contact Persons:* Barbara Mroczkowski, Ph.D., Executive Secretary, Discovery Experimental Therapeutics Program, National Cancer Institute, NIH, 31 Center Drive, Room 3A44, Bethesda, Maryland 20817, 301-496-4291, [mroczkoskib@mail.nih.gov](mailto:mroczkoskib@mail.nih.gov).

Toby Hecht, Ph.D., Executive Secretary, Development Experimental Therapeutics Program, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 3W110, Rockville, Maryland 20850, 240-276-5683, [toby.hecht2@nih.gov](mailto:toby.hecht2@nih.gov).

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 27, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-16277 Filed 7-31-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Cancer Institute; Notice of Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be held as a virtual meeting and open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting, should notify the Contact Person listed below in advance of the meeting. The meeting can be accessed by clicking on the following link: <https://nci.rev.vbrick.com/#/webcasts/presidentscancerpanel>.

*Name of Committee:* President's Cancer Panel.

*Date:* September 7, 2023.

*Time:* 8:30 a.m. to 5:00 p.m.

*Agenda:* President's Cancer Panel National Cancer Plan Stakeholder Meeting.

*Place:* National Institutes of Health, 31 Center Drive, Building 31, Room 11A48, Rockville, MD 20850 (Virtual Meeting).

*Access to Meeting:* <https://nci.rev.vbrick.com/#/webcasts/presidentscancerpanel>.

*Contact Person:* Maureen R. Johnson, Ph.D., Executive Secretary, President's Cancer Panel, Special Assistant to the Director, National Cancer Institute, NIH 31, Center Drive, Room 11A48, MSC 2590, Bethesda, MD 20892, 240-781-3327, [johnsonr@mail.nih.gov](mailto:johnsonr@mail.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <http://deainfo.nci.nih.gov/advisory/pcp/index.htm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: July 27, 2023.

**Melanie J. Pantoja,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2023-16276 Filed 7-31-23; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### Current List of HHS-Certified Laboratories and Instrumented Initial Testing Facilities Which Meet Minimum Standards To Engage in Urine and Oral Fluid Drug Testing for Federal Agencies

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs using Urine or Oral Fluid (Mandatory Guidelines).

**FOR FURTHER INFORMATION CONTACT:** Anastasia Donovan, Division of Workplace Programs, SAMHSA/CSAP, 5600 Fishers Lane, Room 16N06B, Rockville, Maryland 20857; 240-276-2600 (voice); [Anastasia.Donovan@samhsa.hhs.gov](mailto:Anastasia.Donovan@samhsa.hhs.gov) (email).

**SUPPLEMENTARY INFORMATION:** In accordance with Section 9.19 of the Mandatory Guidelines, a notice listing all currently HHS-certified laboratories and IITFs is published in the **Federal Register** during the first week of each month. If any laboratory or IITF certification is suspended or revoked, the laboratory or IITF will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory or IITF has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end and will be omitted from the monthly listing thereafter.

This notice is also available on the internet at <https://www.samhsa.gov/workplace/resources/drug-testing/certified-lab-list>.

The Department of Health and Human Services (HHS) notifies federal agencies of the laboratories and Instrumented Initial Testing Facilities (IITFs) currently certified to meet the standards of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) using Urine and of the laboratories currently certified to meet the standards of the Mandatory Guidelines using Oral Fluid.

The Mandatory Guidelines using Urine were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908); September 30, 1997 (62 FR 51118); April 13, 2004 (69 FR 19644); November 25, 2008 (73 FR 71858); December 10, 2008 (73 FR 75122); April 30, 2010 (75 FR 22809); and on January 23, 2017 (82 FR 7920).

The Mandatory Guidelines using Oral Fluid were first published in the **Federal Register** on October 25, 2019 (84 FR 57554) with an effective date of January 1, 2020.

The Mandatory Guidelines were initially developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71 and allowed urine drug testing only. The Mandatory Guidelines using Urine have since been revised, and new Mandatory Guidelines allowing for oral fluid drug testing have been published. The Mandatory Guidelines require strict standards that laboratories and IITFs must meet in order to conduct drug and specimen validity tests on specimens for federal agencies. HHS does not allow IITFs to conduct oral fluid testing.

To become certified, an applicant laboratory or IITF must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory or IITF must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories and IITFs in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines using Urine and/or Oral Fluid. An HHS-certified laboratory or IITF must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA), which attests

that the test facility has met minimum standards. HHS does not allow IITFs to conduct oral fluid testing.

#### HHS-Certified Laboratories Approved To Conduct Oral Fluid Drug Testing

In accordance with the Mandatory Guidelines using Oral Fluid dated October 25, 2019 (84 FR 57554), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on oral fluid specimens:

At this time, there are no laboratories certified to conduct drug and specimen validity tests on oral fluid specimens.

#### HHS-Certified Instrumented Initial Testing Facilities Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified IITFs meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Dynacare, 6628 50th Street NW, Edmonton, AB Canada T6B 2N7, 780-784-1190 (Formerly: Gamma-Dynacare Medical Laboratories)

#### HHS-Certified Laboratories Approved To Conduct Urine Drug Testing

In accordance with the Mandatory Guidelines using Urine dated January 23, 2017 (82 FR 7920), the following HHS-certified laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

Alere Toxicology Services, 1111 Newton St., Gretna, LA 70053, 504-361-8989/800-433-3823 (Formerly: Kroll Laboratory Specialists, Inc., Laboratory Specialists, Inc.)  
Alere Toxicology Services, 450 Southlake Blvd., Richmond, VA 23236, 804-378-9130 (Formerly: Kroll Laboratory Specialists, Inc., Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.)  
Clinical Reference Laboratory, Inc., 8433 Quivira Road, Lenexa, KS 66215-2802, 800-445-6917  
Desert Tox, LLC, 5425 E Bell Rd., Suite 125, Scottsdale, AZ 85254, 602-457-5411/623-748-5045  
DrugScan, Inc., 200 Precision Road, Suite 200, Horsham, PA 19044, 800-235-4890  
Dynacare \*, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519-679-1630 (Formerly: Gamma-Dynacare Medical Laboratories)  
ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662-236-2609

Laboratory Corporation of America Holdings, 7207 N Gessner Road, Houston, TX 77040, 713-856-8288/800-800-2387

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908-526-2400/800-437-4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Corporation of America Holdings, 1904 TW Alexander Drive, Research Triangle Park, NC 27709, 919-572-6900/800-833-3984 (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc., CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866-827-8042/800-233-6339 (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center)

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913-888-3927/800-873-8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.)

Legacy Laboratory Services Toxicology, 1225 NE 2nd Ave., Portland, OR 97232, 503-413-5295/800-950-5295

MedTox Laboratories, Inc., 402 W County Road D, St. Paul, MN 55112, 651-636-7466/800-832-3244

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612-725-2088. Testing for Veterans Affairs (VA) Employees Only

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800-328-6942 (Formerly: Centinela Hospital Airport Toxicology Laboratory)

Phamatech, Inc., 15175 Innovation Drive, San Diego, CA 92128, 888-635-5840

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610-631-4600/877-642-2216 (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755-5235, 301-677-7085. Testing for Department of Defense (DoD) Employees Only

\* The Standards Council of Canada (SCC) voted to end its Laboratory

Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on January 23, 2017 (82 FR 7920). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

**Anastasia Marie Donovan**,  
*Public Health Advisor, Division of Workplace Programs.*

[FR Doc. 2023-16262 Filed 7-31-23; 8:45 am]

**BILLING CODE 4160-20-P**

## DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA-2023-0020]

### Notice of President's National Security Telecommunications Advisory Committee Meeting

**AGENCY:** Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security.

**ACTION:** Notice of *Federal Advisory Committee Act* (FACA) meeting; request for comments.

**SUMMARY:** CISA is publishing this notice to announce the following President's National Security Telecommunications Advisory Committee (NSTAC) meeting. This meeting is open to the public.

**DATES:**

**Meeting Date:** The NSTAC will meet on September 26, 2023, from 2:00 p.m. to 3:00 p.m. ET. The meeting may close early if the committee has completed its business.

**Meeting Registration:** Registration to attend the meeting is required and must

be received no later than 5:00 p.m. Eastern Time (ET) on September 19, 2023. For more information on how to participate, please contact *NSTAC@cisa.dhs.gov*.

**Speaker Registration:** Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on September 19, 2023.

**Written Comments:** Written comments must be received no later than 5:00 p.m. ET on September 19, 2023.

**ADDRESSES:** The meeting will be held via conference call. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email *NSTAC@cisa.dhs.gov* by 5:00 p.m. ET on September 19, 2023. The NSTAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

**Comments:** Members of the public are invited to provide comment on the issues that will be considered by the committee as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at <https://www.cisa.gov/nstac> by September 18, 2023. Comments may be submitted by 5:00 p.m. ET on September 19, 2023, and must be identified by Docket Number CISA-2023-0020. Comments may be submitted by one of the following methods:

- **Federal eRulemaking Portal:** [www.regulations.gov](https://www.regulations.gov). Please follow the instructions for submitting written comments.

- **Email:** *NSTAC@cisa.dhs.gov*. Include the Docket Number CISA-2023-0020 in the subject line of the email.

**Instructions:** All submissions received must include the words "Department of Homeland Security" and the Docket Number for this action. Comments received will be posted without alteration to [www.regulations.gov](https://www.regulations.gov), including any personal information provided. You may wish to review the Privacy & Security Notice available via a link on the homepage of [www.regulations.gov](https://www.regulations.gov).

**Docket:** For access to the docket and comments received by the NSTAC, please go to [www.regulations.gov](https://www.regulations.gov) and enter docket number CISA-2023-0020.

A public comment period is scheduled to be held during the meeting

from 2:20 p.m. to 2:25 p.m. ET. Speakers who wish to participate in the public comment period must email [NSTAC@cisa.dhs.gov](mailto:NSTAC@cisa.dhs.gov) to register. Speakers should limit their comments to three minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, following the last request for comments.

**FOR FURTHER INFORMATION CONTACT:** Christina Berger, 202-701-6354, [NSTAC@cisa.dhs.gov](mailto:NSTAC@cisa.dhs.gov).

**SUPPLEMENTARY INFORMATION:** The NSTAC is established under the authority of Executive Order (E.O.) 12382, dated September 13, 1982, as amended by E.O. 13286, continued and amended under the authority of E.O. 14048, dated September 30, 2021. Notice of this meeting is given under FACA, 5 U.S.C. ch. 10 (Pub. L. 117-286). The NSTAC advises the president on matters related to national security and emergency preparedness (NS/EP) telecommunications and cybersecurity policy.

*Agenda:* The NSTAC will hold a conference call on Tuesday, September 26, 2023, from 2:00 p.m. to 3:00 p.m. ET to discuss current NSTAC activities and the government's ongoing cybersecurity and NS/EP communications initiatives. This meeting is open to the public and will include: (1) remarks from the administration and CISA leadership on salient NS/EP and cybersecurity efforts; (2) a deliberation and vote on the *NSTAC Letter to the President on Securing Next Generation Wireless Telecommunications*; and (3) a deliberation and vote on the *NSTAC Report to the President on Addressing the Abuse of Domestic Infrastructure by Foreign Malicious Actors*.

Dated: July 25, 2023.

**Christina Berger,**

*Designated Federal Officer, NSTAC, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.*

[FR Doc. 2023-16265 Filed 7-31-23; 8:45 am]

**BILLING CODE 9110-9P-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7071-N-13]

### 60-Day Notice of Proposed Information Collection: Green and Resilient Retrofit Program (GRRP) Application Forms; OMB Control No.: 2502-0624

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** *Comments Due Date:* October 2, 2023.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal.

Written comments and recommendations for the proposed information collection can be submitted within 60 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function. Interested persons are also invited to submit comments regarding this proposal by name and/or OMB Control Number and can be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410-5000 or email at [PaperworkReductionActOffice@hud.gov](mailto:PaperworkReductionActOffice@hud.gov).

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) or telephone 202-402-3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

#### A. Overview of Information Collection

*Title of Information Collection:* Green and Resilient Retrofit Program (GRRP) Application Forms.

*OMB Approval Number:* 2502-0624.

*OMB Expiration Date:* 8/31/2023.

*Type of Request:* Revision of a currently approved collection.

*Form Numbers:* 5991, 5992, and 5993.

*Description of the need for the information and proposed use:* The Green and Resilient Retrofit Program (“GRRP”) is newly funding through Title III of the Inflation Reduction Act of 2022, H.R. 5376 (IRA), in section 30002 titled “Improving Energy Efficiency or Water Efficiency or Climate Resilience of Affordable Housing” (the “IRA”), authorizing HUD to make loans, grants to improve energy or water efficiency; enhance indoor air quality or sustainability; implement the use of zero-emission electricity generation, low-emission building materials or processes, energy storage, or building electrification strategies; or address climate resilience of eligible HUD-assisted multifamily properties. The program leverages significant technological advancements in utility efficiency and adds a focus on preparing for climate hazards—both reducing residents’ and properties’ exposure to hazards and protecting life, livability, and property when disaster strikes. With its dual focus, GRRP is the first program to consider, at the national scale, how best to approach both green and energy efficiency upgrades simultaneously with investment in climate resilience strategies in multifamily housing. HUD is taking a multi-faceted approach to deploy these funds multiple funding rounds and for properties at different development stages.

Funding under this program will be made through multiple cohorts under one or multiple Notices of Funding Opportunity (NOFOs) that will detail the application process for eligible applicants. This collection is necessary in order to receive applications requesting funding under this program.

*Respondents:* HUD-assisted multifamily owners.

*Estimated Number of Respondents:* 680.

*Estimated Number of Responses:* 680.

*Frequency of Response:* Once per application.

*Average Hours per Response:* 15 hours.

*Total Estimated Burden:* 10,200.

#### B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

### C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

**Jeffrey D. Little,**

*General Deputy Assistant Secretary, Office of Housing.*

[FR Doc. 2023-16314 Filed 7-31-23; 8:45 am]

**BILLING CODE 4210-67-P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7070-N-44]

### 30-Day Notice of Proposed Information Collection: PRO Housing Competition Application Collection; OMB Control No.: 2506-New

**AGENCY:** Office of Policy Development and Research, Chief Data Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** *Comments Due Date:* August 31, 2023.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://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. Interested persons are also invited to submit comments regarding this proposal and comments should refer to the proposal by name

and/or OMB Control Number and should be sent to: Colette Pollard, Clearance Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 8210, Washington, DC 20410-5000; email [PaperworkReductionActOffice@hud.gov](mailto:PaperworkReductionActOffice@hud.gov).

#### FOR FURTHER INFORMATION CONTACT:

Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 7th Street SW, Room 8210, Washington, DC 20410; email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) or telephone 202-402-3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on May 22, 2023 at 88 FR 32782.

#### A. Overview of Information Collection

*Title of Information Collection:* PRO Housing Competition Application Collection.

*OMB Approval Number:* 2506-New.

*Type of Request:* New Collection.

*Form Number:* N/A.

*Description of the need for the information and proposed use:* HUD is issuing this NOFO under the authority of the Consolidated Appropriations Act, 2023 (Pub. L. 117-328, enacted December 29, 2022) (Appropriations Act) for the identification and removal of barriers to affordable housing production and preservation. The most successful proposals in this competition will demonstrate not only how applicants identify and remove affordable housing barriers within their jurisdiction(s), but also demonstrate: (1) progress and a commitment to overcoming local barriers to facilitate the increase in affordable housing production and preservation; and (2) an acute demand for housing affordable to households with incomes below 100 percent of the area median income. HUD encourages applicants to also consider how their proposed activities

will address issues related to affordable housing production and preservation, such as advancing equity, locating affordable housing near transit and other services, and developing and preserving affordable housing in accordance with input from community members and other stakeholders.

*Respondents:* State and local governments, Metropolitan Planning Organizations and Multijurisdictional Entities.

*Estimated Number of Respondents:* 100.

*Estimated Number of Responses:* 100.

*Frequency of Response:* 1.

*Average Hours per Response:* 11.

*Total Estimated Burdens:* 1100.

The estimated burden for this NOFO application collection includes HUD's Standardized Grant Application forms which have been reviewed and approved by OMB under control number: 2501-0017. Additionally, as stated above, OMB has reviewed and approved the post award activity for CDBG activities under control numbers: 2506-0077, 0085, 0117, and 0165. The burden hours and requirements under the above-mentioned approved collections have not been altered in any way. Applicants are asked to provide narrative responses detailing their proposed activities using PRO Housing funding. Applicants are also required to affirmatively acknowledge the statutorily required certification, located in Appendix D of the NOFO. HUD is collecting certifications from all applicants, and there is a specific certification form depending on each applicant type: local governments, state governments, metropolitan planning organizations and multijurisdictional entities. Each applicant is only required to complete one certification form. The certification form collects information related to a variety of laws, including CDBG requirements and cross-cutting requirements. The applicant will be expected to review and sign the form.

If an applicant is proposing a partnership with one or more entities as part of their application submission, the applicant must provide documentation of that partnership in the form of partner letters from each partner and a partnership agreement. The burden hours include submission of documentation of partnership, if required. Optional partnership templates are included in the application package, which applicants may choose to use to satisfy these requirements.

The burden hours associated with the above-mentioned forms have been included in the burden hours list below.

TABLE 1—ESTIMATED PUBLIC BURDEN

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response *	Annual cost
NOFO Application .....	100	1	100	10	1000	\$38.92	\$38,920
NOFO Certifications .....	100	1	100	1	100	38.92	3,892
Total .....	100	1	100	11	1100	38.92	42,812

\* Given that the nature of the applicants is unknown at this time, HUD estimates the cost per response to average around OPMs supplied GS-13 base pay level (locality pay not included). While NOFO applicants may vary in experience, pay, and possibly industry, HUD believes that the average range of pay across the respondents will fall closely within the GS-13 pay range.

## B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses; and

(5) Ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

## C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

### Colette Pollard,

Department Reports Management Officer,  
Office of Policy Development and Chief Data Officer.

[FR Doc. 2023-16283 Filed 7-31-23; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

[FWS-R6-NWRS-2023-0062; FF06R0ZS00-FXRS1261060000-223]

#### Intent To Prepare an Updated Bison and Elk Management Plan for the National Elk Refuge in Wyoming; Environmental Impact Statement

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of intent; announcement of public meetings; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service), U.S. Department of the Interior, intends to prepare an updated Bison and Elk Management Plan (BEMP) and environmental impact statement (EIS) for the National Elk Refuge (NER). The BEMP describes the Service's proposal for the management of the Jackson bison and elk populations within their respective jurisdictions with the goal of ensuring sustainable and healthy herds; an EIS will be prepared pursuant to the National Environmental Policy Act of 1969 to evaluate the potential environmental impacts of the BEMP. We invite input from other Federal and State agencies, Tribes, nongovernmental organizations, private sector businesses, and members of the public on the scope of the EIS, alternatives to our proposed approaches for the management of bison and elk on the NER, and the pertinent issues that we should address in the EIS.

#### DATES:

**Comment submission:** To ensure consideration of written comments, they must be received on or before August 31, 2023. Comments submitted online at <https://www.regulations.gov> (see **ADDRESSES**) must be received by 11:59 p.m. eastern time on the closing date.

**Public meetings:** We will hold public scoping meetings on August 21 and 22, 2023 in Jackson, Wyoming, and Pinedale, Wyoming, respectively. In addition, we will present a public webinar on August 23, 2023. Additional information regarding these scoping

sessions, including the times and venues, and other scoping materials will be available on our website at <https://www.fws.gov/project/upcoming-bison-elk-management-plan>. Persons wishing to participate in the public scoping meetings who need special accommodations should contact Alice Lee at [fws-bemp@doimsp.onmicrosoft.com](mailto:fws-bemp@doimsp.onmicrosoft.com) by August 14, 2023.

**ADDRESSES:** *Comment submission:* You may submit written comments by one of the following methods. Please do not submit comments by both methods.

- *Online:* <https://www.regulations.gov>. Follow the instructions for submitting comments to Docket No. FWS-R6-NWRS-2023-0062.

- *United States mail:* Public Comments Processing, Attn: FWS-R6-NWRS-2023-0062; U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041-3803. Please note in your submission that your comments are regarding the U.S. Fish and Wildlife Service's Bison and Elk Management Plan.

We will post all information received on <https://www.regulations.gov>. This generally means that we will post any personal information you provide us (see Availability of Comments below for more information).

**Public meetings:** We will hold public scoping meetings on August 21 and 22, 2023, in Jackson, Wyoming, and Pinedale, Wyoming, respectively. Additional information regarding these scoping sessions, including the times and venues, and other scoping materials will be available on our website at <https://www.fws.gov/project/upcoming-bison-elk-management-plan>. In addition, we will present a public webinar on August 23, 2023. Information regarding registration for the webinar can be found at <https://www.fws.gov/project/upcoming-bison-elk-management-plan>.

**FOR FURTHER INFORMATION CONTACT:** Alice Lee, Conservation Planner, by phone at 720-601-1821 or via email at [fws-bemp@doimsp.onmicrosoft.com](mailto:fws-bemp@doimsp.onmicrosoft.com). Individuals in the United States who are

deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The National Elk Refuge (NER) is located north of Jackson, Wyoming and is part of the southern portion of the Greater Yellowstone Ecosystem. The NER comprises approximately 24,700 acres. The Jackson bison and elk herds make up one of the largest concentrations of free-ranging ungulates in North America. Currently, these herds number about 450 bison and 10,600 elk. The herds migrate across several jurisdictional boundaries, including NER, Grand Teton National Park, southern Yellowstone National Park, Bridger-Teton National Forest, Bureau of Land Management resource areas, and State and private lands, before they winter primarily on the NER. Given the wide range of authorities and interests, the Service has used, and will continue to use, a cooperative approach to management planning involving all associated Federal agencies and the Wyoming Game and Fish Department (WGFD).

In order to manage the Jackson bison and elk herds on NER, the Service worked closely with representatives from the National Park Service, U.S. Forest Service, the Animal and Plant Health Inspection Service, the Bureau of Land Management, and the WGFD to develop a BEMP. The BEMP was finalized in April 2007 after a 9-year public process (June 6, 2007, 72 FR 31339). The 2007 BEMP outlined the desired future conditions, management goals, objectives, and strategies for managing the Jackson bison and elk herds on the NER and Grand Teton National Park for 15 years. The BEMP called for reducing the number of elk wintering on the NER to 5,000 and reducing the number of bison to 500. One of the goals was a sustainable population of elk and bison that are healthy and able to adapt to changing conditions in the environment and that are at reduced risk from the adverse effect of non-endemic disease.

Following the BEMP, a Step-down Plan was finalized by the Service in December 2019 consistent with the 2007 BEMP. This Step-down Plan provides guidance to adaptively manage bison and elk herds to meet the goals and objectives outlined in the BEMP,

specifically to reduce the number of elk wintering on NER and subsequently reduce reliance on supplemental feeding. Reducing feed season length has been the principal method of choice to achieve this goal.

##### **Purpose and Need for Agency Action**

More than 15 years have elapsed since the 2007 BEMP was finalized. In addition, the 2019 Step-down Plan reducing supplemental feeding on the NER ends in December 2024. The purpose and need of the updated BEMP will be to address changed conditions and newly available scientific information for bison and elk management, including supplemental winter feeding, hunting, disease management, and habitat conservation. The BEMP will set updated desired conditions, management goals, objectives, and strategies to guide the management of bison and elk on the NER and work towards a goal of a healthy sustainable population of bison and elk on NER.

##### **NEPA Analysis of Agency Actions**

The National Environmental Policy Act (NEPA; 42 U.S.C. 4321–4347) requires Federal agencies to undertake an assessment of the environmental effects of any proposed action prior to making a final decision and implementing the decision. NEPA also established the Council on Environmental Quality (CEQ), which issued regulations implementing the procedural provisions of NEPA (40 CFR parts 1500–1508). The Service has regulatory authority under the National Wildlife Refuge System Administration Act to manage the NER. Establishing a BEMP is a Federal action requiring review under NEPA.

Consistent with CEQ guidance for implementing NEPA, we intend to complete an EIS to consider approaches to manage bison and elk on the NER. The EIS will address the potential environmental impacts of a range of reasonable alternatives. The potential environmental impacts assessed in the EIS would include the effects on bison and elk from management measures; effects on other environmental resources such as federally listed species; cultural and Tribal resources; potential socioeconomic effects, including impacts on economic activities such as tourism, agriculture, and hunting; and effects on a range of other resources identified through internal and external scoping. We will address our compliance with other applicable authorities in our NEPA review.

##### **Responsibilities to Tribes**

The Service has unique responsibilities to Tribes, including under the National Historic Preservation Act (16 U.S.C. 470 *et seq.*); the American Indian Religious Freedom Act (42 U.S.C. 1996); Native American Grave Protection and Repatriation Act (25 U.S.C. 3001); Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb *et seq.*); Joint Secretarial Order 3403, Fulfilling the Trust Responsibility to Indian Tribes in the Stewardship of Federal Lands and Waters (November 15, 2021); Secretarial Order 3206, American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the ESA (June 5, 1997); Executive Order 13007, Indian Sacred Sites (61 FR 26771, May 29, 1996); and the agency's Native American Policies. We apply the term "Tribal" or "Tribe(s)" generally to federally recognized Tribes and Alaska Native Tribal entities.

The Service will consult and collaborate with Tribes on the proposals set forth in this document. We will also ensure that those Tribes wishing to engage directly in the NEPA process will have the opportunity to do so. As part of this process, we will protect the confidential nature of any consultations and other communications we have with Tribes, to the extent permitted by the Freedom of Information Act and other laws.

##### **Potential Alternatives**

We will be considering a range of reasonable alternatives for management of bison and elk on the NER that potentially include management measures such as winter feeding, hunting, disease management, and habitat conservation. These approaches may be considered separately or in any combination in the EIS.

Under the no-action alternative, the Service would continue to manage bison and elk on the NER based on the 2007 BEMP.

##### **Scoping Process**

In accordance with NEPA, we are conducting a public scoping process to invite input on the range of alternatives and issues to be addressed during the preparation of the EIS. Scoping is an early and open process for determining the scope of issues to be addressed and identifying issues that should be considered in selecting an alternative for implementation. To that end, during the scoping process, we are inviting input from other interested government agencies, Native American Tribes, the scientific community, industry, nongovernmental organizations,

members of the public, and other interested parties. We solicit input on the following issues:

1. The alternatives considered for managing bison and elk on the NER.
2. Other alternatives, or combinations of alternatives, that should be considered with respect to managing bison and elk on the NER.
3. Specific requirements for NEPA analyses related to the proposed action and alternatives.
4. Considerations for evaluating the significance of impacts on bison and other affected resources, such as other listed or sensitive wildlife and plant species, cultural resources, and socioeconomic resources or activities.
5. Information and analyses regarding other resources that may be affected by the proposed action.
6. Considerations for evaluating the interactions between affected natural resources.
7. Considerations for evaluating the impacts on species, locations, or other resources of religious or cultural significance for Tribes and impacts on cultural values from the actions being considered.
8. Considerations for evaluating climate change effects on bison, elk, and other affected resources.
9. Integrating the management of bison and elk with existing guidance and plans, such as the NER's Comprehensive Conservation Plan.

#### Schedule for the Decision-Making Process

After the scoping period is completed, the Service will develop a draft EIS. The Service currently expects to issue the Notice of Availability for the draft EIS in August 2024 to begin a 45-day public comment period. After the public comment period ends, the Service will review and respond to comments received and will develop the final EIS. The Service currently expects to make the final EIS available to the public in July 2025. A ROD will be completed no sooner than 30 days after the final EIS is released, in accordance with 40 CFR 1506.11.

#### Availability of Comments

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>. 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.

**Matthew J. Hogan,**  
Regional Director, Mountain-Prairie Region.  
[FR Doc. 2023-16378 Filed 7-31-23; 8:45 am]

**BILLING CODE 4333-15-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

[Docket No. BOEM-2023-0034]

#### Notice of Intent To Prepare an Environmental Assessment for Commercial Wind Lease Issuance and Site Assessment Activities on the Atlantic Outer Continental Shelf Offshore Delaware, Maryland, and Virginia

**AGENCY:** Bureau of Ocean Energy Management, Interior

**ACTION:** Notice of intent; request for comments.

**SUMMARY:** In compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Ocean Energy Management (BOEM) intends to prepare an environmental assessment (EA) to consider the potential environmental impacts associated with possible wind energy-related leasing, site assessment, and site characterization activities on the U.S. Atlantic Outer Continental Shelf (OCS). BOEM is seeking public input regarding important environmental issues and the identification of reasonable alternatives that should be considered in the EA. The environmental impacts of any proposed wind energy projects will be assessed after a lease is issued and before BOEM decides whether or not to approve any lessee's project construction and operations plan.

**DATES:** BOEM must receive your comments no later than August 31, 2023.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Through the regulations.gov web portal:* Navigate to <http://www.regulations.gov> and search for Docket No. BOEM-2023-0034 to submit public comments and view supporting and related materials available for this notice. Click on the "Comment" button below the document link. Enter your information and comment, then click "Submit Comment"; or

- *By U.S. Postal Service or other delivery service:* Send your comments and information to the following address: Bureau of Ocean Energy Management, Office of Renewable Energy Programs, 45600 Woodland Road, Mail Stop VAM-OREP, Sterling, VA 20166.

**FOR FURTHER INFORMATION CONTACT:** Jessica Stromberg, BOEM, Environment Branch for Renewable Energy, 45600 Woodland Road, Mail Stop VAM-OREP, Sterling, VA 20166, (703) 787-1730, or [jessica.stromberg@boem.gov](mailto:jessica.stromberg@boem.gov).

#### SUPPLEMENTARY INFORMATION:

**Authority:** This notice of intent to prepare an EA is published pursuant to 43 CFR 46.305.

**Background:** On November 16, 2022, BOEM announced eight draft wind energy areas (WEAs) on the U.S. Central Atlantic OCS for public review and comment. The draft WEAs are offshore North Carolina, Virginia, Maryland, and Delaware, covering approximately 1.7 million acres. Before finalizing the WEAs, BOEM considered feedback from government partners, ocean users, and stakeholders in addition to potential conflicts with a United States Coast Guard safety fairway, commercial fishing, Department of Defense activities, a National Aeronautics and Space Administration danger zone, and marine habitat areas. On July 31, 2023, BOEM announced the final WEAs, which consist of the WEAs identified as A-2, B-1, and C-1 offshore Delaware, Maryland, and Virginia. Detailed information about the WEAs can be found on BOEM's website at: <https://www.boem.gov/central-atlantic>.

#### Proposed Action and Scope of Analysis

The EA's proposed action is issuing wind energy leases in the Central Atlantic WEAs A-2, B-1, and C-1. The EA will consider project easements and grants for subsea cable corridors associated with leasing. The EA also will consider the potential environmental impacts associated with site characterization surveys (*i.e.*, biological, archeological, geological, and geophysical surveys and core samples) and site assessment activities (*i.e.*, installation of meteorological buoys), that are expected to take place following lease issuance. The EA's proposed action does not include the installation of meteorological towers because developers prefer meteorological buoys to collect data. In addition to the no-action alternative, other alternatives may be considered, such as exclusion of certain areas.

BOEM has decided to prepare an EA for this proposed action in order to

assist agency planning and decision-making (40 CFR 1501.3). This notice starts the scoping process for the EA and solicits information regarding additional important environmental issues and alternatives that should be considered in the EA (43 CFR 46.305). Additionally, BOEM will use the scoping process to identify and eliminate from detailed analysis issues that are not significant or that have been analyzed by prior environmental reviews (40 CFR 1501.9(f)(1)).

BOEM will use responses to this notice and the EA public input process to satisfy the public involvement requirements of the National Historic Preservation Act (NHPA), as provided in 36 CFR 800.2(d)(3). Specific to NHPA, BOEM seeks information from the public on the identification and assessment of potential impacts to cultural resources and historic properties that might be impacted by possible wind energy-related leasing, site characterization, and site assessment activities in WEAs A-2, B-1, and C-1.

The EA analyses will also support compliance with other environmental statutes (e.g., Coastal Zone Management Act, Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, and Marine Mammal Protection Act).

Wind energy leases do not authorize any activities on the Outer Continental Shelf. Instead, leases grant lessees the exclusive right to submit plans for BOEM approval. Prior to deciding whether or not to approve any plan for the construction and operation of commercial wind energy facilities, BOEM will prepare a plan-specific environmental analysis and will comply with all consultation requirements. Therefore, this EA will not consider the construction and operation of any commercial wind energy facilities in the WEAs A-2, B-1, and C-1.

**Cooperating Agencies:** BOEM invites Tribal governments and Federal, State, and local government agencies to consider becoming cooperating agencies in the preparation of this EA. Council on Environmental Quality (CEQ) regulations implementing the procedural provisions of NEPA define cooperating agencies as those with “jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative)” (40 CFR 1508.1(e)). Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency. An agency’s role in the environmental analysis neither enlarges nor diminishes

the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEM will provide potential cooperating agencies with a draft memorandum of agreement that includes a schedule with critical action dates and milestones, mutual responsibilities, designated points of contact, and expectations for handling pre-decisional information. Agencies should also consider the “Factors for Determining Whether to Invite, Decline or End Cooperating Agency Status” in CEQ’s memo “Cooperating Agencies in Implementing the Procedural Requirements of [NEPA]” dated January 30, 2002. A copy of this document is available at: [https://www.energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf](https://www.energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf).

BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if an organization is not a cooperating agency, opportunities will exist to provide information and comments to BOEM during the normal public input phases of the NEPA process.

**Comments:** Federal agencies, Tribal, State, local governments, and other interested parties are requested to comment on the important issues to be considered in the EA. For information on how to submit comments and deadline, see the **DATES** and **ADDRESSES** section above.

#### **Privileged and Confidential Information**

BOEM will protect privileged and confidential information in your comment under the Freedom of Information Act (FOIA). Exemption 4 of FOIA applies to trade secrets and commercial and financial information that is privileged or confidential. If you wish to protect the confidentiality of such information, clearly label it and request that BOEM treat it as confidential. BOEM will not disclose such information if BOEM determines under 30 CFR 585.114(b) that it qualifies for a FOIA exemption. Please label privileged or confidential information “Contains Confidential Information” and consider submitting such information as a separate attachment.

BOEM will not treat as confidential any aggregate summaries of such information or comments not containing such privileged or confidential information. Information that is not labeled as privileged or confidential may be regarded by BOEM as suitable for public release.

#### **Personally Identifiable Information**

BOEM encourages you not to submit anonymous comments. Please include your name and address as part of your comment. You should be aware that your entire comment, including your name, address, and any personally identifiable information (PII) included in your comment, may be made publicly available. All submissions from identified individuals, businesses, and organizations will be available for public viewing on [regulations.gov](https://www.regulations.gov). Except for clearly identified privileged and confidential information, BOEM will make available for public inspection all comments, in their entirety, submitted by organizations and businesses, or by individuals identifying themselves as representatives of organizations or businesses.

For BOEM to consider withholding your PII from disclosure, you must identify any information contained in your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. Even if BOEM withholds your information in the context of this notice, your submission is subject to FOIA and, if your submission is requested under the FOIA, your information will only be withheld if a determination is made that one of the FOIA’s exemptions to disclosure applies. Such a determination will be made in accordance with the Department’s FOIA regulations and applicable law.

#### **Section 304 of the National Historic Preservation Act (54 U.S.C. 307103(a))**

After consultation with the Secretary of the Interior, BOEM is required to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners. Tribal entities and other parties providing information on historic resources should designate information that they wish to be held as confidential and provide the reasons why BOEM should do so.

**Karen Baker,**

*Chief, Office of Renewable Energy Programs,  
Bureau of Ocean Energy Management.*

[FR Doc. 2023-16313 Filed 7-31-23; 8:45 am]

**BILLING CODE 4340-98-P**

## INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–589 and 731–  
TA–1394–1396 (Review)]

### Forged Steel Fittings From China, Italy, and Taiwan; Institution of Five-Year Reviews

**AGENCY:** United States International  
Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (“the Act”), as amended, to determine whether revocation of the countervailing duty order on forged steel fittings from China and the antidumping duty orders on forged steel fittings from China, Italy, and Taiwan would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

**DATES:** Instituted August 1, 2023. To be assured of consideration, the deadline for responses is August 31, 2023. Comments on the adequacy of responses may be filed with the Commission by October 12, 2023.

**FOR FURTHER INFORMATION CONTACT:** Alec Resch (202–708–1448) or Celia Feldpausch (202–205–2387), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission’s TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for this proceeding may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>.

#### SUPPLEMENTARY INFORMATION:

**Background.**—On September 24, 2018, the Department of Commerce (“Commerce”) issued an antidumping duty order on imports of forged steel fittings from Taiwan (83 FR 48280). On November 26, 2018, Commerce issued a countervailing duty order on imports of forged steel fittings from China (83 FR 60396) and antidumping duty orders on imports of forged steel fittings from China and Italy (83 FR 60397). The Commission is conducting reviews

pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission’s Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission’s determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

**Definitions.**—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China, Italy, and Taiwan.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise*. In its original determinations, the Commission defined a single *Domestic Like Product* consisting of forged steel fittings, coextensive with Commerce’s scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product*, or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of the *Domestic Like Product*, except Anvil International, Inc. (“Anvil”). The Commission found that appropriate circumstances existed in its original determinations to exclude Anvil from the *Domestic Industry* as a related party. One Commissioner defined the *Domestic Industry* differently in the original determinations.

(5) The *Order Dates* are the dates that the antidumping and countervailing duty orders under review became effective. In the review concerning the antidumping duty order on imports of forged steel fittings from Taiwan, the *Order Date* is September 24, 2018. In the reviews concerning the antidumping and countervailing duty orders on imports of forged steel fittings from China and the antidumping duty order

on imports of forged steel fittings from Italy, the *Order Date* is November 26, 2018.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

**Participation in the proceeding and public service list.**—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission’s rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission’s designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

**Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.**—Pursuant to § 207.7(a) of the Commission’s rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the

application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

**Certification.**—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding 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.

**Written submissions.**—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on August 31, 2023. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on October 12, 2023. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures*, available on the Commission's website at [https://www.usitc.gov/documents/handbook\\_on\\_filing\\_procedures.pdf](https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf), elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must

be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

No response to this request for information is required if a currently valid Office of Management and Budget ("OMB") number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–576, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

**Inability to provide requested information.**—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be provided in response to this notice of institution—If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country*; or produce *Subject Merchandise* in more than one *Subject Country*, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country*. As used below, the term "firm" includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at

[https://usitc.gov/reports/response\\_noi\\_worksheet](https://usitc.gov/reports/response_noi_worksheet), where one can download and complete the "NOI worksheet" Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product*, a U.S. union or worker group, a U.S. importer of the *Subject Merchandise*, a foreign producer or exporter of the *Subject Merchandise*, a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry*.

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product*. Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date*.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product*, provide the following information on your firm's operations on that product during calendar year 2022, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties)

of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country*; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country*, provide the following information on your firm's(s') operations on that product during calendar year 2022 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Date*, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include

technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country*, and such merchandise from other countries.

(13) (*Optional*) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry*; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

*Authority:* This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: July 26, 2023.

**Sharon Bellamy,**

*Acting Supervisory Hearings and Information Officer.*

[FR Doc. 2023-16188 Filed 7-31-23; 8:45 am]

BILLING CODE 7020-02-P

---

## DEPARTMENT OF JUSTICE

[OMB Number 1105-0102]

### Agency Information Collection Activities; Proposed eCollection Activities Requested; Extension of a Previously Approved Collection; Statement of Claim for Filing of Claims in the Guam Claims Program Pursuant to the Guam World War II Loyalty Recognition Act

**AGENCY:** U.S. Marshals Service, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The U.S. Marshals Service (USMS), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until October 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Jeremy LaFrancois, Foreign Claims Settlement Commission, 600 E Street NW, Suite 6002, Washington, DC 20579; telephone: 202-616-6981 or [jeremy.r.lafrancois@usdoj.gov](mailto:jeremy.r.lafrancois@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the

- proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Abstract:* Information will be used as a basis for the Commission to receive, examine, adjudicate and render final decisions with respect to claims for compensation of claims pursuant to the Guam World War II Loyalty Recognition Act, title XVII, Public Law 114-328.

**Overview of This Information Collection**

1. *Type of Information Collection:* Extension of a previously approved collection.

2. *The Title of the Form/Collection:* Statement of Claim for filing of Claims in the Guam Claims Program Pursuant to the Guam World War II Loyalty Recognition Act.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: FCSC-2, FCSC-2C. Component: USMS.

4. *Affected Public: Individuals or households.* The obligation to respond is mandatory per 45 CFR part 510.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated number of respondents is 5,000. The time per response is two hours to complete the form.

6. *An estimate of the total annual burden (in hours) associated with the collection:* The total annual burden hours for this collection is 10,000 hours.

7. *An estimate of the total annual cost burden associated with the collection:* \$0.

**TOTAL BURDEN HOURS**

Activity	Number of respondents	Frequency	Total annual responses	Time per response (hours)	Total annual burden (hours)
FCSC-2, FCSC-2C .....	5,000	1/annually .....	5,000	2	10,000
Unduplicated Totals .....	5,000	.....	5,000	.....	10,000

*If additional information is required contact:* Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: July 27, 2023.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2023-16291 Filed 7-31-23; 8:45 am]

**BILLING CODE 4410-18-P**

**DEPARTMENT OF JUSTICE**

[OMB Number 1122-0NEW]

**Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection; Supervised Visitation and Safe Exchange Guiding Principles Reflection Survey for Past and Current Grantees**

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Office on Violence Against Women (OVW), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until October 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cathy Poston, Office on Violence Against Women, at 202-514-5430 or [Catherine.poston@usdoj.gov](mailto:Catherine.poston@usdoj.gov).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Abstract:* Congress acknowledged the need for available and appropriate supervised visitation and exchange services for child(ren) and adult victims of domestic violence and established the Safe Havens: Supervised Visitation and Safe Exchange Grant Program (Supervised Visitation Program) as part of the Violence Against Women Act of 2000. This Federal grant program is designed to increase supervised visitation and exchange services for victims of domestic violence, sexual assault, stalking, dating violence, and child abuse. The Supervised Visitation Program seeks to shift the focus of supervised visitation and exchange in domestic violence cases in an important way: where the traditional purpose of supervised visitation was to keep the children safe while allowing continued access by the parents, Supervised Visitation Program grantees, funded by the United States Department of Justice, Office on Violence Against Women (OVW), must consider as their highest priority the safety of both children and adult victims.

In 2007, OVW announced Guiding Principles of the Safe Havens: Supervised Visitation and Safe Exchange Grant Program (Guiding Principles) designed to guide the development and administration of Supervised Visitation Program centers with an eye toward addressing the

needs of child(ren) and adult victims of domestic violence in visitation and exchange settings. The Guiding Principles look beyond the visitation setting to address how communities funded under the Supervised Visitation Program should address domestic violence in the larger community. In addition, the Guiding Principles provide guidance for communities developing or enhancing supervised visitation and exchange services for families experiencing domestic violence, child abuse, sexual assault, dating violence, or stalking; serve as a reference for drafting policies and protocols for these services; and assist collaborations with shaping, informing, and reviewing local supervised visitation and exchange services to address domestic violence.

In the Violence Against Women Reauthorization Act of 2013, Congress authorized the Justice for Families (JFF) Program which supports activities to improve the capacity of communities and courts to respond to families impacted by domestic violence, dating violence, sexual assault, stalking, and in some cases child sexual abuse with court based and court-related programs, supervised visitation and safe exchange by and between parents, training and technical assistance for people who work with families in the court system, civil legal services, and the provision of resources in juvenile court matters. The JFF Program includes purpose areas previously authorized under the Supervised Visitation Program. OVW has decided to update to reimagine the Guiding Principles to reflect improved best practices for families experiencing domestic violence, language access and serving underserved communities.

The purpose of this information collection is to provide valuable information from current and former Supervised Visitation Program and JFF Programs grantees to inform the process of updating the Guiding Principles. The type of survey questions will include

Likert scale questions and open ended questions regarding equal regard for the safety of children and adult victims; valuing multiculturalism and diversity; understanding domestic violence nature, dynamics and impact; respectful and fair interaction; community collaboration; and advocacy.

**Overview of This Information Collection**

1. *Type of Information Collection:* New collection.
2. *The Title of the Form/Collection:* Supervised Visitation and Safe Exchange Guiding Principles Reflection Survey for Past and Current Grantees.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: 1122-XXXX. U.S. Department of Justice, Office on Violence Against Women.
4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: affected public includes the current and former JFF Program grantees. The obligation to respond is voluntary.
5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it will take the approximately 240 respondents, current and former JFF Program and Safe Haven Program grantees approximately thirty minutes to complete the survey.  
An estimate of the total annual burden (in hours) associated with the collection:
6. The total annual hour burden to complete the data collection forms is 120 hours, that is 240 current and former JFF Program and Safe Haven Program grantees completing the survey one time with an estimated completion time being thirty minutes.
7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

**TOTAL BURDEN HOURS**

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
Survey .....	240	1 time .....	1 time .....	30	120
Unduplicated Totals .....	600	.....	600 .....	.....	37

If additional information is required contact: Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: July 27, 2023.

**Darwin Arceo,**

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023-16289 Filed 7-31-23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Stipulated Order Under the Clean Water Act

On July 26, 2023, the Department of Justice lodged a proposed Stipulated Order on Sewer System with the United States District Court for the Southern District of Mississippi in the lawsuit entitled *United States and State of Mississippi v. City of Jackson, Mississippi*, Civil Action No. 3:12-cv-790-HTW-LGI (S.D. Miss.) [Docket No. 36].

The proposed Stipulated Order places the operation of the sewer system of the City of Jackson, Mississippi ("City") under the control of an Interim Third-Party Manager. The proposed Stipulated Order requires the Interim Third-Party Manager to perform substantial work to address problems plaguing the City's sewer system. The work required includes addressing more than 200 emergency sewer failure locations (many resulting in sanitary sewer overflows), addressing prohibited bypasses of treatment prior to discharging wastewater into the Pearl River, and implementing Management, Operations, and Maintenance Programs. The proposed Stipulated Order does not resolve any claims against the City or any non-compliance with the 2013 consent decree in this case.

The publication of this notice opens a period for public comment on the Stipulated Order. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to entitled *United States and State of Mississippi v. City of Jackson, Mississippi*, Civil Action No. 3:12-cv-790-HTW-LGI (S.D. Miss.), D.J. Ref. No. 90-5-1-1-09841. All comments must be submitted or postmarked by August 31, 2023. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the Stipulated Order may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the Stipulated Order upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$14.00 (25 cents per page reproduction cost) payable to the United States Treasury.

**Lori Jonas,**

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2023-16261 Filed 7-31-23; 8:45 am]

**BILLING CODE 4410-05-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1105-0109]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Previously Approved Collection; Procurement Collusion Strike Force Complaint Form

**AGENCY:** U.S. Marshals Service, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The U.S. Marshals Service (USMS), Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until October 2, 2023.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Sarah Oldfield, Deputy Chief Legal Advisor—Criminal, U.S. Department of

Justice, Antitrust Division, 950 Pennsylvania Ave. NW, Room 3311, Washington, DC 20530, email: [sarah.oldfield@usdoj.gov](mailto:sarah.oldfield@usdoj.gov); telephone: 202-305-8915.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Abstract:* The Department of Justice formed the Procurement Collusion Strike Force (PCSF) in 2019, to focus on deterring, detecting, investigating, and prosecuting antitrust crimes and related frauds involving government procurement, grants, and program funding. The PCSF members include the Department's Antitrust Division, multiple U.S. Attorneys' offices, the Federal Bureau of Investigation, and the Inspectors General for various Federal agencies. The collection of information through the PCSF complaint form facilitates reporting of information regarding potential antitrust crimes affecting government procurement.

### Overview of This Information Collection

1. *Type of Information Collection:* Extension of a previously approved collection.
2. *The Title of the Form/Collection:* Procurement Collusion Strike Force Complaint Form.
3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: None. Component: U.S. Marshals Service, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Individuals or households. The obligation to respond is voluntary.  
 5. *An estimate of the total number of respondents and the amount of time*

*estimated for an average respondent to respond:* The estimated number of respondents for this collection is 500. The time per response is 30 minutes to complete the form.  
 6. *An estimate of the total annual burden (in hours) associated with the*

*collection:* The total annual burden hours for this collection is 250 hours.

7. *An estimate of the total annual cost burden associated with the collection, if applicable:* \$0.

TOTAL BURDEN HOURS

Activity	Number of respondents	Frequency	Total annual responses	Time per response (minutes)	Total annual burden (hours)
Procurement Complaint Form .....	500	1/annually .....	500	30	250
Unduplicated Totals .....	500	.....	500	.....	250

*If additional information is required contact:* Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W-218, Washington, DC.

Dated: July 27, 2023.  
**Darwin Arceo,**  
*Department Clearance Officer for PRA, U.S. Department of Justice.*  
 [FR Doc. 2023-16290 Filed 7-31-23; 8:45 am]  
**BILLING CODE 4410-18-P**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**  
 [OMB Control No. 1219-0034]

**Proposed Extension of Information Collection; Records of Tests and of Examinations of Personnel Hoisting Equipment**

**AGENCY:** Mine Safety and Health Administration, Labor.  
**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Records of Tests and of

Examinations of Personnel Hoisting Equipment.

**DATES:** All comments must be received on or before October 2, 2023.

**ADDRESSES:** Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA-2023-0036.
- *Mail/Hand Delivery:* DOL-MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202-5452. Before visiting MSHA in person, call 202-693-9455 to make an appointment, in keeping with the Department of Labor's COVID-19 policy. Special health precautions may be required.
- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at [MSHA.information\\_collections@dol.gov](mailto:MSHA.information_collections@dol.gov) (email); (202) 693-9440 (voice); or (202) 693-9441 (facsimile). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), Public Law 95-164 as amended, 30 U.S.C. 813(h), authorizes Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811,

authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

MSHA's mandatory standards for hoists and appurtenances, including wire rope, used for hoisting persons for both surface and underground metal and nonmetal mines are referenced in 30 CFR 56 and 30 CFR 57, for underground coal mines in 30 CFR 75, and for surface coal mines and surface work areas of underground coal mines in 30 CFR 77.

*Initial Wire Rope Diameter Measurement*

30 CFR 56.19022, 30 CFR 57.19022, 30 CFR 75.1432 and 30 CFR 77.1432 require the diameter of newly installed wire rope to be measured at least once in every third interval of the rope's active length to establish a baseline for subsequent semiannual measurements. A record of the measurements is required to be made and retained until the rope is retired from service.

*Biweekly and Daily Visual Examinations of Wire Ropes and Hoists*

30 CFR 56.19023(a), 57.19023(a), 75.1433(a), and 77.1433(a) require the wire rope to be examined visually at least every fourteen days for visible structural damage, corrosion, and improper lubrication or dressing. If the examination reveals weakening portions of the rope, the weakened portions must be monitored daily for further deterioration until retirement criteria require that the rope be removed from service. 30 CFR 56.19023(d), 57.19023(d), 75.1433(d), and 77.1433(d) require that the person conducting the examination must certify that the examination was made and the condition of weakening portions. The records must be retained for one year.

30 CFR 56.19121 and 30 CFR 57.19121 require the person conducting the inspections, tests, or examinations of hoisting equipment to certify by signature and date that these activities have been done. A record of any part that is not functioning properly must be made and dated. All certifications and records must be retained for 1 year.

30 CFR 75.1400–3 and 77.1403 require hoists and elevators to be examined daily. 30 CFR 75.1400–4 and 77.1404 require a record to be made of each daily examination, including the condition and date if any unsafe condition is found during the examination. All certifications and records must be retained for 1 year.

30 CFR 77.1906 requires a daily examination of hoists used to transport persons. The person making the examination must certify that the examination has been made. If any unsafe condition is found during the examination, the person conducting the examination must make a record of the condition. All certifications and records must be retained for 1 year.

#### *Semiannual Tests and Measurement of Wire Ropes*

30 CFR 56.19023(c), 57.19023(c), 75.1433(c), and 77.1433(c) also require, at least once every six months, mine operators to conduct nondestructive tests of the active length of the rope or measure rope diameter, wherever wear is evident or at regular stopping points, or the rope rests on sheaves or leaves the drum, or at drum cross over and changing-of-layer regions. 30 CFR 56.19023(e), 57.19023(e), 75.1433(c), and 77.1433(c) require the records of nondestructive tests and measurements must be dated and retained until the rope is retired from service.

#### *Safety Catches*

30 CFR 75.1400(c) requires that cages, platforms, or other devices used to transport persons in shafts and slopes shall be equipped with safety catches or other no less effective devices approved by the Secretary that act quickly and effectively in an emergency. Such catches or devices shall be tested at least once every two months. 30 CFR 75.1400–2 requires a record to be made of tests conducted on safety catches. Each entry must be signed by the person performing the tests and countersigned by a responsible official.

## II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Records of Tests and of Examinations of Personnel Hoisting Equipment. MSHA is

particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on [www.regulations.gov](http://www.regulations.gov) and [www.reginfo.gov](http://www.reginfo.gov).

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

## III. Current Actions

This request for collection of information contains provisions for Records of Tests and of Examinations of Personnel Hoisting Equipment. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0034.

*Affected Public:* Business or other for-profit.

*Number of Annual Respondents:* 225.

*Frequency:* On occasion.

*Number of Annual Responses:* 61,265.

*Annual Burden Hours:* 5,114 hours.

*Annual Respondent or Recordkeeper*

*Cost:* \$270,000.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

**Song-ae Aromie Noe,**

*Certifying Officer, Mine Safety and Health Administration.*

[FR Doc. 2023–16259 Filed 7–31–23; 8:45 am]

**BILLING CODE 4510–43–P**

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

[OMB Control No. 1219–0046]

#### Proposed Extension of Information Collection; Escape and Evacuation Plans

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Escape and Evacuation Plans.

**DATES:** All comments must be received on or before October 2, 2023.

**ADDRESSES:** You may submit comment as follows. Please note that late, untimely filed comments will not be considered. Electronic Submissions: Submit electronic comments in the following way:

- *Federal E-Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA–2023–0023.

- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite

4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor’s COVID–19 policy. Special health precautions may be required.

- MSHA will post all comments as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at [MSHA.information.collections@dol.gov](mailto:MSHA.information.collections@dol.gov) (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), (Pub. L. 91–173, as amended by Pub. L. 95–164), 30 U.S.C. 813(h), authorizes the Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811, authorizes the Secretary of Labor to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal or other mines.

30 CFR 57.11053 requires the development of specific escape and evacuation plans by the operator that address the unique conditions and mining system of each underground metal and nonmetal mine (MNM). The plan must show assigned responsibilities of all key personnel in the event of an emergency and set out in written form. 30 CFR 57.11053 also requires that mine operators make revisions to the escape and evacuation plan for an underground metal and nonmetal mine as mining progresses and conditions at the mine change. The plan must be available to the Secretary or their authorized representatives from MSHA and conspicuously posted at the mine at locations convenient to all persons on the surface and underground. The mine operator and MSHA are required to jointly review the plan at least once every 6 months.

The following information is required with each escape and evacuation plan submission:

- (1) Mine maps or diagrams showing directions of principal air flow, location of escape routes, and locations of existing telephones, primary fans, primary fan controls, fire doors,

ventilation doors, and refuge chambers. Appropriate portions of such maps or diagrams shall be posted at all shaft stations and in underground shops, lunchrooms, and elsewhere in working areas where persons congregate.

- (2) Procedures to show how the miners will be notified of an emergency.

- (3) An escape plan for each working area in the mine, including instructions showing how each working area should be evacuated. Each such plan shall be posted at appropriate shaft stations and elsewhere in working areas where persons congregate.

- (4) A firefighting plan.

- (5) Procedures for surface personnel to follow in an emergency, including the notification of proper authorities and the preparation of rescue equipment and other equipment which may be used in rescue and recovery operations.

- (6) A statement on the availability of emergency communication and transportation facilities, emergency power and ventilation, as well as the location of rescue personnel and equipment.

**II. Desired Focus of Comments**

MSHA is soliciting comments concerning the proposed information collection related to Escape and Evacuation Plans. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA’s estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on [www.regulations.gov](http://www.regulations.gov) and [www.reginfo.gov](http://www.reginfo.gov).

The public may also examine publicly available documents at DOL–MSHA, Office of Standards, Regulations, and

Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist’s desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor’s COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

**III. Current Actions**

This information collection request concerns provisions for Escape and Evacuation Plans. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0046.

*Affected Public:* Business or other for-profit.

*Number of Annual Respondents:* 190.

*Frequency:* On occasion.

*Number of Annual Responses:* 380.

*Annual Burden Hours:* 3,230 hours.

*Annual Respondent or Recordkeeper Cost:* \$1,900.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

**Song-ae Aromie Noe,**

*Certifying Officer, Mine Safety and Health Administration.*

[FR Doc. 2023–16264 Filed 7–31–23; 8:45 am]

**BILLING CODE 4510–43–P**

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

[OMB Control No. 1219–0049]

**Proposed Extension of Information Collection; Hoist Operators’ Physical Fitness**

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden,

conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Hoist Operators' Physical Fitness.

**DATES:** All comments must be received on or before October 2, 2023.

**ADDRESSES:** Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below. Please note that late, untimely filed comments will not be considered.

- *Federal E-Rulemaking Portal:* <https://www.regulations.gov>. Follow the on-line instructions for submitting comments for docket number MSHA–2023–0034.

- *Mail/Hand Delivery:* DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

- Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket, with no changes. Because your comment will be made public, you are responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as your or anyone else's Social Security number or confidential business information.

- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at [MSHA.information.collections@dol.gov](mailto:MSHA.information.collections@dol.gov) (email); (202) 693–9440 (voice); or (202) 693–9441 (facsimile). These are not toll-free numbers.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act), Public Law 95–164 as amended, 30 U.S.C. 813(h), authorizes Mine Safety and Health Administration (MSHA) to collect information necessary to carry out its duty in protecting the safety and health of miners. Further, section 101(a) of the Mine Act, 30 U.S.C. 811(a), authorizes the Secretary of Labor (Secretary) to develop, promulgate, and revise as may be appropriate, improved mandatory health or safety standards for the protection of life and prevention of injuries in coal and metal and nonmetal mines.

30 CFR 56.19057—Hoist operator's physical fitness (Surface Metal and Nonmetal Mines) and 57.19057—Hoist operator's physical fitness (Underground Metal and Nonmetal Mines) require the examination and certification of hoist operators' physical fitness by a qualified, licensed physician, within 12 months preceding hoisting duties. The safety of all metal and nonmetal miners riding hoist conveyances is largely dependent upon the attentiveness and physical capabilities of the hoist operator. Improper movements, overspeed, and overtravel of a hoisting conveyance can result in serious physical harm or death to passengers.

### II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Hoist Operators' Physical Fitness. MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The information collection request will be available on <http://www.regulations.gov>. MSHA cautions the commenter against providing any information in the submission that

should not be publicly disclosed. Full comments, including personal information provided, will be made available on [www.regulations.gov](http://www.regulations.gov) and [www.reginfo.gov](http://www.reginfo.gov).

The public may also examine publicly available documents at DOL–MSHA, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

### III. Current Actions

This information collection request concerns provisions for Hoist Operators' Physical Fitness. MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request from the previous information collection request.

*Type of Review:* Extension, without change, of a currently approved collection.

*Agency:* Mine Safety and Health Administration.

*OMB Number:* 1219–0049.

*Affected Public:* Business or other for-profit.

*Number of Annual Respondents:* 803.

*Frequency:* On occasion.

*Number of Annual Responses:* 803.

*Annual Burden Hours:* 27 hours.

*Annual Respondent or Recordkeeper Cost:* \$325,157.

Comments submitted in response to this notice will be summarized in the request for Office of Management and Budget approval of the proposed information collection request; they will become a matter of public record and will be available at <https://www.reginfo.gov>.

**Song-Ae Aromie Noe,**

*Certifying Officer, Mine Safety and Health Administration.*

[FR Doc. 2023–16260 Filed 7–31–23; 8:45 am]

**BILLING CODE 4510–43–P**

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration**

[Docket No. OSHA–2007–0083]

**Applied Research Laboratories of South Florida, LLC; Voluntary Termination of Recognition as a Nationally Recognized Testing Laboratory****AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the voluntary termination of recognition granted to Applied Research Laboratories of South Florida, LLC as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The voluntary termination of recognition specified by this notice becomes effective on August 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov).

**SUPPLEMENTARY INFORMATION:****I. Notice of Voluntary Termination of Recognition as a Nationally Recognized Testing Laboratory**

On April 25, 2018, OSHA granted Applied Research Laboratories of South Florida, LLC (ARL) recognition as a Nationally Recognized Testing Laboratory (NRTL). The NRTL Program regulation, 29 CFR 1910.7 App. A, provides that, “[a]t any time, a recognized NRTL may voluntarily terminate its recognition, either in its entirety or with respect to any area covered in its recognition, by giving written notice to OSHA,” that “[t]he written notice shall state the date as of which the termination is to take effect, and that [t]he Assistant Secretary shall inform the public of any voluntary termination by **Federal Register** notice.”

ARL notified OSHA by a letter dated April 19, 2023 (OSHA–2007–0083–0057), that it would be closing its business effective July 31, 2023. In a

subsequent email, dated May 25, 2023 (OSHA–2007–0038–0058), ARL confirmed that this letter constituted a voluntary and complete termination of ARL’s recognition as a NRTL, effective August 1, 2023, as well as a voluntary withdrawal of any open NRTL scope expansions and NRTL renewal applications previously submitted to OSHA, also effective August 1, 2023.

Therefore, pursuant to the NRTL Program regulation, OSHA is informing the public that ARL has voluntarily terminated its recognition.

**II. Authority and Signature**

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 657(g)(2), Secretary of Labor’s Order No. 8–2020 (85 FR 58393, Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on July 24, 2023.

**James S. Frederick,**

*Deputy Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2023–16131 Filed 7–31–23; 8:45 am]

**BILLING CODE 4510–26–P**

**NUCLEAR REGULATORY COMMISSION**

[NRC–2023–0065]

**Information Collection: Medical Use of Byproduct Material**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Renewal of existing information collection; request for comment.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, “Medical Use of Byproduct Material.”

**DATES:** Submit comments by October 2, 2023. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search

for Docket ID NRC–2023–0065. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Mail comments to:* David C. Cullison, Office of the Chief Information Officer, Mail Stop: T–6 A10M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

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:**

David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov).

**SUPPLEMENTARY INFORMATION:****I. Obtaining Information and Submitting Comments***A. Obtaining Information*

Please refer to Docket ID NRC–2023–0065 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2023–0065.

- *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](mailto:PDR.Resource@nrc.gov). The supporting statement and burden spreadsheet are available in ADAMS under Accession Nos. ML23137A012 and ML23136B177.

- *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](mailto: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.

- *NRC’s Clearance Officer:* A copy of the collection of information and related

instructions may be obtained without charge by contacting the NRC's Clearance Officer, David C. Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-2084; email: [Infocollects.Resource@nrc.gov](mailto:Infocollects.Resource@nrc.gov).

### B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC-2023-0065, in your comment submission.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at <https://www.regulations.gov> and entered into ADAMS. Comment submissions are not routinely edited 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 comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

## II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* 10 CFR part 35, Medical Use of Byproduct Material.

2. *OMB approval number:* 3150-0010.

3. *Type of submission:* Revision.

4. *The form number, if applicable:* Not applicable.

5. *How often the collection is required or requested:* Reports of medical events, doses to an embryo/fetus or nursing child, or leaking source are reportable on occurrence. A specialty board certifying entity desiring to be recognized by the NRC must submit a one-time request for recognition and infrequently revise the information.

6. *Who will be required or asked to respond:* Physicians and medical institutions holding an NRC license authorizing the administration of byproduct material or radiation from

this material to humans for medical use. A specialty board certification entity desiring to have its certifying process and board certificate recognized by NRC.

7. *The estimated number of annual responses:* 313,982 (234,272 reporting responses + 7,327 recordkeepers + 72,383 third party disclosure responses).

8. *The estimated number of annual respondents:* 7,328 (862 NRC licensees + 6,465 Agreement State licensees + 1 specialty board certification entity).

9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 1,117,269 hours (61,506 reporting + 1,043,235 recordkeeping + 12,528 third party disclosure).

10. *Abstract:* Part 35 of title 10 of the *Code of Federal Regulations*, "Medical Use of Byproduct Material," contains NRC's requirements and provisions for the medical use of byproduct material and for issuance of specific licenses authorizing the medical use of this material. These requirements and provisions provide for the radiation safety of workers, the general public, patients, and human research subjects. Part 35 contains mandatory requirements that apply to NRC licensees authorized to administer byproduct material or radiation to humans for medical use. These requirements also provide voluntary provisions for specialty boards to apply to have their certification processes recognized by the NRC so that their board-certified individuals can use the certifications as proof of training and experience.

## III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility? Please explain your answer.

2. Is the estimate of the burden of the information collection accurate? Please explain your answer.

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated: July 27, 2023.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2023-16256 Filed 7-31-23; 8:45 am]

**BILLING CODE 7590-01-P**

## NUCLEAR REGULATORY COMMISSION

[NRC-2023-0122]

### Applications for Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Consideration(s) and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of two amendment requests. The amendment requests are for Millstone Power Station, Unit 3. For each amendment request, the NRC proposes to determine that it involves no significant hazards consideration (NSHC). Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation by persons who file a hearing request or petition for leave to intervene.

**DATES:** Comments must be filed by August 31, 2023. A request for a hearing or petitions for leave to intervene must be filed by October 2, 2023. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by August 11, 2023.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2023-0122. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto: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:** Kay Goldstein, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-1506; email: [Kay.Goldstein@nrc.gov](mailto:Kay.Goldstein@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining Information and Submitting Comments**

*A. Obtaining Information*

Please refer to Docket ID NRC-2023-0122, 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-2023-0122.

- *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](mailto:PDR.Resource@nrc.gov). The Millstone Power Station, Unit 3, documents are available in ADAMS under Accession Nos. ML23123A279 and ML23145A195.

- *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](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

*B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (<https://www.regulations.gov>).

Please include Docket ID NRC-2023-0122, 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. Background**

Pursuant to section 189a.(1)–(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this 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 NSHC, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes two notices of amendments containing SUNSI.

**III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The Commission has made a proposed determination that the following amendment requests involve NSHC. Under the Commission’s regulations in 10 CFR 50.92, this means that operation of the facility 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 basis for this proposed determination for each amendment request is shown as follows.

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 determination.

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 amendments involve no significant hazards consideration. 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 a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination for any of these amendments, any hearing on those amendments will take place after issuance. The Commission expects that the need to take this action 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](mailto: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](mailto: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 dockets 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 names, docket numbers, date of application, ADAMS accession number, and location in the application of the licensee proposed NSHC determination. For further details with respect to these license amendment applications, see the applications for amendment, publicly available portions of 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.

**Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit 3; New London County, CT**

Docket No(s) .....	50-423.
Application Date .....	May 2, 2023.
ADAMS Accession No .....	ML23123A279.
Location in Application of NSHC .....	Pages 9-11 of Attachment 1.
Brief Description of Amendment .....	The proposed amendment would revise Technical Specification (TS) 6.9.1.6.b to support the transition to Framatome (FRM) GAIA fuel with M5™ cladding at Millstone Power Station, Unit 3 (Millstone, Unit 3), which requires the application of the FRM Small Break Loss of Coolant Accident and Realistic Large Break Loss of Coolant Accident methodologies and the associated use of the GALILEO fuel performance code within the loss-of-coolant accident (LOCA) methods. Specifically, TS 6.9.1.6.b would add FRM Topical Reports EMF-2328-P-A, “PWR Small Break LOCA Evaluation Model, S-RELAP5 Based,” EMF-2103-P-A, “Realistic Large Break LOCA Methodology for Pressurized Water Reactors,” and ANP-10349-P-A, “GALILEO Implementation in LOCA Methods” to the list of methodologies for establishing core operating limits. The proposed revision to TS 6.9.1.6.b would also delete one methodology no longer used to define core operating limits at Millstone, Unit 3. Dominion Energy Nuclear Connecticut, Inc. is also requesting an exemption to facilitate the use of FRM GAIA fuel assemblies containing fuel rods fabricated with M5™ cladding material at Millstone, Unit 3.
Proposed Determination .....	NSHC.
Name of Attorney for Licensee, Mailing Address .....	W.S. Blair, Senior Counsel, Dominion Energy Services, Inc., 120 Tredegar St., RS-2, Richmond, VA 23219.
NRC Project Manager, Telephone Number .....	Richard Guzman, 301-415-1030.

**Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit 3; New London County, CT**

Docket No(s) .....	50-423.
Application Date .....	May 23, 2023.
ADAMS Accession No .....	ML23145A195.
Location in Application of NSHC .....	Pages 10-14 of Attachment 1.
Brief Description of Amendment(s) .....	The proposed amendment would revise the Millstone Power Station, Unit 3 (Millstone, Unit 3), technical specifications (TSs) to support the use of Framatome GAIA fuel with M5™ fuel cladding material, which is currently scheduled for insertion into the Millstone, Unit 3, reactor during the spring 2025 refueling outage. The proposed TS changes include updating the reactor core safety limits (TS 2.1.1.2), fuel assemblies design features (TS 5.3.1), and list of approved methodologies for the Core Operating Limits Report (TS 6.9.1.6.b).
Proposed Determination .....	NSHC.
Name of Attorney for Licensee, Mailing Address .....	W.S. Blair, Senior Counsel, Dominion Energy Services, Inc., 120 Tredegar St., RS-2, Richmond, VA 23219.
NRC Project Manager, Telephone Number .....	Richard Guzman, 301-415-1030.

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A “potential party” is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are [Hearing.Docket@nrc.gov](mailto:Hearing.Docket@nrc.gov) and [RidsOgcMailCenter.Resource@nrc.gov](mailto:RidsOgcMailCenter.Resource@nrc.gov), respectively.<sup>1</sup> The request must include the following information:

<sup>1</sup> While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC’s “E-Filing Rule,” the initial request to access SUNSI under these

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party’s particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor’s basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within

procedures should be submitted as described in this paragraph.

10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order<sup>2</sup> setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with

jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.<sup>3</sup>

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated: July 11, 2023.

For the Nuclear Regulatory Commission.

**Brooke P. Clark,**  
*Secretary of the Commission.*

**Attachment 1—General Target Schedule for Processing and Resolving Requests for Access to Sensitive Unclassified Non-Safeguards Information in This Proceeding**

Day	Event/activity
0	Publication of <b>Federal Register</b> notice of hearing or opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI.

<sup>2</sup> Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

<sup>3</sup> Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer

or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

Day	Event/activity
A .....	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3 .....	Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28 .....	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53 .....	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60 .....	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60 .....	Decision on contention admission.

[FR Doc. 2023-15031 Filed 7-31-23; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[NRC-2022-0170]

### Information Collection: Requests to Federally Recognized Indian Tribes for Information; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of submission to the Office of Management and Budget; request for comment; correction.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is correcting a notice that was published in the **Federal Register** (FR) on July 25, 2023, regarding submission of the renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. This action is necessary to correct the number of anticipated responses and respondents to the information collection.

**DATES:** The correction takes effect on August 1, 2023.

**ADDRESSES:** Please refer to Docket ID NRC-2022-0170 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking Website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0170. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at

<https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). The supporting statement is available in ADAMS under Accession No. ML23159A048.

- **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](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-2084; email: [David.Cullison@nrc.gov](mailto:David.Cullison@nrc.gov).

**SUPPLEMENTARY INFORMATION:** In the FR on July 25, 2023, in FR Doc. 2023-15691, on page 47926, in the second column under the heading "II. Background," second paragraph, item number 7, "The estimated number of annual responses," replace "32" with "640 (20 requests annually × 32 responses per request)." In the third column, item number 8, "The estimated number of annual respondents," replace "637" with "45."

Dated: July 27, 2023.

For the Nuclear Regulatory Commission.

**David C. Cullison,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 2023-16255 Filed 7-31-23; 8:45 am]

BILLING CODE 7590-01-P

## NUCLEAR REGULATORY COMMISSION

[Docket No. 70-7020; NRC-2022-0053]

### Sensor Concepts & Applications, Inc.

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License renewal; issuance.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has renewed Special Nuclear Materials (SNM) License No. SNM-2017, to Sensor Concepts & Applications, Inc. (SCA, the licensee) located in Glen Arm, Maryland. The renewed license authorizes SCA to continue to possess and use SNM for a period of 10 years and will expire on July 26, 2033.

**DATES:** License No. SNM-2017 was issued on July 27, 2023, and is effective as of the date of issuance.

**ADDRESSES:** Please refer to Docket ID NRC-2022-0053 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- **Federal Rulemaking website:** Go to <https://www.regulations.gov> and search for Docket ID NRC-2022-0053. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, at 301-415-4737, or by email to [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov). The ADAMS

accession number for each document referenced (if it is available in ADAMS) is provided in the “Availability of Documents” section.

- *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](mailto:PDR.Resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8 a.m. and 4 p.m. ET, Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:**

Jennifer Tobin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone: 301-415-2328, email: [Jennifer.Tobin@nrc.gov](mailto:Jennifer.Tobin@nrc.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Sensor Concepts & Applications, Inc. (SCA) is a privately held company in Glen Arm, Maryland. SCA possesses and uses SNM in greater than critical mass quantities for research and development of radiation detection instrumentation at its location in Glen Arm, Maryland as well as other locations selected by the U.S. Department of Defense (DOD). The quantity of SNM possessed and used by SCA requires an NRC-issued SNM license pursuant to part 70 of title 10 of the *Code of Federal Regulations* (10 CFR), “Domestic licensing of special nuclear material.”

**II. Discussion**

Pursuant to 10 CFR 2.106, the NRC is providing notice of the issuance of renewal of a 10 CFR part 70 license, SNM-2017, to SCA. The license authorizes SCA to possess and use SNM in support of the DOD, Defense Threat Reduction Agency, and the United States Army. The supporting activities include concept demonstrations, test and evaluation, characterization evaluations, and operator training activities to use technology to demonstrate techniques to detect special nuclear materials and clear alarms that represent a non-threat.

SCA’s original license renewal application for a 10-year license was made by letter dated November 24, 2021. On February 1, 2022, the NRC sent SCA an acceptance letter, noting that the license renewal application contained sufficient information for a detailed technical review. SCA was also notified that, since it filed its license renewal application at least 30 days before the license’s expiration date, pursuant to the timely renewal provisions in 10 CFR 70.38(a), SCA was permitted to continue using its SNM in accordance with the existing SNM-2017 license, pending a final decision by the Commission on the license renewal application.

On March 7, 2022, a notice of receipt of SCA’s license renewal application with an opportunity for the public to request a hearing and petition for leave to intervene was published in the **Federal Register** (87 FR 12740). The NRC did not receive a request for a

hearing or for a petition for leave to intervene.

The license renewal application was subsequently supplemented by letters dated May 26, 2022, September 22, 2022, October 4, 2022, and November 17, 2022.

The NRC staff determined that SCA’s proposed licensed activities meet the categorical exclusion in 10 CFR 51.22(c)(14)(v) for the use of radioactive materials for research and development and for educational purposes. Therefore, an environmental assessment and an environmental impact statement are not required for the renewal of the SNM-2017 license.

The NRC finds that the renewed license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the NRC’s rules and regulations as set forth in 10 CFR chapter 1. Accordingly, the renewed license issued on July 27, 2023, is effective immediately. The NRC prepared a safety evaluation report for the renewal of License SNM-2017 and concluded that the licensee can continue to use and possess SNM in accordance with its license without endangering the health and safety of the public, and that this action will not significantly affect the quality of the human environment for the duration of the license.

**III. Availability of Documents**

Documents related to this action, including the license renewal application and other supporting documentation, are available to interested persons as indicated.

Document description	ADAMS accession No.
License Renewal Application (Initial), dated November 24, 2021 .....	ML22027A596.
Acceptance of SCA’s License Renewal Application, dated February 1, 2022 .....	ML22021B672.
SCA Supplemental Information, dated May 26, 2022 .....	ML22159A247 (non-public, withheld pursuant to 10 CFR § 2.390).
SCA Supplemental Information, dated September 22, 2022 .....	ML22276A223 (Package) (non-public, withheld pursuant to 10 CFR § 2.390).
SCA Supplemental Information, dated October 4, 2022 .....	ML22291A023.
SCA Supplemental Information, dated November 17, 2022 .....	ML22333A720.
Letter—SNM-2017 License Renewal Transmittal, dated July 27, 2023. ....	ML23072A187.
SER on SCA License Renewal Application, dated July 27, 2023. ....	ML23179A142.
Renewed SNM-2017, dated July 27, 2023. ....	ML23073A189.

Dated: July 27, 2023.  
 For the Nuclear Regulatory Commission.  
**Carrie M. Safford**,  
*Deputy Director, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.*  
 [FR Doc. 2023-16310 Filed 7-31-23; 8:45 am]  
**BILLING CODE 7590-01-P**

**POSTAL REGULATORY COMMISSION**  
**[Docket Nos. CP2023-107; MC2023-199 and CP2023-203; MC2023-200 and CP2023-204]**  
**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:* August 3, 2023.  
**ADDRESSES:** Submit comments electronically via the Commission’s Filing Online system at <http://>

[www.prc.gov](http://www.prc.gov). Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

- I. Introduction
- II. Docketed Proceeding(s)

**I. Introduction**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<sup>1</sup>

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and

39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

**II. Docketed Proceeding(s)**

1. *Docket No(s)*: CP2023-107; *Filing Title*: USPS Notice of Amendment to Priority Mail, First-Class Package Service & Parcel Select Contract 6, Filed Under Seal; *Filing Acceptance Date*: July 26, 2023; *Filing Authority*: 39 CFR 3035.105; *Public Representative*: Arif Hafiz; *Comments Due*: August 3, 2023.

2. *Docket No(s)*: MC2023-199 and CP2023-203; *Filing Title*: USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 38 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 26, 2023; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: August 3, 2023.

3. *Docket No(s)*: MC2023-200 and CP2023-204; *Filing Title*: USPS Request to Add Priority Mail, First-Class Package Service & Parcel Select Contract 39 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: July 26, 2023; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative*: Christopher C. Mohr; *Comments Due*: August 3, 2023.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**  
*Secretary.*

[FR Doc. 2023-16293 Filed 7-31-23; 8:45 am]

**BILLING CODE 7710-FW-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-97999; File No. SR-NYSEAMER-2023-36]

**Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule**

July 26, 2023.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 14, 2023, NYSE American LLC ("NYSE American" or the "Exchange") filed with the Securities and Exchange

Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Connectivity Fee Schedule (the "Fee Schedule") to add the services available to third party telecommunications service providers in the two Mahwah data center meet me rooms. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

**A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

**1. Purpose**

The Exchange proposes to amend the Fee Schedule to add the services available to third party telecommunications service providers<sup>4</sup> in the two Mahwah, New Jersey data center ("MDC") meet me rooms ("MMRs").<sup>5</sup>

<sup>4</sup> In this filing, telecommunications service providers that choose to purchase MMR services at the MDC are referred to as "Telecoms." Telecoms are licensed by the Federal Communications Commission ("FCC") and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

<sup>5</sup> Through its Fixed Income and Data Services ("FIDS") (previously ICE Data Services) business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange is an indirect subsidiary of ICE and is an affiliate of NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change. See SR-NYSEAMER-2023-36, SR-NYSEARCA-2023-47, SR-NYSECHX-2023-14, and SR-NYSEENAT-2023-12.

<sup>1</sup> 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).

<sup>2</sup> 15 U.S.C. 78s(b)(1).

<sup>3</sup> 15 U.S.C. 78a.

<sup>4</sup> 37 CFR 240.19b-4.

Meet me rooms are standard within the data center industry. A meet me room is a location within a data center where circuits from outside of the data center “meet” and connect with the circuits within the data center, such as those of collocated customers. As a general description, telecommunications service provider’s circuits from outside a data center are brought into a meet me room, where those circuits connect to a telecommunications service provider’s equipment in a meet me room cabinet. From there, a cross connect will complete the connection to a customer’s equipment in the data center’s collocation hall. The data center customer uses the circuit supplied by the telecommunications service provider to connect to locations outside of the data center, e.g., the customers’ back offices.

Before 2013, the MDC did not have a MMR, and all connectivity into and out of the MDC was provided by ICE’s predecessor, NYSE Euronext. In response to customer demand for more connectivity options, the MMRs opened to Telecoms in January 2013. The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

In the ten years since the MMRs opened, 19 Telecoms established services in the MMRs, of which three exited the MMRs. As of June 30, 2023, the 16 Telecoms had 27 cabinets in the MMRs, providing each market participant that requests to receive collocation services directly from the Exchange (“User”)<sup>6</sup> with connectivity options.

It is clear that the MMRs are useful to Users. Although FIDS offers Users circuits,<sup>7</sup> all but a few Users use circuits

<sup>6</sup> Other than Telecoms, Users are the only FIDS customers with equipment physically located in the MDC.

<sup>7</sup> The Exchange notes that the FIDS circuits do not have a distance or latency advantage over the Telecoms within the MDC. FIDS has normalized (a) the distance between the MMRs and collocation and (b) the distance from the MPOE rooms, where the FIDS circuits are, and the collocation hall. As a result, there is no difference in the distances or latency within the MDC. In addition, FIDS itself is a Telecom customer. It is not a Telecom, does not own circuits and must contract with Telecoms to provide its services. The fact that the FIDS circuits do not have an advantage is reflected by the fact

supplied by Telecoms instead: as of June 1, 2023, more than 95% of the circuits for which Users contracted were supplied by the Telecoms.<sup>8</sup> Indeed, all but two of the Users that use FIDS circuits also connect to Telecom circuits in the MMRs.<sup>9</sup>

The Exchange seeks to amend the Fee Schedule to add the services offered to Telecoms and the related fees. Such fees include cabinet and power-related fees, cross-connect fees, and several other fees pertaining to the suite of services that the Exchange offers to Telecoms that operate in the MMR environment.

**The MMR Structure**

Every User requires a circuit into and out of the MDC in order to connect its equipment outside of the MDC to its equipment within the MDC. As noted above, most Users choose to utilize Telecom circuits for these purposes.

A Telecom completes a circuit by placing equipment in a MMR and installing carrier circuits between one or more points outside the MDC and the Telecom’s MMR equipment.<sup>10</sup> A User that has contracted with the Telecom then connects to the Telecom’s MMR equipment using a cross connect from the User’s co-located equipment. Once connected to the Telecom’s equipment, the User can use the Telecom’s circuit to transport data into and out of the MDC.

A Telecom may sell access to its circuits to a second Telecom, so that the second Telecom may use the first Telecom’s circuit to access the MDC. In this way, the second Telecom can install its equipment in an MMR and sell the sublet circuits to its customers without incurring the cost of installing its own circuits to the MDC.<sup>11</sup>

**MMR Services**

The Exchange proposes to add the following MMR services and fees to the end of the Fee Schedule, under the heading “D. Meet-Me-Room (‘MMR’)

that FIDS circuits represent a small portion of the MDC circuits.

<sup>8</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

<sup>9</sup> The Exchange believes that many Users that have FIDS circuits use the FIDS circuits for backup purposes.

<sup>10</sup> A User may use a wireless connection, including a third party wireless connection, to the MDC. In such a case, the portion of the connection closest to the MDC is wired. Accordingly, the present description applies to wireless connections as well as those that are wired. A Telecom elects which MMR it will use, or if it will use both.

<sup>11</sup> FIDS does not have to consent to, and need not be informed of, a Telecom’s sale of a circuit to another Telecom. In addition, neither FIDS nor the Exchange knows the termination point of a Telecom’s circuit or the content of any data sent on a circuit.

Services.” With the exception of cross connects, which may be paid for by the Telecom or by the Telecom’s customer, the proposed services and fees are specific to Telecoms.

**Cabinet-Related Services**

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the cabinets that FIDS provides Telecoms to set up their servers in the MMRs (collectively, the “Cabinet-Related Services”).

*Initial Fee per MMR Cabinet and MMR Monthly Fee for Cabinets:* FIDS offers Telecoms dedicated cabinets in the MMRs to house their equipment. The cabinets come in sizes based on the number of kilowatts (“kW”) allocated, subject to a minimum of 4 kW and maximum of 8 kW per cabinet.

Telecoms pay an initial fee for each cabinet and a monthly fee based on the number of kW allocated to all the Telecom’s cabinets.<sup>12</sup> To indicate how the fee is calculated, the Exchange proposes to add a note stating that the monthly fee is based on the total kW allocated to all of a Telecom’s cabinets.

The Exchange proposes to add the following fees and language to the Fee Schedule for the Cabinet-Related Services:

Initial Fee per MMR Cabinet: Dedicated Cabinet of between 4 kW and 8 kW ...	\$5,000
MMR Monthly Fee for Cabinets: Monthly fee is based on total kW allocated to all of a Telecom’s cabinets.	
Number of kW	Per kW fee monthly
4–8 .....	\$1,200
9–20 .....	1,050
21–40 .....	950
41 + .....	900

**Access and Service Fees**

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the access and services FIDS provides to Telecoms (collectively, the “Access and Service Fees”).

*Data Center Fiber Cross Connect:* FIDS offers fiber cross connects for an initial and monthly charge. Cross connects may run between a Telecom’s cabinets, between its cabinet and the cabinet of another Telecom, or between its cabinet and its customer’s equipment. Cross connects may be

<sup>12</sup> For example, a Telecom that had two cabinets with a total power allocation of 12 kW would have a monthly charge of \$1,200 per kW for the first eight kW and \$1,050 per kW for the next four kW (between 9 kW and 12 kW), for a total of \$13,800.

bundled (*i.e.*, multiple cross connects within a single sheath) such that a single sheath can hold either one cross connect or six cross connects.

Importantly, a cross connect to MMR cabinets may be paid for by the Telecom or by the Telecom’s customer, who may be a User or another Telecom. The same fee applies irrespective of which entity purchases the cross connect.

**Carrier Connection Fee:** Telecoms contract with their customers for circuits into and out of the MDC. A Telecom is charged a monthly fee for providing such circuits to Users, on a per connection basis. Unlike cross connects, which may be purchased by either the Telecom or its customer, the

Carrier Connection Fee is always charged to the Telecom.

**Conduit Sleeve Fee:** A Telecom’s circuits into and out of the MDC run through FIDS conduits. There are currently three FIDS conduit paths leading into the MDC. A Telecom determines which conduit or conduits it will use to carry its circuits, which are carried in individual conduit sleeves. The Telecom is charged an initial charge for the installation of circuits in the FIDS conduit, which covers up to five hours of work, and a monthly fee per conduit sleeve for using the FIDS conduit.<sup>13</sup>

**Connection to Time Protocol Feed:** FIDS offers Telecoms the option to

purchase connectivity to the Precision Time Protocol, with monthly and initial charges. Telecoms may make use of time feeds to receive time and to synchronize clocks between computer systems or throughout a computer network, and time feeds may assist Telecoms in other functions, including record keeping or measuring response times.

**Expedite Fee:** FIDS offers Telecoms the option to expedite the completion of MMR services purchased or ordered by the Telecoms, for which the Exchange charges an “Expedite Fee.”

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
Data Center Fiber Cross Connect .....	Furnish and install 1 cross connect ..... Furnish and install bundle of 6 cross connects	\$500 initial charge plus \$600 monthly charge \$500 initial charge plus \$1,800 monthly charge.
Conduit Sleeve Fee .....	Install (5 hrs) and maintain conduit sleeve supporting Telecom circuit into data center.	\$1,000 initial charge plus \$2,000 monthly charge per conduit sleeve.
Carrier Connection Fee .....	Maintain Telecom’s connections to its non-Telecom data center customers.	\$1,150 monthly charge per connection.
Connection to Time Protocol Feed .....	Precision Time Protocol .....	\$1,000 initial charge plus \$250 monthly charge.
Expedite Fee .....	Expedited installation/completion of MMR service.	\$4,000 per request.

**Service-Related Fees**

The Exchange proposes to add the following services and fees relating to services FIDS provides to Telecoms (collectively, the “Service-Related Fees”) to the Fee Schedule.

**Change Fee:** FIDS charges a Telecom a “Change Fee” if the Telecom requests a change to one or more existing MMR services that FIDS has already established or completed for the Telecom. The Change Fee is charged per order. If a Telecom orders two or more services at one time (for example,

through submitting an order form requesting multiple services) the Telecom is charged a one-time Change Fee, which would cover the multiple services.

**Hot Hands Service:** FIDS offers Telecoms a “Hot Hands Service,” which allows Telecoms to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack a server in a Telecom’s cabinet, power recycling, and install and document the fitting of cable in a Telecom’s cabinet(s). The Hot Hands fee is charged per half hour.

**Shipping and Receiving:** FIDS offers shipping and receiving services to Telecoms, with a per shipment fee for the receipt of one shipment of goods at the MDC from the Telecom or supplier.

**Visitor Security Escort:** Telecom representatives are required to be accompanied by a visitor security escort during visits to the MDC. A fee per visit is charged.

To reflect the above FIDS services and fees, the Exchange proposes to add the following to the Fee Schedule:

Type of service	Description	Amount of charge
Change Fee .....	Change to a service that has already been installed/completed for a Telecom.	\$950 per request.
Hot Hands Service .....	Allows Telecom to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack, power recycling, and install and document cable.	\$100 per half hour.
Shipping and Receiving .....	Receipt of one shipment of goods at data center on behalf of Telecom (includes coordination of shipping and receiving).	\$100 per shipment.
Visitor Security Escort .....	All Telecom representatives are required to be accompanied by a visitor security escort during visits to the data center.	\$75 per visit.

**Application and Impact of the Proposed Changes**

The proposed change would apply equally to all telecommunications

service providers that choose to purchase MMR services (*i.e.*, Telecoms). With the exception of cross connects, which may be paid for by a Telecom or

by the Telecom’s customer, the proposed services and fees are specific to Telecoms.

<sup>13</sup> The number of conduit sleeves a Telecom uses is dependent on the equipment and technology it

uses and the size of the circuits it sells to its customers, who may be Users or other Telecoms.

Most Telecoms use one conduit sleeve or none at all.

Under the proposed rule, a Telecom could select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is the Exchange's understanding that Telecoms do not have to purchase a large number of cabinets or amount of power in order to have a MMR presence. For example, as of June 1, 2023, nine of the 16 Telecoms had one cabinet and five Telecoms had two cabinets. Only two Telecoms had four cabinets. Similarly, half of the Telecoms had only 4 kW of power, and only two Telecoms reached 16 kW of power.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>15</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>16</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

## The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable, for the following reasons.

### Proposed MMR Fees

It is in the Exchange's interest to set MMR prices at a reasonable level so that Telecoms will maximize their use of the MDC. When the MMR fees are set at a reasonable level, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers<sup>17</sup> to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted.<sup>18</sup>

The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

The proposed rule is reasonable because it would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business

<sup>17</sup> "Hosting" is a service offered by a User to another entity in the User's space within the MDC. The Exchange allows Users to act as Hosting Users for a monthly fee. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). Hosting Users' customers are referred to as "Hosted Customers."

<sup>18</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

If the Exchange were to set the MMR fees at an unreasonable level, it could expect the competitive environment among Telecoms in the MMRs to wither. Some Telecoms would likely exit the MDC market, while others would reduce the scope of their operations there, and some may never enter at all, as telecommunications service providers are not required to be in the MMRs. Fewer Telecoms in the MMRs would lead to less competition between the Telecoms for the sale of circuits to Users, which would likely cause the prices of circuits to rise. This, in turn, would increase Users' overall costs of doing business in the MDC. Some customers might choose to exit the MDC altogether, while others might seek to reduce their footprint in colocation by decreasing the number of cabinets, ports, and power they use, or by reducing the number of third-party data feeds they connect to at the MDC. The Exchange thus has every incentive to set the MMR fees at a rate that is reasonable for Telecoms, and no incentive to charge any more than that.

The Exchange's belief that the MMR fees are reasonable is supported by the fact that the MMR fees are very low when compared to both (1) the revenues that Telecoms earn by selling circuits in financial data centers and (2) the total connectivity fees that market participants pay at the MDC.

First, using public information, the Exchange reviewed the MMR fees in the context of Telecoms' business opportunities and expense. Specifically, the Exchange reviewed the public filings and financial statements of the parent company of some of the 16 Telecoms that currently operate in the MMRs.<sup>19</sup>

The parent company's financial statements disclose that the "financial services" share of its "fiber site rental revenue" for the fourth quarter of 2021 was 9%. Based on this disclosure, the Exchange estimated the parent company's annual financial services-related fiber site rental revenue for 2021,

<sup>19</sup> The other Telecoms either are not obligated to make any information public or do not break out their financial information in a manner that would allow the Exchange to assess the impact of the MMR fees.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78f(b)(4).

and then compared that figure to the MMR fees that the parent's Telecoms paid that year, as a percentage of the parent's revenue.<sup>20</sup> The Exchange concluded that the MMR fees paid by those Telecoms represent just 0.9% of the parent's financial services fiber site rental revenue.

Second, the Exchange sought to calculate the portion of market participants' total connectivity spend at the MDC that is attributable to MMR fees. Using data from February 2023, the Exchange summed the following connectivity costs: (1) colocation fees paid by market participants to FIDS; (2) MMR fees paid by Telecoms to FIDS;<sup>21</sup> and (3) a proxy<sup>22</sup> for the circuit and wireless connectivity fees that market participants pay to Telecoms and FIDS. MMR revenue for the same period was then divided by the summation of the connectivity costs. The Exchange determined that the MMR fees represented less than 5 percent of the total connectivity spend.<sup>23</sup>

In sum, the proposed MMR fees are a very small fraction of the overall fees that market participants pay for connectivity services at the MDC. This is further support for the Exchange's position that the MMR fees proposed herein are reasonable.

#### Security of the MDC

The Exchange's belief that the proposed rule change is reasonable takes into account the fact that no third party can establish a meet me room in the MDC, leaving FIDS the sole entity that can control a MMR. FIDS's operation and maintenance of the MDC MMRs is both rational and consistent with the normal commercial practice of data centers.<sup>24</sup> While the Exchange understands that most data centers offer

meet me rooms, it is not aware of any data center operator, within or outside the U.S., that allows a third party to run a meet me room.

Safeguarding the security of the U.S. national market system—in this case, the MDC where the Exchange and the Affiliate SROs maintain trading engines and publish market data, and where the Securities Industry Automation Corporation ("SIAC") publishes the National Market System ("NMS") data feeds for which it is the exclusive securities information processor—is a key part of the operation of a free and open market and national market system and protecting investors and the public interest. The MMR structure furthers that goal.

Having FIDS control the MMRs limits third parties' need to enter the MDC, minimizing security risks. Because it controls the MMRs, FIDS can establish and enforce usage policies designed to protect the MMRs' security and treat the Telecoms equally and consistently. FIDS's control also ensures that the Telecoms' equipment and connections do not extend further into the MDC than the MMRs, and essentially makes the MMRs the demarcation or "hand-off" point for Telecom circuits coming into the MDC. If a third party established a meet me room in the MDC, FIDS could not ensure its control of any of these matters.

This structure reduces security risks because it allows the trading engines of the Exchange and the Affiliate SROs, SIAC's NMS market data publishers, and the ICE Global Network, including the FIDS circuits, to be physically and logically segregated from vendors and other third party service providers, including Telecoms.

In addition, the MMR structure provides Users with the opportunity to use Telecom circuits to create systems that are potentially more redundant and resilient than if they relied on just one exclusive provider. For example, while the original exclusive NYSE Euronext connectivity option to the MDC was designed to be redundant and resilient,<sup>25</sup> today 16 additional Telecoms make circuits available to Users and help to maintain a securities market infrastructure that is stronger and more robust. The Exchange believes that the fact that most customers for

FIDS circuits also purchase Telecom circuits shows the structural importance of the MMRs.

#### The Proposed Change Is Equitable

The Exchange believes that the proposed change is equitable, for the following reasons.

The Exchange believes that the proposed rule change is equitable because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in a MMR, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

The proposed rule is also equitable because it would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably so that Telecoms will maximize their use of the MDC. When the MMR fees are set equitably, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees equitably for Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

#### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory because it

<sup>20</sup> Because the Exchange is obligated to keep customer identities confidential, it is not disclosing the name of the parent company in this filing, but will provide it to the Commission confidentially upon request.

<sup>21</sup> The analysis assumes that Telecoms pass the MMR fees on to the Users.

<sup>22</sup> The Exchange cannot know actual circuit fee revenue because Telecoms are not required to report what they charge their customers for circuits or to charge all customers the same amount. Accordingly, the Exchange used the fees for FIDS circuits as a proxy for the Telecom circuit fees. To estimate the "total circuit fee revenue," the Exchange multiplied what one User would pay for a FIDS circuit by the number of carrier connections.

<sup>23</sup> That percentage varies slightly within the range of 4.28% to 5.30% based on the precise proxy that is used for part (3) of the calculation above, depending on the share of connections one assumes to be wired vs. wireless and the circuit fees.

<sup>24</sup> In addition to the security aspects outlined herein, the Exchange notes that, because FIDS controls the MMRs, it can ensure that all cross connects between Telecoms and Users are normalized.

<sup>25</sup> See, e.g., oral testimony of Robert L.D. Colby, Deputy Director, Division of Market Regulation, Securities and Exchange Commission, before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services (February 12, 2003) (Testimony Concerning Recovery and Renewal: Protecting the Capital Markets Against Terrorism Post 9/11), at <https://www.sec.gov/news/testimony/021203tsrc.htm>.

applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in the MMRs of the MDC, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

The proposed rule is also not unfairly discriminatory because it would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange’s interest to set MMR prices equitably in a non-discriminatory way so that Telecoms will maximize their use of the MDC. When the MMR fees are set in a non-discriminatory fashion, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees in a way that does not unfairly discriminate against any Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization’s Statement on Burden on Competition*

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or

appropriate in furtherance of the purposes of section 6(b)(8) of the Act.<sup>26</sup>

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather encourages competition between Telecoms in the MMRs. It is in the Exchange’s interest to set MMR prices at a reasonable level so that Telecoms are attracted to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC. The Exchange directly benefits from such competition between Telecoms because it increases the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange’s experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted were supplied by the Telecoms.<sup>27</sup>

The proposed rule encourages competition between Telecoms because a Telecom may select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections. The proposed rule would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models.

In sum, the MMR structure creates incentives for Telecoms to compete against each other in providing their customers with connectivity services.

These customers, which are both Users and other Telecoms, directly and indirectly participate in the national market system. As a result, the MMR structure fosters cooperation and coordination with persons facilitating transactions in securities.

#### *C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act<sup>28</sup> and Rule 19b-4(f)(6) thereunder.<sup>29</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)<sup>30</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

<sup>26</sup> 15 U.S.C. 78f(b)(8).

<sup>27</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

<sup>30</sup> 15 U.S.C. 78s(b)(2)(B).

*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](mailto:rule-comments@sec.gov). Please include file number SR-NYSEAMER-2023-36 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-NYSEAMER-2023-36. 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-NYSEAMER-2023-36 and should be submitted on or before August 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-16240 Filed 7-31-23; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-98001; File No. SR-NYSECHX-2023-14]

**Self-Regulatory Organizations; NYSE Chicago, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule**

July 26, 2023.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 14, 2023, NYSE Chicago, Inc. ("NYSE Chicago" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the Connectivity Fee Schedule (the "Fee Schedule") to add the services available to third party telecommunications service providers in the two Mahwah data center meet me rooms. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend the Fee Schedule to add the services available to third party telecommunications service providers<sup>4</sup> in the two Mahwah, New Jersey data center ("MDC") meet me rooms ("MMRs").<sup>5</sup>

Meet me rooms are standard within the data center industry. A meet me room is a location within a data center where circuits from outside of the data center "meet" and connect with the circuits within the data center, such as those of colocated customers. As a general description, telecommunications service provider's circuits from outside a data center are brought into a meet me room, where those circuits connect to a telecommunications service provider's equipment in a meet me room cabinet. From there, a cross connect will complete the connection to a customer's equipment in the data center's colocation hall. The data center customer uses the circuit supplied by the telecommunications service provider to connect to locations outside of the data center, e.g., the customers' back offices.

Before 2013, the MDC did not have a MMR, and all connectivity into and out of the MDC was provided by ICE's predecessor, NYSE Euronext. In response to customer demand for more connectivity options, the MMRs opened to Telecoms in January 2013. The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS

<sup>4</sup> In this filing, telecommunications service providers that choose to purchase MMR services at the MDC are referred to as "Telecoms." Telecoms are licensed by the Federal Communications Commission ("FCC") and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

<sup>5</sup> Through its Fixed Income and Data Services ("FIDS") (previously ICE Data Services) business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange is an indirect subsidiary of ICE and is an affiliate of NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change. See SR-NYSEAMER-2023-36, SR-NYSEARCA-2023-47, SR-NYSECHX-2023-14, and SR-NYSENAT-2023-12.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>31</sup> 17 CFR 200.30-3(a)(12).

are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

In the ten years since the MMRs opened, 19 Telecoms established services in the MMRs, of which three exited the MMRs. As of June 30, 2023, the 16 Telecoms had 27 cabinets in the MMRs, providing each market participant that requests to receive collocation services directly from the Exchange (“User”)<sup>6</sup> with connectivity options.

It is clear that the MMRs are useful to Users. Although FIDS offers Users circuits,<sup>7</sup> all but a few Users use circuits supplied by Telecoms instead: as of June 1, 2023, more than 95% of the circuits for which Users contracted were supplied by the Telecoms.<sup>8</sup> Indeed, all but two of the Users that use FIDS circuits also connect to Telecom circuits in the MMRs.<sup>9</sup>

The Exchange seeks to amend the Fee Schedule to add the services offered to Telecoms and the related fees. Such fees include cabinet and power-related fees, cross-connect fees, and several other fees pertaining to the suite of services that the Exchange offers to Telecoms that operate in the MMR environment.

**The MMR Structure**

Every User requires a circuit into and out of the MDC in order to connect its equipment outside of the MDC to its equipment within the MDC. As noted above, most Users choose to utilize Telecom circuits for these purposes.

A Telecom completes a circuit by placing equipment in a MMR and installing carrier circuits between one or more points outside the MDC and the Telecom’s MMR equipment.<sup>10</sup> A User

<sup>6</sup> Other than Telecoms, Users are the only FIDS customers with equipment physically located in the MDC.

<sup>7</sup> The Exchange notes that the FIDS circuits do not have a distance or latency advantage over the Telecoms within the MDC. FIDS has normalized (a) the distance between the MMRs and colocation and (b) the distance from the MPOE rooms, where the FIDS circuits are, and the colocation hall. As a result, there is no difference in the distances or latency within the MDC. In addition, FIDS itself is a Telecom customer. It is not a Telecom, does not own circuits and must contract with Telecoms to provide its services. The fact that the FIDS circuits do not have an advantage is reflected by the fact that FIDS circuits represent a small portion of the MDC circuits.

<sup>8</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

<sup>9</sup> The Exchange believes that many Users that have FIDS circuits use the FIDS circuits for backup purposes.

<sup>10</sup> A User may use a wireless connection, including a third party wireless connection, to the MDC. In such a case, the portion of the connection

that has contracted with the Telecom then connects to the Telecom’s MMR equipment using a cross connect from the User’s co-located equipment. Once connected to the Telecom’s equipment, the User can use the Telecom’s circuit to transport data into and out of the MDC.

A Telecom may sell access to its circuits to a second Telecom, so that the second Telecom may use the first Telecom’s circuit to access the MDC. In this way, the second Telecom can install its equipment in an MMR and sell the sublet circuits to its customers without incurring the cost of installing its own circuits to the MDC.<sup>11</sup>

**MMR Services**

The Exchange proposes to add the following MMR services and fees to the end of the Fee Schedule, under the heading “D. Meet-Me-Room (‘MMR’) Services.” With the exception of cross connects, which may be paid for by the Telecom or by the Telecom’s customer, the proposed services and fees are specific to Telecoms.

**Cabinet-Related Services**

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the cabinets that FIDS provides Telecoms to set up their servers in the MMRs (collectively, the “Cabinet-Related Services”).

*Initial Fee per MMR Cabinet and MMR Monthly Fee for Cabinets:* FIDS offers Telecoms dedicated cabinets in the MMRs to house their equipment. The cabinets come in sizes based on the number of kilowatts (“kW”) allocated, subject to a minimum of 4 kW and maximum of 8 kW per cabinet.

Telecoms pay an initial fee for each cabinet and a monthly fee based on the number of kW allocated to all the Telecom’s cabinets.<sup>12</sup> To indicate how the fee is calculated, the Exchange proposes to add a note stating that the monthly fee is based on the total kW allocated to all of a Telecom’s cabinets.

The Exchange proposes to add the following fees and language to the Fee Schedule for the Cabinet-Related Services:

closest to the MDC is wired. Accordingly, the present description applies to wireless connections as well as those that are wired. A Telecom elects which MMR it will use, or if it will use both.

<sup>11</sup> FIDS does not have to consent to, and need not be informed of, a Telecom’s sale of a circuit to another Telecom. In addition, neither FIDS nor the Exchange knows the termination point of a Telecom’s circuit or the content of any data sent on a circuit.

<sup>12</sup> For example, a Telecom that had two cabinets with a total power allocation of 12 kW would have a monthly charge of \$1,200 per kW for the first eight kW and \$1,050 per kW for the next four kW (between 9 kW and 12 kW), for a total of \$13,800.

Initial Fee per MMR Cabinet: Dedicated Cabinet of between 4 kW and 8 kW ...	\$5,000
MMR Monthly Fee for Cabinets: Monthly fee is based on total kW allocated to all of a Telecom’s cabinets.	
Number of kW	Per kW fee monthly
4–8 .....	\$1,200
9–20 .....	1,050
21–40 .....	950
41 + .....	900

**Access and Service Fees**

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the access and services FIDS provides to Telecoms (collectively, the “Access and Service Fees”).

*Data Center Fiber Cross Connect:* FIDS offers fiber cross connects for an initial and monthly charge. Cross connects may run between a Telecom’s cabinets, between its cabinet and the cabinet of another Telecom, or between its cabinet and its customer’s equipment. Cross connects may be bundled (*i.e.*, multiple cross connects within a single sheath) such that a single sheath can hold either one cross connect or six cross connects.

Importantly, a cross connect to MMR cabinets may be paid for by the Telecom or by the Telecom’s customer, who may be a User or another Telecom. The same fee applies irrespective of which entity purchases the cross connect.

*Carrier Connection Fee:* Telecoms contract with their customers for circuits into and out of the MDC. A Telecom is charged a monthly fee for providing such circuits to Users, on a per connection basis. Unlike cross connects, which may be purchased by either the Telecom or its customer, the Carrier Connection Fee is always charged to the Telecom.

*Conduit Sleeve Fee:* A Telecom’s circuits into and out of the MDC run through FIDS conduits. There are currently three FIDS conduit paths leading into the MDC. A Telecom determines which conduit or conduits it will use to carry its circuits, which are carried in individual conduit sleeves. The Telecom is charged an initial charge for the installation of circuits in the FIDS conduit, which covers up to five hours of work, and a monthly fee per conduit sleeve for using the FIDS conduit.<sup>13</sup>

<sup>13</sup> The number of conduit sleeves a Telecom uses is dependent on the equipment and technology it uses and the size of the circuits it sells to its

*Connection to Time Protocol Feed:* FIDS offers Telecoms the option to purchase connectivity to the Precision Time Protocol, with monthly and initial charges. Telecoms may make use of time feeds to receive time and to synchronize

clocks between computer systems or throughout a computer network, and time feeds may assist Telecoms in other functions, including record keeping or measuring response times.  
*Expedite Fee:* FIDS offers Telecoms the option to expedite the completion of

MMR services purchased or ordered by the Telecoms, for which the Exchange charges an “Expedite Fee.”  
The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
Data Center Fiber Cross Connect .....	Furnish and install 1 cross connect ..... Furnish and install bundle of 6 cross connects	\$500 initial charge plus \$600 monthly charge. \$500 initial charge plus \$1,800 monthly charge.
Conduit Sleeve Fee .....	Install (5 hrs) and maintain conduit sleeve supporting Telecom circuit into data center.	\$1,000 initial charge plus \$2,000 monthly charge per conduit sleeve.
Carrier Connection Fee .....	Maintain Telecom’s connections to its non-Telecom data center customers.	\$1,150 monthly charge per connection.
Connection to Time Protocol Feed .....	Precision Time Protocol .....	\$1,000 initial charge plus \$250 monthly charge.
Expedite Fee .....	Expedited installation/completion of MMR service.	\$4,000 per request.

**Service-Related Fees**

The Exchange proposes to add the following services and fees relating to services FIDS provides to Telecoms (collectively, the “Service-Related Fees”) to the Fee Schedule.

*Change Fee:* FIDS charges a Telecom a “Change Fee” if the Telecom requests a change to one or more existing MMR services that FIDS has already established or completed for the Telecom. The Change Fee is charged per order. If a Telecom orders two or more services at one time (for example,

through submitting an order form requesting multiple services) the Telecom is charged a one-time Change Fee, which would cover the multiple services.

*Hot Hands Service:* FIDS offers Telecoms a “Hot Hands Service,” which allows Telecoms to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack a server in a Telecom’s cabinet, power recycling, and install and document the fitting of cable in a Telecom’s cabinet(s). The Hot Hands fee is charged per half hour.

*Shipping and Receiving:* FIDS offers shipping and receiving services to Telecoms, with a per shipment fee for the receipt of one shipment of goods at the MDC from the Telecom or supplier.

*Visitor Security Escort:* Telecom representatives are required to be accompanied by a visitor security escort during visits to the MDC. A fee per visit is charged.

To reflect the above FIDS services and fees, the Exchange proposes to add the following to the Fee Schedule:

Type of service	Description	Amount of charge
Change Fee .....	Change to a service that has already been installed/completed for a Telecom.	\$950 per request.
Hot Hands Service .....	Allows Telecom to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack, power recycling, and install and document cable.	\$100 per half hour.
Shipping and Receiving .....	Receipt of one shipment of goods at data center on behalf of Telecom (includes coordination of shipping and receiving).	\$100 per shipment.
Visitor Security Escort .....	All Telecom representatives are required to be accompanied by a visitor security escort during visits to the data center.	\$75 per visit.

**Application and Impact of the Proposed Changes**

The proposed change would apply equally to all telecommunications service providers that choose to purchase MMR services (*i.e.*, Telecoms). With the exception of cross connects, which may be paid for by a Telecom or by the Telecom’s customer, the proposed services and fees are specific to Telecoms.

Under the proposed rule, a Telecom could select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no

conduit sleeves, and three carrier connections.

It is the Exchange’s understanding that Telecoms do not have to purchase a large number of cabinets or amount of power in order to have a MMR presence. For example, as of June 1, 2023, nine of the 16 Telecoms had one cabinet and five Telecoms had two cabinets. Only two Telecoms had four cabinets. Similarly, half of the Telecoms had only

customers, who may be Users or other Telecoms.

Most Telecoms use one conduit sleeve or none at all.

4 kW of power, and only two Telecoms reached 16 kW of power.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>15</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>16</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

### The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable, for the following reasons.

#### Proposed MMR Fees

It is in the Exchange's interest to set MMR prices at a reasonable level so that Telecoms will maximize their use of the MDC. When the MMR fees are set at a reasonable level, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers<sup>17</sup>

to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted.<sup>18</sup>

The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

The proposed rule is reasonable because it would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

If the Exchange were to set the MMR fees at an unreasonable level, it could expect the competitive environment among Telecoms in the MMRs to wither. Some Telecoms would likely exit the MDC market, while others would reduce the scope of their operations there, and some may never enter at all, as telecommunications service providers are not required to be in the MMRs. Fewer Telecoms in the MMRs would lead to less competition between the Telecoms for the sale of circuits to

Users, which would likely cause the prices of circuits to rise. This, in turn, would increase Users' overall costs of doing business in the MDC. Some customers might choose to exit the MDC altogether, while others might seek to reduce their footprint in colocation by decreasing the number of cabinets, ports, and power they use, or by reducing the number of third-party data feeds they connect to at the MDC. The Exchange thus has every incentive to set the MMR fees at a rate that is reasonable for Telecoms, and no incentive to charge any more than that.

The Exchange's belief that the MMR fees are reasonable is supported by the fact that the MMR fees are very low when compared to both (1) the revenues that Telecoms earn by selling circuits in financial data centers and (2) the total connectivity fees that market participants pay at the MDC.

First, using public information, the Exchange reviewed the MMR fees in the context of Telecoms' business opportunities and expense. Specifically, the Exchange reviewed the public filings and financial statements of the parent company of some of the 16 Telecoms that currently operate in the MMRs.<sup>19</sup>

The parent company's financial statements disclose that the "financial services" share of its "fiber site rental revenue" for the fourth quarter of 2021 was 9%. Based on this disclosure, the Exchange estimated the parent company's annual financial services-related fiber site rental revenue for 2021, and then compared that figure to the MMR fees that the parent's Telecoms paid that year, as a percentage of the parent's revenue.<sup>20</sup> The Exchange concluded that the MMR fees paid by those Telecoms represent just 0.9% of the parent's financial services fiber site rental revenue.

Second, the Exchange sought to calculate the portion of market participants' total connectivity spend at the MDC that is attributable to MMR fees. Using data from February 2023, the Exchange summed the following connectivity costs: (1) colocation fees paid by market participants to FIDS; (2) MMR fees paid by Telecoms to FIDS;<sup>21</sup>

<sup>19</sup> The other Telecoms either are not obligated to make any information public or do not break out their financial information in a manner that would allow the Exchange to assess the impact of the MMR fees.

<sup>20</sup> Because the Exchange is obligated to keep customer identities confidential, it is not disclosing the name of the parent company in this filing, but will provide it to the Commission confidentially upon request.

<sup>21</sup> The analysis assumes that Telecoms pass the MMR fees on to the Users.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> "Hosting" is a service offered by a User to another entity in the User's space within the MDC. The Exchange allows Users to act as Hosting Users for a monthly fee. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR

60190 (October 5, 2015) (SR-NYSE-2015-40). Hosting Users' customers are referred to as "Hosted Customers."

<sup>18</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

and (3) a proxy<sup>22</sup> for the circuit and wireless connectivity fees that market participants pay to Telecoms and FIDS. MMR revenue for the same period was then divided by the summation of the connectivity costs. The Exchange determined that the MMR fees represented less than 5 percent of the total connectivity spend.<sup>23</sup>

In sum, the proposed MMR fees are a very small fraction of the overall fees that market participants pay for connectivity services at the MDC. This is further support for the Exchange's position that the MMR fees proposed herein are reasonable.

#### Security of the MDC

The Exchange's belief that the proposed rule change is reasonable takes into account the fact that no third party can establish a meet me room in the MDC, leaving FIDS the sole entity that can control a MMR. FIDS's operation and maintenance of the MDC MMRs is both rational and consistent with the normal commercial practice of data centers.<sup>24</sup> While the Exchange understands that most data centers offer meet me rooms, it is not aware of any data center operator, within or outside the U.S., that allows a third party to run a meet me room.

Safeguarding the security of the U.S. national market system—in this case, the MDC where the Exchange and the Affiliate SROs maintain trading engines and publish market data, and where the Securities Industry Automation Corporation (“SIAC”) publishes the National Market System (“NMS”) data feeds for which it is the exclusive securities information processor—is a key part of the operation of a free and open market and national market system and protecting investors and the public interest. The MMR structure furthers that goal.

Having FIDS control the MMRs limits third parties' need to enter the MDC, minimizing security risks. Because it controls the MMRs, FIDS can establish

<sup>22</sup> The Exchange cannot know actual circuit fee revenue because Telecoms are not required to report what they charge their customers for circuits or to charge all customers the same amount. Accordingly, the Exchange used the fees for FIDS circuits as a proxy for the Telecom circuit fees. To estimate the “total circuit fee revenue,” the Exchange multiplied what one User would pay for a FIDS circuit by the number of carrier connections.

<sup>23</sup> That percentage varies slightly within the range of 4.28% to 5.30% based on the precise proxy that is used for part (3) of the calculation above, depending on the share of connections one assumes to be wired vs. wireless and the circuit fees.

<sup>24</sup> In addition to the security aspects outlined herein, the Exchange notes that, because FIDS controls the MMRs, it can ensure that all cross connects between Telecoms and Users are normalized.

and enforce usage policies designed to protect the MMRs' security and treat the Telecoms equally and consistently. FIDS's control also ensures that the Telecoms' equipment and connections do not extend further into the MDC than the MMRs, and essentially makes the MMRs the demarcation or “hand-off” point for Telecom circuits coming into the MDC. If a third party established a meet me room in the MDC, FIDS could not ensure its control of any of these matters.

This structure reduces security risks because it allows the trading engines of the Exchange and the Affiliate SROs, SIAC's NMS market data publishers, and the ICE Global Network, including the FIDS circuits, to be physically and logically segregated from vendors and other third party service providers, including Telecoms.

In addition, the MMR structure provides Users with the opportunity to use Telecom circuits to create systems that are potentially more redundant and resilient than if they relied on just one exclusive provider. For example, while the original exclusive NYSE Euronext connectivity option to the MDC was designed to be redundant and resilient,<sup>25</sup> today 16 additional Telecoms make circuits available to Users and help to maintain a securities market infrastructure that is stronger and more robust. The Exchange believes that the fact that most customers for FIDS circuits also purchase Telecom circuits shows the structural importance of the MMRs.

#### The Proposed Change Is Equitable

The Exchange believes that the proposed change is equitable, for the following reasons.

The Exchange believes that the proposed rule change is equitable because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in a MMR, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

<sup>25</sup> See, e.g., oral testimony of Robert L.D. Colby, Deputy Director, Division of Market Regulation, Securities and Exchange Commission, before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services (February 12, 2003) (Testimony Concerning Recovery and Renewal: Protecting the Capital Markets Against Terrorism Post 9/11), at <https://www.sec.gov/news/testimony/021203tsrc.htm>.

The proposed rule is also equitable because it would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably so that Telecoms will maximize their use of the MDC. When the MMR fees are set equitably, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees equitably for Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

#### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in the MMRs of the MDC, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

The proposed rule is also not unfairly discriminatory because it would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of

April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably in a non-discriminatory way so that Telecoms will maximize their use of the MDC. When the MMR fees are set in a non-discriminatory fashion, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees in a way that does not unfairly discriminate against any Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of section 6(b)(8) of the Act.<sup>26</sup>

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather encourages competition between Telecoms in the MMRs. It is in the Exchange's interest to set MMR prices at a reasonable level so that Telecoms are attracted to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC. The Exchange directly benefits from such competition between Telecoms because it increases the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and

connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted were supplied by the Telecoms.<sup>27</sup>

The proposed rule encourages competition between Telecoms because a Telecom may select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections. The proposed rule would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models.

In sum, the MMR structure creates incentives for Telecoms to compete against each other in providing their customers with connectivity services. These customers, which are both Users and other Telecoms, directly and indirectly participate in the national market system. As a result, the MMR structure fosters cooperation and coordination with persons facilitating transactions in securities.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act<sup>28</sup> and Rule 19b-4(f)(6) thereunder.<sup>29</sup> Because the

proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)<sup>30</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSECHX-2023-14 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-NYSECHX-2023-14. 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

<sup>27</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

<sup>30</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>26</sup> 15 U.S.C. 78f(b)(8).

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-NYSECHX-2023-14 and should be submitted on or before August 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-16244 Filed 7-31-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270-619, OMB Control No. 3235-0681]

### Submission for OMB Review; Comment Request; Extension: Rules 15Ba1-1 through 15Ba1-8

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549-2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of extension of the previously approved collection of information provided for in Rules 15Ba1-1 to 15Ba1-8 (17 CFR 240.15Ba1-1 to 17 CFR 240.15Ba1-8)—Registration of Municipal Advisors, under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the "Exchange Act").

On September 20, 2013 (*see* 78 FR 67468, November 12, 2013), the Commission adopted Rules 15Ba1-1

through 15Ba1-8 and Rule 15Bc4-1 under the Exchange Act to establish the rules by which a municipal advisor must obtain, maintain, and terminate its registration with the Commission. In addition, the rules interpret the definition of the term "municipal advisor," interpret the statutory exclusions from that definition, and provide certain additional regulatory exemptions. The rules became effective on January 13, 2014; however, on January 13, 2014, the Commission temporarily stayed such rules until July 1, 2014 (*see* 79 FR 2777, January 16, 2014). Amendments to Form MA and Form MA-I designed to eliminate aspects of the forms that request filers to provide certain forms of personally identifiable information of natural persons, including Social Security numbers, dates of birth, and foreign identity numbers became effective on May 14, 2018 (*see* 83 FR 22190, May 14, 2018). Section 15B(a)(1) of the Exchange Act makes it unlawful for a municipal advisor to provide advice to or on behalf of a municipal entity or obligated person with respect to municipal financial products or the issuance of municipal securities, or to undertake certain solicitations of a municipal entity or obligated person, unless the municipal advisor is registered with the Commission. The rules, among other things: (i) require municipal advisors to file certain forms (*i.e.*, Form MA, Form MA-A, Form MA/A, Form MA-I, Form MA-I/A, Form MA-NR, and Form MA-W) with the Commission to obtain, maintain, or terminate their registration with the Commission and maintain certain books and records in accordance with the Exchange Act, and (ii) set forth how certain entities may meet the requirements of the statutory exclusions or regulatory exemptions from the definition of "municipal advisor."

### Form MA

The initial application for municipal advisor registration under Form MA is a one-time reporting burden. The Commission estimates that approximately 15 respondents will submit new Form MA applications annually in each of the next three years.<sup>1</sup> The Commission further estimates that the average amount of time for a municipal advisor to complete a new Form MA submission will be approximately 3.5 hours. Thus, the total annual burden borne by respondents for submitting an initial

<sup>1</sup> The estimate is derived by averaging the number of Form MA filings over the last three years. There were 21 Form MA submissions in 2020, 16 Form MA submissions in 2021, and 8 Form MA submissions in 2022.

Form MA application will be approximately 53 hours.<sup>2</sup> The Commission estimates that respondents submitting new Form MA applications would, on average, consult with outside counsel for one hour, at a rate of \$518/hour. Thus, the Commission estimates that the average total annual cost that may be incurred by all respondents filing new Form MA applications will be \$7,770.<sup>3</sup>

In addition to filing initial Form MA applications, the rules require municipal advisors to amend Form MA once annually (Form MA-A) and after the occurrence of any enumerated material event (Form MA/A). The requirement to amend Form MA applies to all registered municipal advisors. As of December 31, 2022, there were approximately 446 municipal advisors registered with the Commission and, as noted above, the Commission anticipates receiving 15 new Form MA submissions annually in each of the next three years; however, the Commission also estimates that it will receive an average of 35 withdrawals on Form MA-W annually in each of the next three years,<sup>4</sup> and the Commission further estimates that it will enter orders cancelling or revoking the registration of 9 municipal advisors on average in each of the next three years,<sup>5</sup> for a net decrease of 29 municipal advisors annually in each of the next three years.<sup>6</sup> Therefore, the Commission expects that the rules' requirement to amend Form MA will apply to approximately 417 municipal advisors in year one, approximately 388 municipal advisors in year two, and approximately 359 municipal advisors in year three. The Commission estimates that the average amount of time for a municipal advisor to prepare an annual amendment to Form MA would be 1.5 hours, and the average amount of time necessary to prepare any interim updating amendment to Form MA other than the required annual amendment would be 0.5 hours. The Commission further estimates that each municipal advisor will likely submit two amendments annually in each of the next three years (one Form MA-A and

<sup>2</sup> 15 respondents × 3.5 hours = 52.5 hours.

<sup>3</sup> 15 respondents × (\$518/hour × 1 hour) = \$7,770.

<sup>4</sup> *See infra* Form MA-W section.

<sup>5</sup> The estimate is derived by averaging the number of CANCELLATION-MA and REVOCATION-MA filings over the last three years. There were 0 CANCELLATION-MA filings in 2020, 18 CANCELLATION-MA filings in 2021, and 9 CANCELLATION-MA filings in 2022. There were 0 REVOCATION-MA filings in 2020, 0 REVOCATION-MA filings in 2021, and 0 REVOCATION-MA filings in 2022.  $((0 + 0) + (18 + 0) + (9 + 0))/3 = 9$ .

<sup>6</sup>  $15 - (35 + 9) = -29$ .

<sup>31</sup> 17 CFR 200.30-3(a)(12).

one Form MA/A). Thus, the Commission estimates that the average annual burden borne by respondents for amending Form MA during the three-year period will be approximately 776 hours.<sup>7</sup>

#### Form MA-I

The initial completion of Form MA-I for each natural person who is a person associated with a municipal advisor is a one-time reporting burden. The Commission estimates that it will receive approximately 330 new Form MA-I submissions annually in each of the next three years.<sup>8</sup> The Commission further estimates that the average amount of time for a municipal advisor to complete a new Form MA-I submission will be approximately three hours. Thus, the total annual burden borne by respondents submitting an initial Form MA-I will be approximately 990 hours.<sup>9</sup>

In addition, municipal advisors will need to complete updating amendments to Form MA-I whenever the information previously provided therein becomes inaccurate, or to indicate that the individual is no longer an associated person of the municipal advisor or no longer engages in municipal advisory activities on its behalf. The Commission estimates that a Form MA-I respondent will submit an average of 2.39 updating amendments annually in each of the next three years (Form MA-I/A), and that each such amendment will take approximately 0.5 hours to complete.<sup>10</sup> As of December 31, 2022, there were approximately 3,254 Form MA-IIs on file with the Commission for natural persons actively associated with a municipal advisor<sup>11</sup> and, as noted

<sup>7</sup>  $(417 \text{ respondents} \times 2 \text{ hours}) + (388 \text{ respondents} \times 2 \text{ hours}) + (359 \text{ respondents} \times 2 \text{ hours}) / 3 = 776 \text{ hours}$ .

<sup>8</sup> The estimate is derived by averaging the number of Form MA-I submissions over the last three years and rounding up. There were 293 Form MA-I submissions in 2020, 363 Form MA-I submissions in 2021, and 332 Form MA-I submissions in 2022.

<sup>9</sup>  $330 \text{ submissions} \times 3 \text{ hours} = 990 \text{ hours}$ .

<sup>10</sup> The estimate is derived by averaging the number of updating amendments submitted by respondents over the last three years. In 2020, the average number was 1,080 Form MA-I/As/525 municipal advisors = 2.06. In 2021, the average number was 1,163 Form MA-I/As/477 municipal advisors = 2.44. In 2022, the average number was 1,188 Form MA-I/As/446 municipal advisors = 2.66. Averaging the average number of updating amendments for the last three years:  $(2.06 (2020) + 2.44 (2021) + 2.66 (2022)) / 3 = 2.39 \text{ updating amendments per year}$ .

<sup>11</sup> The estimated number of active Form MA-I filings is derived by taking the total number of Form MA-I submissions filed with the Commission from the inception of the rules to December 31, 2022, and subtracting the total number of Form MA-I/A withdrawals filed with the Commission from the inception of the rules to December 31, 2022.  $8,488 \text{ (Form MA-I submissions)} - 5,234 \text{ (Form MA-I/A withdrawals)} = 3,254 \text{ active Form MA-IIs on file}$ .

above, the Commission anticipates receiving 330 new Form MA-I submissions annually in each of the next three years. Therefore, the Commission expects the rules' requirement to amend Form MA-I to apply to approximately 3,584 Form MA-IIs in year one, approximately 3,914 Form MA-IIs in year two, and approximately 4,244 Form MA-IIs in year three. Thus, the Commission estimates that the average annual burden borne by respondents submitting Form MA-I amendments during the three-year period will be approximately 4,677 hours.<sup>12</sup>

#### Form MA-W

Withdrawal from municipal advisor registration is a one-time reporting burden. The Commission estimates that it will receive an average of 35 Form MA-W submissions annually in each of the next three years.<sup>13</sup> The Commission further estimates that the average amount of time for a municipal advisor to complete each Form MA-W submission will be approximately 0.5 hours. Thus, the total annual burden borne by respondents submitting Form MA-W will be approximately 17.5 hours.<sup>14</sup>

#### Form MA-NR

The designation of a U.S. agent for service of process is a one-time reporting burden. The Commission estimates that approximately three municipal advisors will have a non-resident general partner, non-resident managing agent, or non-resident associated person<sup>15</sup> and such advisors will submit a total of approximately five Form MA-NRs annually in each of the next three years.<sup>16</sup> The Commission further estimates that each Form MA-NR submission will take, on average, approximately one hour to complete.

<sup>12</sup>  $((3,584 \text{ Form MA-I/As} \times 2.39 \text{ amendments} \times 0.5 \text{ hours}) + ((3,914 \text{ Form MA-I/As} \times 2.39 \text{ amendments} \times 0.5 \text{ hours}) + ((4,244 \text{ Form MA-I/As} \times 2.39 \text{ amendments} \times 0.5 \text{ hours}))) / 3 = 4,677.23 \text{ hours}$ .

<sup>13</sup> The estimate of 35 Form MA-W submissions is derived by averaging the number of Form MA-W submissions over the last three years and rounding up. There were 28 Form MA-W submissions in 2020, 46 Form MA-W submissions in 2021, and 30 Form MA-W submissions in 2022.

<sup>14</sup>  $35 \text{ respondents} \times 0.5 \text{ hours} = 17.5 \text{ hours}$ .

<sup>15</sup> The estimate is derived by averaging the number of Form MA-NR respondents over the last three years and rounding up. There were two Form MA-NR respondents in 2020, one Form MA-NR respondent in 2021, and four Form MA-NR respondents in 2022.

<sup>16</sup> The estimate is derived by averaging the number of Form MA-NR submissions over the last three years. There were seven Form MA-NR submissions in 2020, two Form MA-NR submissions in 2021, and six Form MA-NR submissions in 2022.

Thus, the total annual burden borne by respondents submitting Form MA-NR will be approximately 5 hours.<sup>17</sup>

In addition, each respondent that submits a Form MA-NR must also provide an opinion of counsel on Form MA stating that the municipal advisor can, as a matter of law, provide the Commission with access to its books and records as required by law and submit to inspection and examination by the Commission. The Commission estimates that such an opinion of counsel would take three hours to complete, at a rate of \$518/hour. Thus, the Commission estimates that the total annual burden borne by respondents providing an opinion of counsel will be approximately nine hours.<sup>18</sup> The estimated average total cost that may be incurred by all respondents providing an opinion of counsel will be \$4,662.<sup>19</sup>

#### Consent to Service of Process From Certain Associated Persons

The consent to service of process from certain associated persons is a one-time recordkeeping burden. The Commission estimates that all 15 new municipal advisors expected to register with the Commission annually in each of the next three years will have to develop a template document to use in obtaining written consents to service of process from their associated persons. The Commission further estimates that each template document will take approximately one hour to draft. Thus, the Commission estimates that the total annual burden borne by respondents developing a template document will be approximately 15 hours.<sup>20</sup>

In addition to the one-time burden borne by new municipal advisors that register with the Commission each year, the Commission estimates that municipal advisors will need to obtain 330 new consents to service of process from associated persons annually in each of the next three years. The Commission further estimates that, after the written consents are drafted, it will take municipal advisors approximately 0.10 hours to obtain each consent. Thus, the Commission estimates that the total annual burden borne by respondents obtaining consents to service of process will be 48 hours.<sup>21</sup>

<sup>17</sup>  $3 \text{ respondents} \times (5 \text{ Form MA-NR submissions} / 3 \text{ respondents}) \times 1 \text{ hour} = 5 \text{ hours}$ .

<sup>18</sup>  $3 \text{ respondents} \times 3 \text{ hours} = 9 \text{ hours}$ .

<sup>19</sup>  $3 \text{ respondents} \times (3 \text{ hours} \times \$518/\text{hour}) = \$4,662$ .

<sup>20</sup>  $15 \text{ respondents} \times 1 \text{ hour} = 15 \text{ hours}$ .

<sup>21</sup>  $15 \text{ hours} + (330 \text{ respondents} \times 0.1 \text{ hours}) = 48 \text{ hours}$ .

### Books and Records To Be Made and Maintained by Municipal Advisors

The maintenance of books and records is an ongoing annual recordkeeping burden. The Commission estimates that approximately 417,388, and 359 municipal advisors will be subject to the books and records rules annually in each of the next three years, respectively. The Commission further estimates that the average annual burden for a municipal advisor to comply with the books and records requirement is approximately 182 hours. Thus, the Commission estimates that the average annual burden borne by respondents to comply with the books and records requirements during the three-year period will be approximately 70,616 hours.<sup>22</sup>

### Independent Registered Municipal Advisor Exemption

The written representations required pursuant to the exemption when a municipal entity or obligated person is represented by an independent registered municipal advisor is a one-time third-party disclosure burden. The Commission estimates that approximately 188 persons will seek to rely on the independent registered municipal advisor exemption annually in each of the next three years.<sup>23</sup> The Commission further estimates that the one-time burden of developing a template disclosure document to use in obtaining the written representations will be approximately one hour. Thus, the Commission estimates that the total one-time burden borne by respondents developing a template disclosure document will be approximately 188 hours.<sup>24</sup>

The Commission also recognizes that respondents will be subject to a recurring burden each time they seek to rely on the exemption. The Commission estimates that respondents may seek the exemption on approximately 12,170 transactions annually in each of the next three years.<sup>25</sup> The Commission further

estimates that the burden of obtaining the written representations needed from the municipal entity or obligated person will be approximately 0.25 hours. Thus, the Commission estimates that the total annual burden borne by respondents seeking to rely on the independent registered municipal advisor exemption will be approximately 3,043 hours.<sup>26</sup>

### Exception to Definition of Municipal Escrow Investments

The written representations required to qualify for the exception for reasonable reliance on representations related to municipal escrow investments is a one-time third-party disclosure burden. The Commission believes that state-registered investment advisers with municipal entity clients are the persons most likely to rely on this exception. The Commission estimates that approximately 432 respondents will seek to rely on the exception.<sup>27</sup> The Commission further estimates that the one-time burden of creating a template document to use in obtaining the written representations necessary to rely on the exception will be approximately one hour. Thus, the Commission estimates that the total one-time burden borne by respondents developing a template document will be approximately 432 hours.<sup>28</sup>

The Commission also recognizes that respondents will be subject to a recurring burden each time they seek to rely on the exception. The Commission estimates that the respondents will seek to rely on the exception with approximately 1,356 municipal entity clients.<sup>29</sup> The Commission further estimates that the burden of obtaining the required written representations from the respondent's client will be approximately 0.25 hours. Thus, the Commission estimates that the total annual burden borne by respondents seeking to rely on the municipal escrow investments exemption will be approximately 339 hours.<sup>30</sup>

14,278 negotiated deals using an underwriter in 2020, 11,855 negotiated deals using an underwriter in 2021, and 10,376 negotiated deals using an underwriter in 2022.

<sup>26</sup> 12,170 transactions  $\times$  0.25 hours = 3,042.5 hours.

<sup>27</sup> The Commission estimates in this section are based on information reported directly by state-registered-only investment advisers (*i.e.*, not dual registrants) in Item 5.D.(i)(1) within Form ADV, as of December 31, 2022. The number of state-registered investment advisers that reported state or municipal government entity clients in Item 5.D.(i)(1) within Form ADV = 432.

<sup>28</sup> 432 respondents  $\times$  1 hour = 432 hours.

<sup>29</sup> The number of state or municipal government entity clients reported by state-registered investment advisers in Item 5.D.(i)(1) within Form ADV = 1,356.

<sup>30</sup> 1,356 clients  $\times$  0.25 hours = 339 hours.

### Exception to Definition of Proceeds of Municipal Securities

The written representations required to qualify for the exception for reasonable reliance on representations related to proceeds of municipal securities is a one-time third-party disclosure burden. The Commission believes the persons most likely to rely on this exception are state-registered investment advisers with clients that are: (i) state or municipal government entities, or (ii) certain pooled investment vehicles in which municipal entities invest. The Commission estimates that approximately 479 respondents will seek to rely on the exception.<sup>31</sup> The Commission further estimates that the one-time burden of creating a template document to use in obtaining the written representations necessary to rely on the exception will be approximately one hour. Thus, the Commission estimates that the total one-time burden borne by respondents developing a template document will be approximately 479 hours.<sup>32</sup>

The Commission also recognizes that respondents will be subject to a recurring burden each time they seek to rely on the exception. The Commission estimates that respondents will seek to rely on the exception in connection with services provided to approximately 2,989 clients.<sup>33</sup> The Commission further estimates that the burden of obtaining the required written representations from the respondent's client will be approximately 0.25 hours. Thus, the Commission estimates that the total annual burden borne by respondents

<sup>31</sup> The Commission estimates in this section are based on information reported directly by state-registered-only investment advisers (*i.e.*, not dual registrants) in Items 5.D.(i)(1) and 5.D.(f)(1) within Form ADV, as of December 31, 2022. The number of state-registered investment advisers that reported pooled investment vehicle clients (other than investment company and business development company clients) in Item 5.D.(f)(1) within Form ADV = 592. The percentage of state-registered investment advisers that reported state or municipal government entity clients in Item 5.D.(f)(1) within Form ADV, out of the total number of state-registered investment advisers = 8%. (592  $\times$  .08) = approximately 47 state-registered investment advisers with clients that are pooled investment vehicles (other than registered investment companies and business development companies) in which municipal entities invest. The number of state-registered investment advisers that reported state or municipal government entity clients in Item 5.D.(i)(1) within Form ADV = 432. (47 + 432) = 479 respondents.

<sup>32</sup> 479 respondents  $\times$  1 hour = 479 hours.

<sup>33</sup> The number of state or municipal government entity clients reported by state-registered investment advisers in Item 5.D.(i)(1) within Form ADV = 1,356 clients. The number of pooled investment vehicle clients (other than investment company and business development company clients) reported by state-registered investment advisers in Item 5.D.(f)(1) within Form ADV = 1,633 clients. (1,356 + 1,633) = 2,989 clients.

<sup>22</sup> ((417 respondents  $\times$  182 hours) + (388 respondents  $\times$  182 hours) + (359 respondents  $\times$  182 hours))/3 = 70,616 hours.

<sup>23</sup> Estimate based on information obtained from Mergent Municipal Bond Securities Database. The estimate is derived by averaging the number of underwriters that participated in negotiated transactions from 2020 to 2022 and rounding up. There were 193 underwriters that participated in negotiated transactions in 2020, 191 underwriters that participated in negotiated transactions in 2021, and 178 underwriters that participated in negotiated transactions in 2022.

<sup>24</sup> 188 respondents  $\times$  1 hour = 188 hours.

<sup>25</sup> Estimate based on information obtained from Mergent Municipal Bond Securities Database. The estimate is derived by averaging the number of negotiated deals using an underwriter each year from 2020 to 2022 and rounding up. There were

seeking to rely on the proceeds of municipal securities exception will be approximately 747 hours.<sup>34</sup>

*Written comments are invited on:* (a) whether this proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (b) the accuracy of the Commission's estimates of the burden imposed by the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 30 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following website: [www.reginfo.gov](http://www.reginfo.gov). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice by August 31, 2023 to (i) [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain) and (ii) David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or by sending an email to: [PRA\\_Mailbox@sec.gov](mailto:PRA_Mailbox@sec.gov).

Dated: July 27, 2023.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-16311 Filed 7-31-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98003; File No. SR-FINRA-2021-010]

### Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Setting Aside Action by Delegated Authority and Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR-FINRA-2015-036

July 27, 2023.

#### I. Introduction

##### A. Overview

##### 1. Rulemaking by Self-Regulatory Organizations

The Financial Industry Regulatory Authority, Inc. ("FINRA") is registered with the Securities and Exchange Commission ("Commission" or "SEC") as a national securities association under the Securities Exchange Act of 1934 ("Exchange Act" or "Act").<sup>1</sup> Under the Exchange Act, the rules of a national securities association for its broker-dealer members<sup>2</sup> must, among other things, be 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, or 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.<sup>3</sup> Further, under the Exchange Act, the rules of a national securities association must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>4</sup>

FINRA, as a national securities association, also is a self-regulatory organization ("SRO") under the Exchange Act and its proposed rules are subject to Commission review and

published for notice and comment.<sup>5</sup> While certain types of proposed rules are effective upon filing, others are subject to Commission approval before they can go into effect.<sup>6</sup> Under the Exchange Act, the Commission must approve an SRO's proposed rule if the Commission finds that the proposed rule change is consistent with the requirements of the Act and the applicable rules and regulations thereunder; if it does not make such a finding, the Commission must disapprove the proposed rule.<sup>7</sup> The SRO has the burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder.<sup>8</sup>

The Exchange Act sets forth timeframes in which the Commission must either approve, disapprove, or institute proceedings to determine whether to approve or disapprove an SRO's proposed rule.<sup>9</sup> If the Commission institutes proceedings, the Exchange Act sets forth timeframes in which the Commission must complete the proceedings and either approve or disapprove the SRO's proposed rule.<sup>10</sup>

The Commission has delegated authority to the staff of its Division of Trading and Markets ("Division") to publish notice of an SRO's proposed rule for comment and to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the proposed rule.<sup>11</sup> Under the Commission's Rules of Practice, any person aggrieved by the Division's exercise of delegated authority may seek Commission review of the action by filing with the Commission: (1) a notice of intention to petition for review; and (2) a subsequent petition for review containing a clear and concise statement of the issues to be reviewed and the reasons why review is appropriate.<sup>12</sup> The notice must be filed within fifteen days of the publication in the **Federal Register** of the action taken by the Division pursuant to delegated authority (e.g., publication of an order approving an SRO proposed rule) and the petition must be filed within five days after the filing of the notice.<sup>13</sup> The Commission

<sup>5</sup> See 15 U.S.C. 78s(a) and (b).

<sup>6</sup> See 15 U.S.C. 78s(b).

<sup>7</sup> See 15 U.S.C. 78s(b)(2)(C).

<sup>8</sup> 17 CFR 201.700(b)(3).

<sup>9</sup> See 15 U.S.C. 78s(b)(2).

<sup>10</sup> See 15 U.S.C. 78s(b)(2)(B).

<sup>11</sup> See 17 CFR 200.30-3(a)(12) and (57).

<sup>12</sup> See 17 CFR 201.430(b)(1) and (2). The petition must include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such record as may exist. 17 CFR 201.430(b)(2).

<sup>13</sup> See 17 CFR 201.430(b)(1) and (2).

<sup>1</sup> See 15 U.S.C. 78o-3(a).

<sup>2</sup> See 15 U.S.C. 78c(a)(3)(B) (defining the term "member" when used with respect to a registered securities association to mean any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the Exchange Act, the rules and regulations thereunder, and its own rules).

<sup>3</sup> See 15 U.S.C. 78o-3(b)(6).

<sup>4</sup> See 15 U.S.C. 78o-3(b)(9).

<sup>34</sup> 2,989 clients × 0.25 hours = 747.25 hours.

may grant or deny the petition for review.<sup>14</sup> If the petition for review is granted, the Commission may affirm, reverse, modify, set aside, or remand for further proceedings, in whole or in part, the action made by the Division pursuant to delegated authority (e.g., the approval of an SRO proposed rule).<sup>15</sup>

## 2. FINRA's Amendments to Rule 4210

Most residential mortgages in the United States are securitized, with the underlying loans pooled into a separate legal trust, which issues mortgage-backed securities and passes on mortgage payments to investors after deducting mortgage servicing fees and other expenses.<sup>16</sup> In the agency market, each mortgage-backed security carries a credit guarantee from Fannie Mae, Freddie Mac, or Ginnie Mae.<sup>17</sup> Most agency mortgaged-backed security trading is conducted in the To-Be-Announced ("TBA") market, with defined settlement dates for each month in the future.<sup>18</sup> Most TBA transactions are nettable and clear through the Mortgage-Backed Securities Division of the Fixed Income Clearing Corporation ("MBSD").<sup>19</sup> Mortgage bankers may enter into a TBA transaction with a forward settlement date to hedge their mortgage pipeline.<sup>20</sup> Agency mortgage-backed securities are debt instruments and may qualify as exempted securities under Section 3(a)(12)(A) of the Exchange Act.<sup>21</sup> Investors in the TBA market include, for example, banks, investment companies, investment

funds, insurance companies, real estate investment trusts, and mortgage originators.<sup>22</sup>

Broker-dealers often require customers to post collateral or "margin" to them in the form of cash or other securities in connection with the purchase and sale of securities. The requirement to post margin to a broker-dealer can be mandated by laws or regulations or agreed to by contract (provided the contract complies with minimum regulatory requirements). Broker-dealers may collect margin from customers for several purposes including, for the initial purchase of securities ("initial margin"), to maintain a minimum equity in the customer's account ("maintenance margin"), or to cover changes in the market value (or mark to market value) of the securities in the account ("variation margin"). In the securities markets, the Board of Governors of the Federal Reserve System ("Federal Reserve Board") and SROs have set margin rules since the 1930s. The Federal Reserve Board generally sets initial margin requirements for broker-dealers in Regulation T.<sup>23</sup> For example, Regulation T prescribes a 50% initial margin requirement for listed equity securities (meaning the customer must pay at least 50% of the market value of a listed equity security when purchasing it in a transaction financed by the broker-dealer). Regulation T also provides that the initial margin requirement for good faith securities—which includes exempted securities and non-equity securities (e.g., debt securities)—is the greater of the margin the broker-dealer requires in good faith or the amount an SRO requires.<sup>24</sup> Agency securities (such as TBA securities) are good faith securities under Regulation T because they are debt securities, exempted securities, or both. SROs, such as FINRA, generally set maintenance margin requirements for their broker-dealer members. FINRA's primary margin rule for its broker-dealer members is FINRA Rule 4210 (Margin Requirements) ("Rule 4210"). For example, FINRA Rule 4210 prescribes a 25% maintenance margin requirement for listed equity securities (meaning the customer must maintain equity of at least 25% of the market value of the security). Consistent with the margin requirements for good faith securities under Regulation T, FINRA Rule 4210 also prescribes margin requirements for exempted securities (such as U.S. Treasury securities and agency

securities), as well as transactions in exempted securities, mortgage related securities, or major foreign sovereign debt securities in an exempt account.<sup>25</sup>

Prior to 2016, however, FINRA Rule 4210 did not specifically address the market for TBAs and other similar agency forward-settling transactions. In 2015, FINRA filed a proposed rule change under SR-FINRA-2015-036 to amend FINRA Rule 4210 to establish requirements for: (1) TBA transactions,<sup>26</sup> inclusive of adjustable rate mortgage ("ARM") transactions; (2) Specified Pool Transactions;<sup>27</sup> and (3) transactions in Collateralized Mortgage Obligations ("CMOs")<sup>28</sup> issued in conformity with a program of an agency<sup>29</sup> or Government-Sponsored Enterprise ("GSE"),<sup>30</sup> with forward

<sup>25</sup> See FINRA Rule 4210(e)(2)(A), (B) and (F). See also *infra* note 86 (defining "exempt account" under FINRA Rule 4210(a)(13)).

<sup>26</sup> See FINRA Rule 6710(u) defining TBA to mean a transaction in an Agency Pass-Through mortgage-backed security or a Small Business Administration ("SBA")-Backed Asset-Backed Security ("ABS") where the parties agree that the seller will deliver to the buyer a pool or pools of mortgages of a specified face amount and meeting certain other criteria but the specific pool or pools to be delivered at settlement is not specified at the Time of Execution, and includes TBA transactions for good delivery and TBA transactions not for good delivery.

<sup>27</sup> See FINRA Rule 6710(x) defining Specified Pool Transaction to mean a transaction in an Agency Pass-Through mortgage-backed security or an SBA-Backed ABS requiring the delivery at settlement of a pool or pools that is identified by a unique pool identification number at the Time of Execution.

<sup>28</sup> See FINRA Rule 6710(dd) defining "CMO" to mean a type of Securitized Product backed by Agency Pass-Through mortgage-backed securities, mortgage loans, certificates backed by project loans or construction loans, other types of mortgage-backed securities or assets derivative of mortgage-backed securities, structured in multiple classes or tranches with each class or tranche entitled to receive distributions of principal or interest according to the requirements adopted for the specific class or tranche, and includes a real estate mortgage investment conduit ("REMIC").

<sup>29</sup> See FINRA Rule 6710(k) defining "agency" to mean a United States executive agency as defined in 5 U.S.C. 105 that is authorized to issue debt directly or through a related entity, such as a government corporation, or to guarantee the repayment of principal or interest of a debt security issued by another entity. The term excludes the U.S. Department of the Treasury in the exercise of its authority to issue U.S. Treasury Securities as defined under FINRA Rule 6710(p). Under 5 U.S.C. 105, the term "executive agency" is defined to mean an "Executive department, a Government corporation, and an independent establishment."

<sup>30</sup> See FINRA Rule 6710(n) defining "GSE" to have the meaning set forth in 2 U.S.C. 622(8). Under 2 U.S.C. 622(8), a GSE is defined, in part, to mean a corporate entity created by a law of the United States that has a Federal charter authorized by law, is privately owned, is under the direction of a board of directors, a majority of which is elected by private owners, and, among other things, is a financial institution with power to make loans or loan guarantees for limited purposes such as to provide credit for specific borrowers or one sector and raise funds by borrowing (which does not carry

<sup>14</sup> See 17 CFR 201.431(b).

<sup>15</sup> See 17 CFR 201.431(a).

<sup>16</sup> See James Vickery & Joshua Wright, *TBA Trading and Liquidity in the Agency MBS Market*, Federal Reserve Bank of New York, Economic Policy Review (May 2013) at 2 (cited in Letter to Vanessa Countryman, Commission, from David H. Thompson, et al., at 6–7 (Feb. 3, 2022) ("Petition for Review")), available at <https://www.sec.gov/rules/sro/finra/2022/34-94013-petn-cooper-kirk-020322.pdf>.

<sup>17</sup> See Petition for Review at 7; *U.S. Credit Markets: Interconnectedness and the Effects of the COVID-19 Economic Shock* (Oct. 2020) at 62, available at [https://www.sec.gov/files/US-Credit-Markets\\_COVID-19\\_Report.pdf](https://www.sec.gov/files/US-Credit-Markets_COVID-19_Report.pdf) ("DERA Report") (cited in Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28161, 28162, n.17 (May 25, 2021) ("Notice")).

<sup>18</sup> See Petition for Review at 9; DERA Report at 62; SIFMA TBA Market Fact Sheet (2015) at 2 (cited in Petition for Review at 9, n.10).

<sup>19</sup> See Petition for Review at 9.

<sup>20</sup> See Letter from Pete Mills, Senior Vice President, Residential Policy and Strategic Industry Engagement, Mortgage Bankers Association (May 10, 2022) ("MBA Letter") at 1–2.

<sup>21</sup> 15 U.S.C. 78c(a)(12)(A). Exempted securities include U.S. Treasury securities or other securities which are direct obligations of, or obligations guaranteed as to principal or interest by, the United States or securities which are issued or guaranteed by corporations in which the United States has a direct or indirect interest (such as Fannie Mae and Freddie Mac).

<sup>22</sup> See DERA Report at 63.

<sup>23</sup> See 12 CFR 220.1, *et. seq.*

<sup>24</sup> See 12 CFR 220.6(a)(2) and 220.12(b).

settlement dates (collectively, “Covered Agency Transactions,” also referred to, for purposes of this order, as the “TBA market”). Broadly, the amendments required FINRA’s broker-dealer members to: (1) perform credit risk determinations for counterparties with whom the broker-dealer engages in Covered Agency Transactions; and (2) collect margin from counterparties with respect to their Covered Agency Transactions with the broker-dealer.

As discussed below, FINRA’s initial amendments to Rule 4210 regarding Covered Agency Transactions went through a notice and comment period during which FINRA filed three amendments to the proposed rule change that, among other things, responded to comments about the potential burdens of the proposed rule change, including the potential burdens on smaller broker-dealers.<sup>31</sup> In June 2016, the Division, pursuant to delegated authority, approved FINRA’s amendments to Rule 4210 (“2016 Amendments”).<sup>32</sup> No petition was filed with the Commission to review the staff’s exercise of delegated authority to approve the 2016 Amendments.

Under the 2016 Amendments, FINRA’s broker-dealer members must make and enforce a written risk limit determination for each counterparty with whom the broker-dealer engages in Covered Agency Transactions.<sup>33</sup> The effective date for the credit risk determination requirement was December 15, 2016 and, therefore, FINRA’s broker-dealer members currently are subject to this requirement. Further, under the 2016 Amendments, FINRA’s broker-dealer members (unless an exception applies) must collect the daily mark to market loss from all counterparties with respect to their Covered Agency Transactions and for non-exempt accounts also collect maintenance margin of two percent.<sup>34</sup> The effective date for these

the full faith and credit of the Federal Government) or to guarantee the debt of others in unlimited amounts.

<sup>31</sup> See section I.B.1. of this order (discussing the procedural history of the notice and comment period for the 2016 Amendments).

<sup>32</sup> Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364, 40375 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR-FINRA-2015-036) (“2016 Approval Order”).

<sup>33</sup> See Rule 4210(e)(2)(H)(ii)(b).

<sup>34</sup> See Rule 4210(e)(2)(H)(i) and (ii) under the 2016 Amendments. Under the 2016 Amendments, the daily mark to market loss is a counterparty’s loss (*i.e.*, the broker-dealer’s gain) resulting from marking a Covered Agency Transaction to the

margin collection requirements is October 25, 2023.<sup>35</sup>

With respect to the 2016 Amendments, FINRA stated it would consider amending them as may be necessary to mitigate their impact on smaller broker-dealers.<sup>36</sup> Interested parties told FINRA that the 2016 Amendments favor larger broker-dealers because they have more market power to negotiate margin agreements or Master Securities Forward Transactions Agreements (“MSFTAs”) with their counterparties, and that smaller broker-dealers also are at a competitive disadvantage to non-FINRA members (*i.e.*, regional banks) because these entities are not subject to margin requirements for Covered Agency Transactions. Additionally, some smaller broker-dealers told FINRA that, among other things, the ability to take a capital charge in lieu of collecting margin would help alleviate this competitive disadvantage, though it would not fully resolve the competitive disparity between FINRA’s broker-dealer members subject to FINRA Rule 4210 and regional banks that are not subject to similar margin requirements.<sup>37</sup>

To address these concerns, FINRA filed a proposed rule change in 2021 (SR-FINRA-2021-010) to amend the margin collection requirements for Covered Agency Transactions in Rule 4210 that were adopted under the 2016 Amendments. As discussed below, FINRA’s proposed amendments went through a notice and comment period during which FINRA filed one amendment that, among other things, responded to comments about the potential burdens of the proposal.<sup>38</sup> Generally, as discussed below, the proposed amendments are intended to further reduce the burdens of the margin collection requirements with respect to Covered Agency Transactions, particularly for smaller broker-dealers. In January 2022, the Division, pursuant

to delegated authority, approved these amendments (“2021 Amendments”).<sup>39</sup>

to delegated authority, approved these amendments (“2021 Amendments”).<sup>39</sup>

As discussed below, the 2021 Amendments would (among other things): (1) eliminate the two percent maintenance margin requirement that applies to non-exempt accounts; (2) permit broker-dealers to take a capital charge in lieu of collecting the mark to market loss, subject to specified conditions and limitations; and (3) make revisions designed to streamline, consolidate, and clarify the text of the rule. The 2021 Amendments also include an implementation schedule for the requirements in Rule 4210 pertaining to collecting margin with respect to Covered Agency Transactions, as those requirements would be amended by the 2021 Amendments (“Amended Margin Collection Requirements”). The implementation schedule provides that FINRA would announce the effective date for the Amended Margin Collection Requirements no later than 60 days following the Commission’s approval of the 2021 Amendments and the announced effective date would be between nine and ten months following the approval.

In February 2022, the Bond Dealers of America (“BDA”) and Brean Capital, LLC (“Brean Capital”) (collectively, the “Petitioners”) jointly filed a timely petition requesting that the Commission review the Division’s approval of the 2021 Amendments.<sup>40</sup> The Commission granted the Petition for Review and, thereby, agreed to review the Division’s action under delegated authority.<sup>41</sup>

The Petitioners requested that the Commission disapprove the 2021 Amendments. Procedurally, if the Commission disapproves the 2021 Amendments, the 2016 Amendments would remain in place and become effective on October 25, 2023. Among other things, this would mean that the Amended Margin Collection Requirements—which would reduce certain burdens of the 2016 Amendments—would not take effect.

In response to the Petition for Review, the Commission has conducted a de novo review of the Division’s action by delegated authority approving the 2021 Amendments. The review gave careful consideration to the entire record—including FINRA’s filings, the

<sup>39</sup> See Exchange Act Release No. 94013 (Jan. 20, 2022), 87 FR 4076 (Jan. 26, 2022) (SR-FINRA-2021-010) (“2022 Approval Order”).

<sup>40</sup> See Petition for Review. Prior to the filing of the Petition for Review, the Petitioners timely filed a notice of their intent to file a petition.

<sup>41</sup> See Exchange Act Release No. 94724 (Apr. 14, 2022), 87 FR 23287 (Apr. 19, 2022) (“2022 Scheduling Order”).

<sup>35</sup> See Exchange Act Release No. 97062 (Mar. 7, 2023), 88 FR 15473 (Mar. 13, 2023) (File No. SR-FINRA-2023-002).

<sup>36</sup> See 2016 Approval Order, 81 FR at 40375.

<sup>37</sup> See Notice, 86 FR at 28162.

<sup>38</sup> See section I.B.2. of this order (discussing the procedural history of the 2021 Amendments).

comments and statements received on the filings, FINRA's responses to those comments and statements, the Petition for Review, and the comments and statements received in response to the Petition for Review—to determine whether the 2021 Amendments are consistent with the requirements of the Exchange Act and the rules and regulations thereunder, including that they do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.<sup>42</sup>

For the reasons discussed below, the Commission finds that FINRA has met its burden to show that the 2021 Amendments are consistent with the requirements of the Exchange Act and the applicable rules and regulations thereunder; including that they do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.<sup>43</sup> Consequently, the Commission is: (1) setting aside the Division's 2022 Approval Order approving the 2021 Amendments pursuant to delegated authority; and (2) approving the 2021 Amendments.

Finally, as discussed below, the 2021 Amendments were subject to notice and comment which provided multiple opportunities for interested parties to comment. The proposed rule change also included the institution of proceedings, which afforded interested parties additional opportunities and time to provide comments to the Commission. Consequently, the record for the 2021 Amendments includes numerous comments, and responses from FINRA to the comments.<sup>44</sup>

### B. Procedural History and Background of Covered Agency Transaction Margin Requirements

#### 1. The 2016 Amendments (SR-FINRA-2015-036)

On October 6, 2015, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act<sup>45</sup> and Rule 19b-4 thereunder,<sup>46</sup> a proposed rule change to amend FINRA Rule 4210 to establish margin requirements for Covered Agency Transactions (*i.e.*, the requirements that FINRA's broker-dealer members perform credit risk determinations and collect margin with respect to Covered Agency

Transactions).<sup>47</sup> The proposed rule change was published for comment in the **Federal Register** on October 20, 2015.<sup>48</sup> On November 10, 2015, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to January 15, 2016.<sup>49</sup> The Commission received over 100 comment letters on the proposed amendments.<sup>50</sup>

On January 13, 2016, FINRA responded to the comments and filed Amendment No. 1 to the proposed rule change.<sup>51</sup> In response to comments, Amendment No. 1, among other things, excluded certain types of securities from the scope of the proposed margin requirements and set bifurcated implementation dates for when broker-dealers would need to begin complying with the amendments if the Commission approved them: six months with respect to the credit risk determination requirements and eighteen months with respect to the margin collection requirements.

On January 14, 2016, the Commission issued an order instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>52</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.<sup>53</sup> The 2016 Order Instituting Proceedings was issued by the Division pursuant to delegated authority and was published in the **Federal Register** on January 21, 2016.<sup>54</sup> By instituting proceedings, the Commission extended

by 90 days the date by which the Commission would need to approve or disapprove the proposed amendments and provided the opportunity for further extensions. The Commission received more than 20 comment letters in response to the 2016 Order Instituting Proceedings.<sup>55</sup> On March 21, 2016, FINRA responded to the comments and filed Amendment No. 2.<sup>56</sup> The amendment, among other things, clarified certain text of the proposed rule.

On April 15, 2016, notice of Amendment No. 2 to the proposed rule change was published in the **Federal Register** to solicit comments from interested persons and to designate a longer period for Commission action on the proposed rule change: until June 16, 2016.<sup>57</sup> The Commission received nine additional comment letters in response to the Amendment No. 2 Notice.<sup>58</sup> On May 26, 2016, FINRA responded to the comments and filed Amendment No. 3.<sup>59</sup> Amendment No. 3 expanded the applicability of an exception under which the broker-dealer would not need to collect margin from counterparties with limited Covered Agency Transactions. In particular, the amendment applied the exception to counterparties with \$10 million or less in gross open Covered Agency Transactions instead of a lower threshold of \$2.5 million or less, as originally proposed.

On June 21, 2016, a notice and order was published in the **Federal Register** to solicit comment on Amendment No. 3 and approve the proposed rule change, as modified by Amendment Nos. 1, 2, and 3 on an accelerated basis (*i.e.*, approve the 2016 Amendments).<sup>60</sup> The Division issued the 2016 Approval Order pursuant to delegated authority. The Commission did not receive any comments in response to the notice of Amendment No. 3. Further, no petition was filed with the Commission to review the Division's action approving the 2016 Amendments by delegated authority. The effective date for the

<sup>47</sup> See File No. SR-FINRA-2015-036. Certain documents related to this rule change are available on FINRA's website at: <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2015-036>.

<sup>48</sup> See Exchange Act Release No. 76148 (Oct. 14, 2015), 80 FR 63603 (Oct. 20, 2015) (File No. SR-FINRA-2015-036).

<sup>49</sup> See Letter to Katherine England, Assistant Director, Division, Commission from Adam Arkel, Associate General Counsel, Office of the General Counsel, FINRA (Nov. 10, 2015).

<sup>50</sup> The public comment file for the proposed rule change is available at: <https://www.sec.gov/comments/sr-finra-2015-036/finra2015036.shtml> ("2016 Rulemaking Comment File"). The Commission staff also participated in numerous meetings and conference calls with certain commenters and other market participants, which are also noted in the 2016 Rulemaking Comment File.

<sup>51</sup> See Amendment No. 1 to the proposed rule change (Jan. 13, 2016) ("Amendment No. 1").

<sup>52</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>53</sup> See Exchange Act Release No. 76908 (Jan. 14, 2016), 81 FR 3532 (Jan. 21, 2016) (Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Partial Amendment No. 1) ("2016 Order Instituting Proceedings").

<sup>54</sup> *Id.*

<sup>55</sup> See 2016 Rulemaking Comment File.

<sup>56</sup> See Amendment No. 2 to the proposed rule change (Mar. 21, 2016) ("Amendment No. 2").

<sup>57</sup> See Exchange Act Release No. 77579 (Apr. 11, 2016), 81 FR 22347 (Apr. 15, 2016) (Notice of Filing of Amendment No. 2 and Designation of a Longer Period for Commission Action on Proceedings to Determine Whether to Approve or Disapprove Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1 and 2) ("Amendment No. 2 Notice").

<sup>58</sup> See 2016 Rulemaking Comment File.

<sup>59</sup> See Amendment No. 3 to the proposed rule change (May 26, 2016) ("Amendment No. 3").

<sup>60</sup> 2016 Approval Order.

<sup>42</sup> See 15 U.S.C. 78o-3(b)(6) and (9).

<sup>43</sup> See 15 U.S.C. 78o-3(b)(6) and (9).

<sup>44</sup> See section I.B.2. of this order (discussing the procedural history of the 2021 Amendments).

<sup>45</sup> 15 U.S.C. 78s(b)(1).

<sup>46</sup> 17 CFR 240.19b-4.

requirement to perform credit risk determinations under the 2016 Amendments was December 15, 2016. The effective date for the margin collection requirements for Covered Agency Transactions under the 2016 Amendments is October 25, 2023.<sup>61</sup>

## 2. The 2021 Amendments (SR-FINRA-2021-010)

On May 7, 2021, FINRA filed with the Commission, pursuant to Section 19(b)(1) of the Exchange Act<sup>62</sup> and Rule 19b-4 thereunder,<sup>63</sup> a proposed rule change to amend the margin requirements for Covered Agency Transactions under Rule 4210.<sup>64</sup> The proposed rule change would: (1) eliminate the two percent maintenance margin requirement that applies to non-exempt accounts; (2) subject to specified conditions and limitations, permit members to take a capital charge in lieu of collecting margin for excess net mark to market losses on Covered Agency Transactions; and (3) make revisions designed to streamline, consolidate and clarify the Covered Agency Transaction rule language. The proposed rule change was published for comment in the *Federal Register* on May 25, 2021.<sup>65</sup> On June 30, 2021, FINRA extended the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to August 23, 2021.<sup>66</sup> The Commission received five comment letters in response to the proposed rule change.<sup>67</sup>

On August 9, 2021, FINRA responded to the comments and filed Amendment No. 1 (2021) to the proposed rule change.<sup>68</sup> In response to comments, Amendment No. 1 (2021), among other things, would: (1) modify the definition

of “non-margin counterparty” to exclude small cash counterparties and other exempt counterparties; (2) define a FINRA member’s “specified net capital deductions” as the net capital deductions required by paragraph (e)(2)(H)(ii)d.1. of FINRA Rule 4210 with respect to all unmarginated excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close of business on the fifth business day after they arose; and (3) set an implementation date for the Amended Margin Collection Requirements.<sup>69</sup>

On August 20, 2021, the Commission issued an order instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act<sup>70</sup> to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1 (2021).<sup>71</sup> The 2021 Order Instituting Proceedings was issued by the Division pursuant to delegated authority and was published in the *Federal Register* on August 26, 2021.<sup>72</sup> The Commission received two comment letters in response to the 2021 Order Instituting Proceedings.<sup>73</sup> On September 16, 2021, FINRA responded to the comments received in response to the 2021 Order Instituting Proceedings.<sup>74</sup> On October 26, 2021, FINRA extended the time period in which the Commission must approve or disapprove the proposed rule change to January 20, 2022.<sup>75</sup>

On January 20, 2022, the Division, acting pursuant to delegated authority on behalf of the Commission,<sup>76</sup> approved the proposed rule change, as modified by Amendment No. 1 (2021).<sup>77</sup> On January 27, 2022, the BDA and Brean Capital—the “Petitioners”—filed a notice of intention to petition for review of the 2022 Approval Order.<sup>78</sup>

Pursuant to the Commission’s Rules of Practice 431(e), the 2022 Approval Order was stayed by the filing with the Commission of a notice of intention to petition for review.<sup>79</sup> On February 3, 2022, the Petitioners jointly filed a timely Petition for Review.<sup>80</sup> On April 14, 2022, the Commission issued a scheduling order, pursuant to Commission’s Rules of Practice, granting the Petition for Review of the 2022 Approval Order and providing until May 10, 2022 for any party or other person to file a written statement in support of, or in opposition to, the 2022 Approval Order.<sup>81</sup> The scheduling order also stated that the proposed rule change, as modified by Amendment No. 1 (2021), shall remain stayed pending further Commission action.<sup>82</sup> On May 10, 2022, FINRA submitted a written statement in support of the 2022 Approval Order.<sup>83</sup> On May 10, 2022, the Petitioners submitted a written statement in opposition to the 2022 Approval Order.<sup>84</sup> The Commission also received over ten additional statements from market participants in response to the Petition for Review.<sup>85</sup>

## II. How the 2021 Amendments Would Change the Covered Agency Transaction Margin Requirements of Rule 4210

### A. Elimination of the Two Percent Maintenance Margin Requirement

Under the 2016 Amendments, Rule 4210 imposes different margin requirements for accounts that are “exempt accounts” and accounts that are not “exempt accounts.” Accounts that are not “exempt accounts” under the 2016 Amendments are subject to stricter margin requirements than

FINRA-2015-036, Release No. 34-94013; File No. SR-FINRA-2021-010, available at <https://www.sec.gov/rules/sro/finra/2022/34-94013-petn-cooper-kirk.pdf>.

<sup>79</sup> 17 CFR 201.431(e).

<sup>80</sup> See Petition for Review.

<sup>81</sup> See 2022 Scheduling Order.

<sup>82</sup> *Id.*

<sup>83</sup> See FINRA’s Statement in Support of Proposed Rule Change to Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (File No. SR-FINRA-2021-010) (“FINRA Statement”).

<sup>84</sup> See Petitioners’ Statement in Opposition to Approval of the Proposed Rule Change (“Petitioners’ Statement”).

<sup>85</sup> See 2021 Rulemaking Comment File. Weichert Financial Services submitted six nearly identical letters signed by different individuals. See Letters from Nancy Crocetto, SVP, Mortgage Operations (May 9, 2022); Eric Declercq, President (May 9, 2022); James M. Weichert, President & Chief Executive Officer (May 9, 2022); Anthony P. Fattizzi, Chief Risk Officer (May 4, 2022); Michael Cadematori (May 4, 2022); Timothy McLaughlin, Chief Investment Officer (May 3, 2022). These are collectively considered one comment letter and referred to as the “Weichert Letters.”

<sup>61</sup> See Exchange Act Release No. 97062 (Mar. 7, 2023), 88 FR 15473 (Mar. 13, 2023) (File No. SR-FINRA-2023-002) (extending the implementation date of the margin collection requirements under SR-FINRA-2015-036 from April 24, 2023 to October 25, 2023).

<sup>62</sup> 15 U.S.C. 78s(b)(1).

<sup>63</sup> 17 CFR 240.19b-4.

<sup>64</sup> The full text of the proposed rule change and the exhibits FINRA filed are collectively referred to as the “proposal,” and are available at: <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2021-010>.

<sup>65</sup> See Notice.

<sup>66</sup> See Letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Sheila Swartz, Division, Commission (June 30, 2021).

<sup>67</sup> The public comment file for the proposed rule change is published on the Commission’s website at: <https://www.sec.gov/comments/sr-finra-2021-010/srfinra2021010.htm> (“2021 Rulemaking Comment File”).

<sup>68</sup> See Amendment No. 1 to the proposed rule change (Aug. 9, 2021) (“Amendment No. 1 (2021)”).

<sup>69</sup> See Amendment No. 1 (2021).

<sup>70</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>71</sup> See Exchange Act Release No. 92713 (Aug. 20, 2021), 86 FR 47655 (Aug. 26, 2021) (“2021 Order Instituting Proceedings”).

<sup>72</sup> *Id.*

<sup>73</sup> See 2021 Rulemaking Comment File.

<sup>74</sup> See Letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Commission (Sept. 16, 2021) (“FINRA Letter”).

<sup>75</sup> See Letter from Adam Arkel, Associate General Counsel, Office of General Counsel, FINRA, to Sheila Swartz, Division, Commission (Oct. 26, 2021).

<sup>76</sup> 17 CFR 200.30-3(a)(12).

<sup>77</sup> See 2022 Approval Order.

<sup>78</sup> See Notice of Intention to Petition for Review of Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions Under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR-

“exempt accounts” because the broker-dealer is required to collect two percent maintenance margin with respect to these accounts in addition to margin to cover the counterparty’s mark to market loss.<sup>86</sup> In particular, paragraph (e)(2)(H)(ii)e. of Rule 4210 broadly provides that the broker-dealer must collect margin from counterparties that are non-exempt accounts equal to the maintenance margin amount, defined to mean margin equal to two percent of the contract value of the net long or net short position, by CUSIP, with the counterparty, *plus* any net mark to market loss, subject to specified exceptions under the rule.<sup>87</sup> By contrast, under the 2016 Amendments, paragraph (e)(2)(H)(ii)d. of Rule 4210 broadly provides that the broker-dealer must collect margin from counterparties that are exempt accounts equal to any net mark to market loss, subject to specified exceptions under the rule (*i.e.*,

<sup>86</sup> The term “exempt account” is defined under FINRA Rule 4210(a)(13). Broadly, an exempt account means a FINRA member, a non-FINRA member registered broker-dealer, an account that is a “designated account” under FINRA Rule 4210(a)(4) (specifically, a bank as defined under Section 3(a)(6) of the Exchange Act, a savings association as defined under Section 3(b) of the Federal Deposit Insurance Act, the deposits of which are insured by the Federal Deposit Insurance Corporation, an insurance company as defined under Section 2(a)(17) of the Investment Company Act, an investment company registered with the Commission under the Investment Company Act, a state or political subdivision thereof, or a pension plan or profit sharing plan subject to the Employee Retirement Income Security Act or of an agency of the United States or of a state or political subdivision thereof), and any person that has a net worth of at least \$45 million and financial assets of at least \$40 million for purposes of paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of FINRA Rule 4210, as set forth under paragraph (a)(13)(B)(i) of FINRA Rule 4210, and meets specified conditions as set forth under paragraph (a)(13)(B)(ii). See Notice, 86 FR at 28163, n.18. Unless otherwise noted, references to the 2016 Amendments are to the “current rule” or “original rulemaking.”

<sup>87</sup> See 2016 Approval Order, 81 FR at 40367; see also paragraph (e)(2)(H)(ii)e. of the current rule in Exhibit 5. The rule further sets forth specified requirements for net capital deductions and the liquidation of positions in the event the uncollected maintenance margin and mark to market loss (defined together under paragraph (e)(2)(H)(i)d. of the current rule as the “deficiency”) is not satisfied. In short, the rule provides that if the deficiency is not satisfied by the close of business on the next business day after the business day on which the deficiency arises, the member shall be required to deduct the amount of the deficiency from net capital as provided in Exchange Act Rule 15c3–1 until such time the deficiency is satisfied; under the rule, if such deficiency is not satisfied within five business days from the date the deficiency was created, the member must promptly liquidate positions to satisfy the deficiency, unless FINRA has specifically granted the member additional time. As discussed in further detail below, the proposed rule change would eliminate current paragraph (e)(2)(H)(ii)e. in its entirety.

maintenance margin need not be collected).<sup>88</sup>

In connection with the 2021 Amendments, FINRA stated that broker-dealer members expressed concern that the different treatment of exempt and non-exempt accounts is burdensome because members will be obligated to obtain and assess the financial information needed to determine which counterparties must be treated as non-exempt accounts.<sup>89</sup> Further, based on feedback from members since the approval date of the 2016 Amendments and additional observation of market conditions, FINRA stated it now believes that the potential risk that the maintenance margin requirement was intended to address when originally proposed is not significant enough to warrant the burdens and competitive disadvantage that the requirement imposes.<sup>90</sup> According to FINRA, members pointed out that, in practice, the maintenance margin requirement would apply to relatively few accounts of entities that participate in the Covered Agency Transaction market. Further, FINRA stated that monitoring and collecting maintenance margin for these accounts will be operationally burdensome and out of proportion with the number and size of the affected accounts.<sup>91</sup> Further, according to FINRA, bank dealers are not subject to the requirement to collect maintenance margin from their customers, which would significantly disadvantage broker-dealers that compete with bank

<sup>88</sup> See 2016 Approval Order, 81 FR at 40367; see also paragraph (e)(2)(H)(ii)d. of the current rule in Exhibit 5 to the 2016 Amendments. Similar to paragraph (e)(2)(H)(ii)e., current paragraph (e)(2)(H)(ii)d. provides that if the mark to market loss is not satisfied by the close of business on the next business day after the business day on which the mark to market loss arises, the member is required to deduct the amount of the mark to market loss from net capital as provided in Exchange Act Rule 15c3–1 until such time the mark to market loss is satisfied; if such mark to market loss is not satisfied within five business days from the date the loss was created, the member must promptly liquidate positions to satisfy the mark to market loss, unless FINRA has specifically granted the member additional time. Again, as discussed in further detail below, the proposed rule change would eliminate current paragraph (e)(2)(H)(ii)d. in its entirety.

<sup>89</sup> See Notice, 86 FR at 28163. Further, FINRA stated that members expressed concern that some asset manager counterparties face constraints with regard to custody of assets at broker-dealers and that, because of these constraints, some members need to enter into separate custodial agreements with third party banks to hold the maintenance margin that they collect from these asset managers. Members expressed concern that this imposes operational burdens both on themselves and their client counterparties, who may, as a consequence, choose to limit their dealings with smaller broker-dealers. *Id.* at n.23.

<sup>90</sup> See Notice, 86 FR at 28163.

<sup>91</sup> *Id.*

dealers.<sup>92</sup> To address these concerns, FINRA proposed to eliminate paragraphs (e)(2)(H)(ii)d. and (e)(2)(H)(ii)e. of Rule 4210, and replace them with new paragraph (e)(2)(H)(ii)c. This paragraph would provide that FINRA’s broker-dealer members must collect margin for each counterparty’s<sup>93</sup> excess net mark to market loss,<sup>94</sup> unless

<sup>92</sup> *Id.*

<sup>93</sup> Current paragraph (e)(2)(H)(i)b. defines the term “counterparty” to mean any person that enters into a Covered Agency Transaction with a member and includes a “customer” as defined in paragraph (a)(3) under FINRA Rule 4210. The proposed rule change would redesignate the definition of counterparty as paragraph (e)(2)(H)(i)a. under the rule and revise the definition to provide that the term “counterparty” means any person, including any “customer” as defined in paragraph (a)(3) of the rule, that is a party to a Covered Agency Transaction with, or guaranteed by, a member. FINRA believes that including transactions guaranteed by a member is a useful clarifying change in the context of Covered Agency Transactions. In connection with this change, FINRA proposes to add new Supplemental Material .02, which would provide that, for purposes of paragraph (e)(2)(H), a member is deemed to have “guaranteed” a transaction if the member has become liable for the performance of either party’s obligations under the transaction. See proposed new Supplemental Material .02 in Exhibit 5 to the proposal. Accordingly, if a clearing broker were to guarantee to an introduced customer an introducing broker’s obligations under a Covered Agency Transaction between that introducing firm and customer, the introducing broker would be considered a “counterparty” of the clearing broker for purposes of paragraph (e)(2)(H). See also Notice, 86 FR at 28163–64, n.25.

<sup>94</sup> FINRA proposes to delete the current definition of “mark to market loss” under paragraph (e)(2)(H)(i)g. as adopted pursuant to the 2016 Approval Order and to replace it with a definition of “net mark to market loss” under proposed new paragraph (e)(2)(H)(i)d. Under the new definition, a counterparty’s “net mark to market loss” would mean (1) the sum of such counterparty’s losses, if any, resulting from marking to market the counterparty’s Covered Agency Transactions with the member, or guaranteed to a third party by the member, reduced to the extent of the member’s legally enforceable right of offset or security by (2) the sum of such counterparty’s gains, if any, resulting from: (a) marking to market the counterparty’s Covered Agency Transactions with the member, guaranteed to the counterparty by the member, cleared by the member through a registered clearing agency, or in which the member has a first-priority perfected security interest; and (b) any “in the money,” as defined in paragraph (f)(2)(E)(iii) of FINRA Rule 4210, amounts of the counterparty’s long standby transactions written by the member, guaranteed to the counterparty by the member, cleared by the member through a registered clearing agency, or in which the member has a first-priority perfected security interest. Under proposed new paragraph (e)(2)(H)(ii)c., a counterparty’s “excess” net mark to market loss is defined to mean such counterparty’s net mark to market loss to the extent it exceeds \$250,000. As such, by specifying excess net mark to market loss, FINRA stated that the proposed rule preserves the \$250,000 de minimis transfer exception set forth under paragraph (e)(2)(H)(ii)f. as adopted pursuant to the 2016 Approval Order. Further, FINRA stated that, in the interest of clarity, proposed new paragraph (e)(2)(H)(ii)c. expressly provides that members would not be required to collect margin, or take capital charges, for counterparties’ mark to market losses on Covered Agency Transactions

otherwise provided under proposed new paragraph (e)(2)(H)(ii)d. of the rule, as discussed further below. As such, both exempt and non-exempt accounts would receive the same margin treatment for purposes of Covered Agency Transactions under paragraph (e)(2)(H).<sup>95</sup> In particular, under the amendments, FINRA's broker-dealer members would not be required to collect the two percent maintenance margin amount for non-exempt accounts.

### *B. Option for Capital Charge in Lieu of Mark to Market Margin*

The 2021 Amendments would add new paragraph (e)(2)(H)(ii)d. to Rule 4210.<sup>96</sup> This paragraph would provide FINRA's broker-dealer members, subject to specified conditions and limitations, the option to take a capital charge in lieu of collecting margin for a counterparty's excess net mark to market loss (that is, the net mark to market loss to the extent it exceeds \$250,000). Informed by FINRA's engagement with members, FINRA believes this approach is appropriate because it would help alleviate the competitive disadvantage of smaller firms vis-à-vis larger firms. FINRA stated smaller firms expressed concern that larger firms can leverage their greater size and scale in obtaining margining agreements with their counterparties, and that counterparties would prefer to transact with larger firms with which margining agreements can more readily be obtained, or with banks that are not subject to margin requirements. FINRA also stated that smaller firms told FINRA that having the option to take a capital charge, in lieu of collecting margin, would help alleviate the competitive disadvantage of needing to obtain margining agreements with such counterparties because there would be an alternative to collecting margin.<sup>97</sup> To this end, as

other than excess net mark to market losses. Last, as discussed further below, the proposed rule change would delete paragraph (e)(2)(H)(ii)f. in the interest of consolidating the rule language. See Notice, 86 FR at 28164, n.26.

<sup>95</sup> Current paragraph (e)(2)(H)(ii)d. of the rule contains provisions designed to permit members to treat mortgage bankers, as defined pursuant to current paragraph (e)(2)(H)(i)h. of the rule, as exempt accounts under specified conditions. Because the proposed rule change eliminates the distinction between exempt and non-exempt accounts for purposes of Covered Agency Transactions, FINRA believes this language is no longer needed and proposed deleting this language. See Notice, 86 FR at 28164, n.27.

<sup>96</sup> See Notice, 86 FR at 28164.

<sup>97</sup> See Notice, 86 FR at 28164; see also FINRA Statement at 25 (citing Letter from Michael Nicholas, Chief Executive Officer, BDA to Ms. Kris Dailey Vice President, Risk Oversight & Operational Regulation, FINRA (June 7, 2018) at 1–2 (“BDA

stated above, the proposed rule change includes conditions and limitations that FINRA stated are designed to help protect the financial stability of members that opt to take capital charges while restricting the ability of the larger members to use their capital to compete unfairly with smaller members.<sup>98</sup> Specifically, the proposed new paragraph provides that a member need not collect margin for a counterparty's excess net mark to market loss under paragraph (e)(2)(H)(ii)c. of the rule, provided that:

- The member must deduct the amount of the counterparty's unmarginated excess net mark to market loss from the member's net capital computed as provided in Exchange Act Rule 15c3–1, if the counterparty is a non-margin counterparty<sup>99</sup> or if the excess net mark to market loss has not been marginated or eliminated by the close of business on the next business day after the business day on which such excess net mark to market loss arises;<sup>100</sup>

- If the member has any non-margin counterparties, the member must establish and enforce risk management procedures reasonably designed to ensure that the member would not exceed either of the limits specified in paragraph (e)(2)(I)(i) of the rule, as proposed to be revised pursuant to this proposed rule change,<sup>101</sup> and that the member's net capital deductions under proposed paragraph (e)(2)(H)(ii)d.1. of the rule for all accounts combined will not exceed \$25 million;<sup>102</sup>

- If the member's net capital deductions under paragraph (e)(2)(H)(ii)d.1. of the rule for all accounts combined exceed \$25 million for five consecutive business days, the

2018 Letter”), available at [http://d31h2lzk6di2h5.cloudfront.net/20180607/81/e8/1f/28/96174e7b8c13fad4d07fa8aa/BDA\\_4210\\_Capital\\_Charge\\_.pdf](http://d31h2lzk6di2h5.cloudfront.net/20180607/81/e8/1f/28/96174e7b8c13fad4d07fa8aa/BDA_4210_Capital_Charge_.pdf).

<sup>98</sup> See Notice, 86 FR at 28164.

<sup>99</sup> Proposed new paragraph (e)(2)(H)(i)e. defines a counterparty as a “non-margin counterparty” if the member: (1) does not have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net mark to market loss is not marginated or eliminated within five business days from the date it arises; or (2) does not regularly collect margin for such counterparty's excess net mark to market loss. See Amendment No. 1 (2021); see also section II.D. below for a discussion of modification to proposed definition of non-margin counterparty.

<sup>100</sup> See proposed paragraph (e)(2)(H)(ii)d.1. in Exhibit 5 to the proposal.

<sup>101</sup> Current paragraph (e)(2)(I) sets forth specified concentration thresholds. As discussed further below in section II.C. the rule change would make conforming revisions to the rule.

<sup>102</sup> See proposed paragraph (e)(2)(H)(ii)d.2. in Exhibit 5 to the proposal.

member must give prompt written notice to FINRA. If the member's net capital deductions under paragraph (e)(2)(H)(ii)d.1. of the rule for all accounts combined exceed the lesser of \$30 million or 25% of the member's tentative net capital,<sup>103</sup> as such term is defined in Exchange Act Rule 15c3–1, for five consecutive business days, the member may not enter into any new Covered Agency Transactions with any non-margin counterparty other than risk-reducing transactions, and must also, to the extent of its rights, promptly collect margin for each counterparty's excess net mark to market loss and promptly liquidate the Covered Agency transactions of any counterparty whose excess net mark to market loss is not marginated or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time;<sup>104</sup> and

- The member must submit to FINRA such information regarding its unmarginated net mark to market losses, non-margin counterparties and related capital charges, in such form and manner, as FINRA shall prescribe by *Regulatory Notice* or similar communication.<sup>105</sup>

### *C. Streamlining and Consolidation of Rule Language; Conforming Revisions*

In support of the amendments discussed above, FINRA has proposed several amendments to the current rule designed to streamline and consolidate the rule language and otherwise make conforming revisions. Generally, these amendments are intended to, among other things: (1) consolidate language related to certain exceptions regarding the de minimis transfer amount and \$10 million gross open position amount and introduce the term “small cash counterparty”; (2) remove defined terms that are no longer relevant; (3) conform and consolidate language related to excepted counterparties and risk limits; (4) revise existing rule text to reflect the elimination of the two percent maintenance margin requirement; and (5) revise related supplemental material to conform to the proposed rule changes. These proposed changes are described in greater detail below.

- The proposed rule change would consolidate language related to the \$250,000 de minimis transfer exception and the \$10 million gross open position exception while, as discussed above,

<sup>103</sup> This is referred to collectively as the 25% TNC/\$30MM Threshold for purposes of this order.

<sup>104</sup> See proposed paragraph (e)(2)(H)(ii)d.3. in Exhibit 5 to the proposal.

<sup>105</sup> See Notice, 86 FR at 28164. See also proposed paragraph (e)(2)(H)(ii)d.4. in Exhibit 5 to the proposal.

preserving these exceptions in substance. FINRA stated that the \$250,000 de minimis transfer exception is preserved because paragraph (e)(2)(H)(ii)c. under the revised rule specifies that the members shall collect margin for each counterparty's excess net mark to market loss, unless otherwise provided under paragraph (e)(2)(H)(ii)d. of the rule (that is, the provisions under the proposed rule change that permit a member to take a capital charge in lieu of collecting margin, subject to specified conditions).<sup>106</sup> The proposed rule change deletes paragraph (e)(2)(H)(ii)f., which currently addresses the de minimis exception and would be rendered redundant by the rule change. With respect to the current \$10 million gross open position exception, FINRA proposes to revise paragraph (e)(2)(H)(ii)a. of the rule, which identifies the types of counterparties that are excepted from the rule's margin requirements, to include a "small cash counterparty." Proposed new paragraph (e)(2)(H)(i)h. would provide that a counterparty is a "small cash counterparty" if:

- The absolute dollar value of all of such counterparty's open Covered Agency Transactions with, or guaranteed by, the member is \$10 million or less in the aggregate, when computed net of any settled position of the counterparty held at the member that is deliverable under such open Covered Agency Transactions and which the counterparty intends to deliver;<sup>107</sup>

- The original contractual settlement date for all such open Covered Agency Transactions is in the month of the trade date for such transactions or in the month succeeding the trade date for such transactions;<sup>108</sup>

- The counterparty regularly settles its Covered Agency Transactions on a delivery-versus-payment ("DVP") basis or for cash;<sup>109</sup> and

- The counterparty does not, in connection with its Covered Agency Transactions with, or guaranteed by, the member, engage in dollar rolls, as defined in Rule 6710(z), or round robin

trades,<sup>110</sup> or use other financing techniques.<sup>111</sup>

The above elements, according to FINRA, are substantially similar to the elements that are currently associated with the exception as set forth under current paragraph (e)(2)(H)(ii)c.2., which would be deleted, along with the definition of "gross open position" under paragraph (e)(2)(H)(i)e., which would be rendered redundant by the rule change.<sup>112</sup> The new proposed language reflects that the scope of transactions addressed by the rule include Covered Agency Transactions with a counterparty that are guaranteed by the member.

- FINRA proposes to delete the definition of "bilateral transaction" set forth in current paragraph (e)(2)(H)(i)a. The definition is used in connection with the provisions under the current rule relating to margin treatment for exempt accounts under paragraph (e)(2)(H)(ii)d. and for non-exempt accounts under paragraph (e)(2)(H)(ii)e., both of which paragraphs, as discussed above, FINRA proposes to delete pursuant to the rule change. Further, FINRA states that the term "bilateral transaction" is unduly narrow given that the proposed revised definition of "counterparty" would have the effect of clarifying that the rule's scope includes transactions guaranteed by the member.<sup>113</sup>

- FINRA proposes to delete the definition of the term "deficiency" set forth in current paragraph (e)(2)(H)(i)d. Under the current rule, the term is designed in part to reference required but uncollected maintenance margin for Covered Agency Transactions. Because the rule change proposes to eliminate the maintenance margin requirement, FINRA believes that the term is not needed.<sup>114</sup>

- Current paragraph (e)(2)(H)(ii)a. addresses the scope of paragraph (e)(2)(H) and certain types of counterparties that are excepted from the rule, provided the member makes and enforces written risk limits pursuant to paragraph (e)(2)(H)(ii)b. Current paragraph (e)(2)(H)(ii)b. contains the core language under the rule relating to risk limits. FINRA is proposing to revise both paragraphs to conform with the changes proposed in the 2021 Amendments and consolidate

the language relating to written risk limits in these paragraphs within paragraph (e)(2)(H)(ii)b. Paragraph (e)(2)(H)(ii)a.1. would be revised to read: "1. a member is not required to collect margin, or to take capital charges in lieu of collecting such margin, for a counterparty's excess net mark to market loss if such counterparty is a small cash counterparty, registered clearing agency, Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements; and . . ." <sup>115</sup> Paragraph (e)(2)(H)(ii)a.2. would be revised to read: "2. a member is not required to include a counterparty's Covered Agency Transactions in multifamily housing securities or project loan program securities in the computation of such counterparty's net mark to market loss, provided . . ." <sup>116</sup> Paragraph (e)(2)(H)(ii)a.2.A. would not be changed, other than to be redesignated as paragraph (e)(2)(H)(ii)a.2. Paragraph (e)(2)(H)(ii)a.2.B. would be eliminated as redundant <sup>117</sup> because, correspondingly, paragraph (e)(2)(H)(ii)b. would be revised to read: "A member that engages in Covered Agency Transactions with any counterparty shall make a determination in writing of a risk limit for each such counterparty, including any counterparty specified in paragraph (e)(2)(H)(ii)a.1. of this Rule, that the

<sup>115</sup> The proposed language in the paragraph reflects FINRA's proposed establishment of the option to take a net capital charge in lieu of collecting margin. Further, FINRA stated that, for clarity, the proposed rule change adds registered clearing agencies to the types of counterparties that are within the exception pursuant to paragraph (e)(2)(H)(ii)a. as revised. FINRA believes that this preserves the treatment of registered clearing agencies under the rule in light of the proposed deletion of current paragraph (e)(2)(H)(ii)c. In this regard, also in the interest of clarity, FINRA proposes to add new paragraph (e)(2)(H)(i)f. defining the term "registered clearing agency." See Notice, 86 FR at 28165, n.39.

<sup>116</sup> Under current paragraph (e)(2)(H)(ii)a.2., a member is not required to apply the margin requirements of paragraph (e)(2)(H) to Covered Agency Transactions with a counterparty in multifamily housing securities or project loan program securities, provided the securities meet the specified conditions under the rule and the member makes and enforces the written risk limit determinations as specified under the rule. FINRA stated that the proposed rule change does not change the treatment of multifamily housing securities or project loan program securities under the current rule other than to clarify, in express terms, that a member is not required to include a counterparty's Covered Agency Transactions in multifamily housing securities or project loan program securities in the computation of such counterparty's net mark to market loss. See Notice, 86 FR at 28165, n.40.

<sup>117</sup> See proposed paragraph (e)(2)(H)(ii)a. in Exhibit 5 to the proposal.

<sup>106</sup> See Notice, 86 FR at 28165.

<sup>107</sup> See proposed paragraph (e)(2)(H)(i)h.1. in Exhibit 5 to the proposal.

<sup>108</sup> See proposed paragraph (e)(2)(H)(i)h.2. in Exhibit 5 to the proposal.

<sup>109</sup> See proposed paragraph (e)(2)(H)(i)h.3. in Exhibit 5 to the proposal.

<sup>110</sup> The term "round robin" is defined under current paragraph (e)(2)(H)(i)i. of the rule and, pursuant to the rule change, would be redesignated as paragraph (e)(2)(H)(i)g., without any change.

<sup>111</sup> See proposed paragraph (e)(2)(H)(i)h.4. in Exhibit 5 to the proposal.

<sup>112</sup> See Notice, 86 FR at 28165.

<sup>113</sup> See Notice, 86 FR at 28165.

<sup>114</sup> See Notice, 86 FR at 28165.

member shall enforce. The risk limit for a counterparty shall cover all of the counterparty's Covered Agency Transactions with the member or guaranteed to a third party by the member, including Covered Agency Transactions specified in paragraph (e)(2)(H)(ii)a.2. of this Rule. The risk limit determination shall be made by a designated credit risk officer or credit risk committee in accordance with the member's written risk policies and procedures."<sup>118</sup>

- Paragraph (e)(2)(I) under FINRA Rule 4210 addresses concentration thresholds. FINRA is proposing to make revisions to align the paragraph with the proposed new language of paragraph (e)(2)(H), in particular the elimination of the maintenance margin requirement and the introduction of the proposed new term "small cash counterparty." Specifically, FINRA proposes to revise the opening sentence of paragraph (e)(2)(I) to read: "In the event that (i) the net capital deductions taken by a member as a result of marked to the market losses incurred under paragraphs (e)(2)(F), (e)(2)(G) (exclusive of the percentage requirements established thereunder), or (e)(2)(H)(ii)d.1. of this Rule, plus any unmarginated net mark to market losses below \$250,000 or of small cash counterparties exceed . . ." <sup>119</sup> Current paragraph (e)(2)(I)(i)c. would be redesignated as (e)(2)(I)(ii) and would read: "(ii) such excess as calculated in paragraph (e)(2)(I)(i) of this Rule continues to exist on the fifth business day after it was incurred . . ." The final clause of the paragraph would be revised to read: ". . . the member shall give prompt written notice to FINRA and shall not enter into any new transaction(s) subject to the provisions of paragraphs (e)(2)(F), (e)(2)(G) or (e)(2)(H) of this Rule that would result in an increase in the amount of such excess."

- Paragraph (f)(6) under FINRA Rule 4210 addresses the time within which margin or "mark to market" must be obtained. FINRA proposes to delete the phrase "other than that required under paragraph (e)(2)(H) of this Rule," so the rule, as revised, would read: "The amount of margin or 'mark to market' required by any provision of this Rule shall be obtained as promptly as possible and in any event within 15 business days from the date such deficiency occurred, unless FINRA has specifically granted the member

additional time." FINRA believes this is appropriate given the proposed elimination of current paragraph (e)(2)(H)(ii)d. and paragraph (e)(2)(H)(ii)e. of the rule, both of which set forth, among other things, specified time frames for collection of mark to market losses or deficiencies, as appropriate, and liquidation of positions that are specific to Covered Agency Transactions.<sup>120</sup>

- Current Supplemental Material .02 addresses the requirement to establish monitoring procedures with respect to mortgage bankers, for purposes of treating them as exempt accounts pursuant to current paragraph (e)(2)(H)(ii)d. Current Supplemental Material .03 addresses how the cure of mark to market loss or deficiency, as the term mark to market loss or deficiency is defined under the current rule, may eliminate the need to liquidate positions. Current Supplemental Material .04 addresses determining whether an account qualifies as an exempt account. The proposed rule change would render each of these provisions unnecessary, given that the proposed rule change would eliminate the need to distinguish exempt versus non-exempt accounts (including the language targeted toward mortgage bankers) and eliminates the liquidation provisions under current paragraph (e)(2)(H)(ii)d. and paragraph (e)(2)(H)(ii)e. of the rule.<sup>121</sup> FINRA proposes to redesignate current Supplemental Material .05 as Supplemental Material .03.<sup>122</sup>

Subject to Commission approval of the proposed rule change, FINRA proposed it would announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. FINRA stated that the effective date will be no later than 120 days following publication of the *Regulatory Notice* announcing Commission approval.<sup>123</sup>

<sup>120</sup> See Notice, 86 FR at 28166.

<sup>121</sup> See Notice, 86 FR at 28166.

<sup>122</sup> See Supplemental Material provisions in Exhibit 5 to the proposal.

<sup>123</sup> See discussion of Amendment No. 1 (2021) in section III.E. below regarding the proposed adjustment of the implementation date. See also Amendment No. 1 (2021) at 20. FINRA stated that the proposed rule change would not impact members that are funding portals or that have elected to be treated as capital acquisition brokers, given that such members are not subject to FINRA Rule 4210. See Notice, 86 FR at 28166, n.45. The term "funding portal" is defined in Rule 100(b)(5) of FINRA's Funding Portal Rules. The term "capital acquisition broker" is defined in Rule 016(c) of FINRA's Capital Acquisition Broker Rules.

#### D. Amendment No. 1 (2021)

In Amendment No. 1 (2021) to the proposed rule change, FINRA proposed to: (1) modify the definition of "non-margin counterparty" to exclude small cash counterparties and other exempted counterparties; and (2) define a FINRA member's "specified net capital deductions" as the net capital deductions required by paragraph (e)(2)(H)(ii)d.1. of FINRA Rule 4210 with respect to all unmarginated excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close of business on the fifth business day after they arose.<sup>124</sup> In addition, Amendment No. 1 (2021) states that, if the Commission approves the proposed rule change, as modified by Amendment No. 1 (2021), FINRA will announce the effective date of the proposed rule change, as modified by Amendment No. 1 (2021), in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date would be between nine and ten months following the Commission's approval.<sup>125</sup>

### III. Commission Discussion and Findings

After careful review of the proposed rule change, as modified by Amendment No. 1 (2021), comment letters, FINRA's responses to the comments, the Petition for Review, and the statements received in response to the Petition for Review, as discussed below, the Commission finds that the proposed rule change, as modified by Amendment No. 1 (2021), is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities association.<sup>126</sup> Specifically, for the reasons discussed below, the Commission finds that the proposed rule change, as modified by Amendment No. 1 (2021), is consistent

<sup>124</sup> Amendment No. 1 (2021) also contains several conforming changes to paragraph numbering to accommodate the proposed modifications to the rule text. See Exhibit 4 to Amendment No. 1 (2021).

<sup>125</sup> See Amendment No. 1 (2021); 2021 Order Instituting Proceedings, 86 FR at 47665.

<sup>126</sup> In approving this rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f). See, e.g., section III.A. (discussing alleviation of competitive impacts on broker-dealers with the elimination of the two percent maintenance margin requirement for non-exempt accounts and the option to take a capital charge in lieu of collecting the excess net mark to market loss, subject to a cap; competitive concerns raised by commenters regarding smaller firms exiting the market resulting in a concentration of larger firms; and enhancements in efficiency in streamlining and consolidating the rule text).

<sup>118</sup> See proposed paragraph (e)(2)(H)(ii)b. in Exhibit 5 to the proposal.

<sup>119</sup> See proposed paragraph (e)(2)(I) in Exhibit 5 to the proposal.

with Section 15A(b)(6) of the Exchange Act,<sup>127</sup> which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Commission also finds that the proposed rule change, as modified by Amendment No. 1 (2021), is consistent with Section 15A(b)(9) of the Exchange Act,<sup>128</sup> which requires that the rules of a national securities association must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*A. The Elimination of the Two Percent Maintenance Margin Requirement, the Optional Capital in Lieu of Margin Charge, and the Streamlining of the Rule Text are Consistent With the Exchange Act*

1. Elimination of the Two Percent Maintenance Margin for Non-Exempt Accounts

a. Comments Received on the Proposal

As discussed in section II.A. above, FINRA proposed to eliminate the two percent maintenance margin requirement that would apply to non-exempt accounts under the current rule. The Commission received one comment supporting the proposed rule change to eliminate the two percent maintenance margin requirement for non-exempt accounts.<sup>129</sup>

b. FINRA's Rationale for the Proposed Change

FINRA stated that eliminating the two percent maintenance margin requirement for non-exempt accounts is intended to reduce costs for FINRA members and address any perceived competitive disadvantage between FINRA members and banks regarding Covered Agency Transactions. FINRA also stated that elimination of the two percent maintenance margin requirement will reduce costs and provide operational relief to FINRA members, as they will not need to enter into separate custodial arrangements with third-party banks to custody the maintenance margin of counterparties that cannot deposit margin collateral

directly with a broker-dealer.<sup>130</sup> By simplifying the current rule, mitigating concerns about regulatory compliance costs and allowing FINRA members to compete in the market more equally with non-FINRA members, FINRA stated that the elimination of the two percent maintenance margin requirement for non-exempt accounts promotes a more just and equitable market by promoting competition and efficiency, which will benefit investors and the public interest.<sup>131</sup>

c. Commission Discussion and Findings

The elimination of the two percent maintenance margin will reduce operational burdens and compliance costs for broker-dealers because they will no longer need to monitor which accounts are exempt or non-exempt for purposes of the Covered Agency Transaction margin requirements. In addition, the two percent maintenance margin requirement only would have applied to a small number of accounts. Monitoring which accounts are non-exempt accounts and collecting maintenance margin for these accounts is operationally burdensome and out of proportion with the number and size of the affected accounts. Elimination of the two percent maintenance margin requirement for non-exempt accounts also will alleviate competitive impacts for FINRA-member broker-dealers in comparison to banks that, depending on their size, may: (1) follow best practices of exchanging variation margin recommended by the Treasury Markets Practice Group ("TMPG"),<sup>132</sup> or (2) not otherwise be subject to margin requirements with respect to Covered Agency Transactions. Therefore, under the proposed rule changes, the elimination of the maintenance margin requirement and the remaining requirement to collect the excess net mark to market loss (or take a capital charge, subject to specified terms and conditions) will allow broker-dealers to more effectively compete with banks that either only collect variation margin from their counterparties for Covered Agency Transactions or that do not collect any margin. Consequently, the elimination of the two percent

maintenance margin requirement will reduce regulatory requirements for FINRA broker-dealers while promoting consistent margin practices among FINRA members.

While the proposed rule change eliminates the two percent maintenance margin requirement for non-exempt accounts, broker-dealers will continue to be protected from the risks of unsecured credit exposures arising from Covered Agency Transactions because, under the proposed rule change, they must collect the excess net market to market loss from a counterparty or take a capital charge (subject to specified conditions and limitations), unless an exception applies. Further, under current Rule 4210, broker-dealers may collect additional margin (*i.e.*, house margin) from a counterparty above the minimums required by the Covered Agency Transaction margin requirements. Finally, under the current rule, FINRA broker-dealers must perform a written credit risk assessment for each counterparty, which is designed to help them manage the risks of Covered Agency Transactions.

Consequently, this amendment will help to facilitate trading in Covered Agency Transactions by reducing the competitive burdens of the margin requirements for FINRA member broker-dealers, including smaller broker-dealers. This will promote competition by reducing the costs associated with collecting maintenance margin from a counterparty and permitting broker-dealers of all sizes to compete more effectively with banks that are not required to collect maintenance margin or that do not collect any margin from their counterparties for Covered Agency Transactions. Finally, the continued requirements to collect the excess net mark to market loss from a counterparty and credit risk assessment procedures will continue to protect FINRA-member broker-dealers and investors from the risks of unsecured credit exposures in the Covered Agency Transaction market.

2. Option for Capital Charge in Lieu of Collecting Excess Net Mark to Market Loss

a. Comments Received on Proposal

As discussed in section II.B. above, FINRA proposed, subject to specified conditions and limitations, to provide FINRA broker-dealers the option to take a capital charge in lieu of collecting a counterparty's excess net mark to market loss (*i.e.*, the net mark to market loss to the extent it exceeds \$250,000). One commenter indicated that its members were appreciative of the proposed rule change stating that it was

<sup>130</sup> See FINRA Statement at 23–24, 33; Notice, 86 FR at 28163–64.

<sup>131</sup> See FINRA Statement at 23–24.

<sup>132</sup> See Margining in Agency MBS Trading (Nov. 2012), available at [https://www.newyorkfed.org/medialibrary/microsites/tmpg/files/margining\\_tmpg\\_11142012.pdf](https://www.newyorkfed.org/medialibrary/microsites/tmpg/files/margining_tmpg_11142012.pdf) ("TMPG Report"). The TMPG Report recommends the best practice of exchanging variation margin for dealer banks. The TMPG is a group of market professionals that participate in the Covered Agency Transaction market and is sponsored by the Federal Reserve Bank of New York.

<sup>127</sup> 15 U.S.C. 78o–3(b)(6).

<sup>128</sup> 15 U.S.C. 78o–3(b)(9).

<sup>129</sup> See Letter from Chris Killian, Managing Director, Securitization, Corporate Credit, Libor, Asset Management Group of SIFMA (June 15, 2021) ("SIFMA AMG Letter") at 1.

consistent with other provisions of FINRA Rule 4210 that permit broker-dealers to take capital charges rather than collect margin for transactions involving securities of high credit quality.<sup>133</sup>

Other commenters opposed the proposed capital charge in lieu of margin stating it would affect liquidity by requiring smaller broker-dealers to take capital charges because they do not have and cannot obtain margin agreements or MSFTAs from their counterparties.<sup>134</sup> For example, the Petitioners, in delineating the types of institutions that participate in the agency mortgage-backed securities market as investors, stated that pension funds and state agencies may be prohibited by their charters from pledging assets, and as a result would be unable to post margin.<sup>135</sup> Petitioners stated that, partially as a result of counterparties who are unable to post margin, because of the limitation imposed by the 25% TNC/\$30MM Threshold, the ability of FINRA members to introduce liquidity into the market during periods of unusual volatility will be drastically limited.<sup>136</sup> Commenters also stated that these smaller broker-dealers would need to maintain a substantial amount of excess net capital in order to comply with the proposed rule, which could reduce liquidity and impair regulatory capital under certain market conditions.<sup>137</sup> These firms, according to commenters, would be unable to commit to

<sup>133</sup> See Letter from Christopher B. Killian, Managing Director Securitization, Corporate Credit, Libor, SIFMA (June 15, 2021) (“SIFMA Letter”) at 5.

<sup>134</sup> See Letter from Duncan F. Williams, President, Duncan-Williams Inc., and Brad Jones, Executive Vice President, Managing Director—Correspondent Division, SouthState Bank N.A. (May 10, 2022) (“Duncan-Williams/SouthState Letter”) at 2–3; Letter from Michael Decker, Senior Vice President, BDA on behalf of CastleOak Securities; Loop Capital Markets; MFR Securities Inc.; Penserra Securities, R. Seelaus & Co. LLC; Siebert Williams Shank & Co., LLC; and Tigress Financial Parter to Vanessa Countryman, Secretary, Commission (May 10, 2022) (“BDA Small Firms Letter”) at 2–3; Letter from DiAnne Calabrisotto, Chief Operating Officer, Siebert Williams Shank & Co., LLC (May 10, 2022) (“Siebert Letter”) at 2; Letter from Stephen Berkeley, Chief Compliance Officer and Regulatory Counsel, Loop Capital Markets LLC (May 12, 2022) (“Loop Capital Letter”) at 2.

<sup>135</sup> See Petition for Review at 8, 33. Petitioners also stated that registered investment companies cannot re-pledge collateral. *Id.*

<sup>136</sup> See Petition for Review at 30, 33.

<sup>137</sup> See Duncan-Williams/SouthState Letter at 3–4; BDA Small Firms Letter at 2–3; Letter from Chirag G. Shah, President and Chief Executive Officer, Performance Trust Capital Partners (May 10, 2022) (“Performance Trust Capital Letter”) at 2; Letter from Wendy L. Brooks, Senior Managing Director, Mesirow Financial, Inc. (May 3, 2022) (“Mesirow Letter”) at 2.

purchasing additional mortgage loans until outstanding trades settled, which they stated could prohibit many smaller broker-dealers (including minority, women, and veteran owned firms) from engaging in Covered Agency Transactions or curtail their business.<sup>138</sup> These commenters stated that this, in turn, could reduce market liquidity and disrupt the mortgage origination process which could harm market participants and customers.

Commenters also stated that the proposed rule change would result in potential anti-competitive impacts on small and medium-sized broker-dealers, including women, veteran, and minority-owned firms.<sup>139</sup> Specifically, these commenters stated that imposing margin requirements or 100% capital charges on Covered Agency Transactions would cause smaller and mid-sized firms (including women, veteran, and minority-owned firms) to exit the Covered Agency Transaction market or significantly decrease their ability to transact in the market, resulting in greater concentration among fewer market participants, reducing access to the Covered Agency Transaction market or negatively affecting market liquidity.<sup>140</sup> These commenters stated that the proposed amendments would cause them to exit the market or decrease their ability to transact in the market because customers would prefer to transact with banks that are not subject to margin requirements, many customers would be unwilling to enter into margin agreements, the operational and compliance costs of engaging in Covered Agency Transactions would increase

<sup>138</sup> See Letter from David R. Jones, CastleOak Securities, L.P. (May 10, 2022) (“CastleOak Securities Letter”) at 1–2; Weichert Letters at 2; Letter from Kirk R. Malmberg, President and Chief Executive Officer, Federal Home Loan Bank of Atlanta (May 10, 2022) (“Malmberg Letter 2”) at 2; Letter from Larry W. Bowden, Executive Vice President, Stephens, Inc. (May 10, 2022) (“Stephens Letter”) at 3; BDA Small Firms Letter at 2–3; Williams/SouthState Letter at 3; Siebert Letter at 2; Performance Trust Capital Letter at 2.

<sup>139</sup> See SIFMA Letter at 2–3; Letter from Michael Decker, Senior Vice President, Public Policy, Bond Dealers of America (June 15, 2021) (“BDA Letter”) at 4–5; Letter from Thomas J. Fleming & Adrienne M. Ward, Olshan, on behalf of Brean Capital, LLC (June 15, 2021) (“Brean Capital Letter”) at 18–21; Letter from Kirk R. Malmberg, President and Chief Executive Officer, Federal Home Loan Bank of Atlanta (Jan. 18, 2022) at 1–2 (“Malmberg Letter 1”); Letter from Senator John Boozman, Senator Thom Tillis, and Senator Cynthia M. Lummis (Jan. 10, 2022) (“Boozman et al Letter”) at 1–2; Petition for Review at 26–29; Duncan-Williams/SouthState Letter at 2–3; Stephens Letter at 2; Mesirow Letter at 2; Loop Capital Letter at 2.

<sup>140</sup> See SIFMA Letter at 2–3; BDA Letter at 4–5; Brean Capital Letter at 18–20; Malmberg Letter 1 at 1–2; Boozman et al Letter at 1–2; Petition for Review at 27–31; Stephens Letter at 2; BDA Small Firms Letter at 3.

significantly, and excessive margin requirements and capital charges would be involved for smaller firms compared to larger firms even though the transactions are riskless to the firm. Other commenters also stated that the proposed requirements, either in whole or in part, are not suitable for Specified Pool Transactions and CMOs.<sup>141</sup> One commenter also expressed concern that an early survey of its customers indicated that many of its customers are uncomfortable with executing an MSFTA that indicates that there is a potential liquidity event or margin call in a volatile market, even if unlikely, and that bank affiliated firms do not require the execution of such a document.<sup>142</sup> One commenter suggested that the proposed capital charges in lieu of margin should be applied at 10% rather than at 100% of the excess net mark to market loss.<sup>143</sup> Commenters also expressed concerns that the proposed rule change would have a disparate impact on underserved communities which smaller firms typically serve and stated that FINRA did not specifically consider the consequences and impact the proposal would have on the housing finance sector and access to the liquidity for underserved communities.<sup>144</sup> Consequently, commenters believe that the proposed rule change will cause smaller broker-dealers to exit the market, resulting in decreased competition and liquidity in the Covered Agency Transaction market.<sup>145</sup>

Further, the Petitioners stated that the proposed rule change would increase systemic risk, as the option to take a capital charge in lieu of margin with its associated 25% TNC/\$30MM Threshold, would force regional broker-dealers to suspend trading in Covered Agency Transactions after a few trades or to liquidate customer positions, and cause customers to move their business to banks which could transform moderate market volatility into a liquidity crisis.<sup>146</sup>

<sup>141</sup> See Letter from Chris Melton, Individual (Aug. 2, 2021) (“Melton Letter”) at 1; SIFMA Letter at 1–3.

<sup>142</sup> See Stephens Letter at 2.

<sup>143</sup> See Brean Capital Letter at 25.

<sup>144</sup> See Petition for Review at 41–42; Letter from Alanna McCargo, President, Government National Mortgage Association (Jan. 20, 2022) at 1–2.

<sup>145</sup> See Petition for Review at 30–31.

<sup>146</sup> Petitioners also stated that the proposed rule change would enhance systemic risk as a result of several factors. These factors include: (1) removing liquidity from agency mortgage-backed security markets; (2) introducing uncertainty into the market due to the difference between trade prices and mark to market losses for calculation of margin; (3) failing to provide a solution to the “chain” fail problem; (4) increasing the bargaining power of primary

Petitioners also stated that the Division staff, in approving the 2021 Amendments by delegated authority, failed to engage in reasoned decision-making, and that FINRA never identified the market participants it engaged with or the substance of the conversations with them. Petitioners further stated that FINRA did not offer any evidence or data to support the need for the proposed changes or the need for FINRA to establish a margin regime for Covered Agency Transactions.<sup>147</sup> Petitioners also stated that the proposed rule change is unnecessary and an abuse of discretion and that the rule is unworkable, increases systemic risk, and will have a catastrophic effect on regional broker-dealers. They stated that despite FINRA's efforts to mitigate the harms to smaller market participants and lessen the burdens that it will impose on competition, these burdens remain significant, unnecessary and inappropriate.<sup>148</sup>

Finally, one commenter stated that the March 2020 period of volatility during the COVID-19 pandemic provided a perfect example of a situation when margin flexibility on the part of broker-dealers was necessary<sup>149</sup> and that if this situation were replicated in the future, the amendments would effectively remove the ability of broker-dealers to exercise appropriate discretion with respect to their clients' positions and would contribute to market stress.<sup>150</sup>

#### b. FINRA's Response to Comments

In response to the comments to the Notice, FINRA stated that it has engaged with industry participants extensively on their concerns, and has addressed them on multiple occasions since the process of soliciting comment on requirements for Covered Agency Transactions began in January 2014 with the publication of *Regulatory Notice 14-02* and in 2015 with FINRA's

dealers to the detriment of introducing brokers; and (5) encouraging a shift in business to banks by broker-dealers with bank affiliates. See *Petition for Review* at 31-33, 37-38. Petitioners also stated that the 25% TNC/\$30MM Threshold will limit large broker-dealers from introducing liquidity in the market in times of stress which may add volatility to the market. See *Petition for Review* at 30. See section III.B. below for a discussion of the concerns commenters raised regarding chain of fails and the calculation of variation margin.

<sup>147</sup> See *Petition for Review* at 43-45.

<sup>148</sup> See Letter from Thomas J. Fleming, Adrienne M. Ward, Olshan, David H. Thompson, Cooper & Kirk, PLLC Harold Reeves, Esq., Cooper & Kirk, PLLC on behalf of BDA and Brean Capital (Sept. 10, 2021) ("BDA and Brean Capital Letter") at 32-42; *Petition for Review* at 26-27.

<sup>149</sup> See MBA Letter at 2.

<sup>150</sup> See MBA Letter at 2.

original rulemaking for Covered Agency Transactions.<sup>151</sup> FINRA also stated that the original rulemaking is necessary because of the risks posed by unsecured credit exposures in the Covered Agency Transactions market.<sup>152</sup>

FINRA also stated that it has addressed, on multiple occasions, the need to include Specified Pool Transactions and CMOs within the scope of the requirements,<sup>153</sup> and made key revisions in finalizing the 2016 Amendments expressly to mitigate any potential impact on smaller firms and on activity in the Covered Agency Transaction market, including increasing the small cash counterparty exception from \$2.5 million to \$10 million, subject to specified conditions, and modifying the two percent maintenance margin requirement, as adopted pursuant to the original rulemaking, to create an exception for cash investors that otherwise would have been subject to the requirement.<sup>154</sup>

FINRA also exempted mortgage bankers from the maintenance margin requirements in the 2016 Amendments; exempted multifamily housing securities and project loan program securities from the new margin requirements;<sup>155</sup> and established a \$250,000 de minimis transfer amount, for a single counterparty, subject to specified conditions, up to which members need not collect margin or take a charge to their net capital.<sup>156</sup>

Additionally, FINRA stated that once the Commission approved the 2016 Amendments that it would monitor the impact of the new requirements and, if the requirements proved overly onerous

<sup>151</sup> See Amendment No. 1 (2021) at 4; Exchange Act Release No. 76148 (Oct. 14, 2015), 80 FR 63603 (Oct. 20, 2015) (Notice of Filing of a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market; File No. SR-FINRA-2015-036) ("2015 Notice"); *Regulatory Notice 14-02* (Jan. 2014). Even before the publication of these materials, as discussed in SR-FINRA-2015-036, FINRA highlighted that it had engaged in extensive outreach and consultation with market participants and staff of the Federal Reserve Bank of New York and the Commission staff. See 2015 Notice, 80 FR at 63604-05. In Partial Amendment No. 3 to SR-FINRA-2015-036, FINRA stated that up to that time there had been four opportunities for public comment on the original rulemaking, beginning with *Regulatory Notice 14-02*, available at <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2015-036>.

<sup>152</sup> See Amendment No. 1 (2021) at 4-5 and 2015 Notice, 80 FR at 63615-16.

<sup>153</sup> See Amendment No. 1 (2021) at 5 and 2016 Approval Order, 81 FR at 40371.

<sup>154</sup> See Amendment No. 1 (2021) at 5.

<sup>155</sup> See Amendment No. 1 (2021) at 5-6 and Partial Amendment No. 1 to SR-FINRA-2015-036, available at <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2015-036>.

<sup>156</sup> See Amendment No. 1 (2021) at 6 and 2016 Approval Order, 81 FR at 40368.

or otherwise were shown to negatively impact the market, it would consider amending such requirements to mitigate the rule's impact.<sup>157</sup> Industry participants requested that FINRA monitor the potential impact of the 2016 Amendments on smaller and mid-sized firms, and that FINRA extend the implementation date of the requirements pending its consideration of any potential amendments to the rule.<sup>158</sup> In response to the concerns of industry participants, FINRA also stated that it engaged in extensive dialogue, both with industry participants and other regulators, including staff of the Commission and the Federal Reserve System, for purposes of amending the 2016 Amendments.<sup>159</sup> Further, FINRA extended the implementation date of the margin collection requirements pursuant to the 2016 Amendments on multiple occasions.<sup>160</sup>

FINRA stated that it developed the proposed rule change in direct response to the concerns of industry participants, and in citing the risks posed by unsecured credit exposures that exist in the Covered Agency Transaction market, stated that it has proposed two key revisions designed to afford relief to industry participants: <sup>161</sup> (1) eliminating the two percent maintenance margin requirement with respect to non-exempt accounts for purposes of their Covered Agency Transactions; <sup>162</sup> and (2) subject to specified conditions and limits, permitting members to take a capital charge in lieu of collecting margin for each counterparty's excess net mark to market loss.<sup>163</sup> FINRA believes the amendments to the original rulemaking as set forth in the proposed rule change, with the additional clarifications it has provided to commenters, afford industry participants appropriate relief and clarity, and that the proposed rule change should be approved.<sup>164</sup>

Further, in response to the additional comments received regarding the 2021 Order Instituting Proceedings, FINRA stated that commenters have repeatedly expressed the same points, including during the original rulemaking, which FINRA stated it has repeatedly addressed, and that it believes the

<sup>157</sup> See Amendment No. 1 (2021) at 6 and Partial Amendment No. 3 to SR-FINRA-2015-036.

<sup>158</sup> See Amendment No. 1 (2021) at 6.

<sup>159</sup> See Amendment No. 1 (2021) at 6.

<sup>160</sup> See Amendment No. 1 (2021) at 6 and Notice, 86 FR at 28162.

<sup>161</sup> See Amendment No. 1 (2021) at 6 and Notice, 86 FR at 28162-63.

<sup>162</sup> This proposal is discussed in section III.A.1. above.

<sup>163</sup> See Amendment No. 1 (2021) at 6-7. This proposal is discussed in section III.A.2. above.

<sup>164</sup> See Amendment No. 1 (2021) at 7.

rulemaking is necessary because of the risk posed by unsecured credit exposures in the Covered Agency Transaction market.<sup>165</sup> FINRA also stated that recent events in connection with market volatility stemming from the COVID-19 pandemic<sup>166</sup> have illustrated the importance of risk and exposure limits,<sup>167</sup> and that these events reinforce that FINRA's attention to unsecured exposures in the Covered Agency Transaction market, in view of its significance to the U.S. mortgage market and financial system generally, is rationally founded. FINRA stated that the Covered Agency Transaction market today is substantial and that the regulatory need for attention to this area is no less than when FINRA initiated the original rulemaking.<sup>168</sup>

In response to the Petition for Review and comments that FINRA failed to engage in reasoned decision-making or provide evidence or data to support the proposal, FINRA stated that record supports the narrow amendments under the proposed rule change. FINRA further stated that rather than imposing new requirements, the narrow amendments to FINRA Rule 4210 in the proposal address—and in fact reduce the potential burden of—amendments to FINRA Rule 4210 included in the 2016 Amendments.<sup>169</sup> Specifically, in its Statement, FINRA stated that permitting FINRA members to take a capital charge in lieu of collecting mark to market margin was a change that was specifically motivated by its efforts to address concerns that the 2016 Amendments could create an unfair disparity between large brokers and small and medium-sized brokers, and that various small broker-dealers commented during the rulemaking process that being permitted to take a

capital charge in lieu of margin would help alleviate the competitive disadvantage that small and medium-sized firms face in obtaining margin agreements with counterparties, as it would provide an alternative to collecting margin.<sup>170</sup> FINRA further stated that in a 2018 letter, BDA, one of the Petitioners, requested that FINRA adopt a provision that would permit members to take a capital charge in lieu of margin as BDA indicated that discussions with two small broker-dealers indicated that this would allow those small broker-dealers the ability to remain competitive and would not erode their capital.<sup>171</sup>

FINRA further stated that the whole purpose of the 2021 Amendments is to respond to the types of concerns raised by smaller firms by providing greater flexibility than they have under the current rule.<sup>172</sup> Further, FINRA stated that the proposed rule permits FINRA members a limited capacity to take capital charges in lieu of collecting margin and thereby assume the risk of counterparty default, and that could help FINRA members to establish (or maintain) relationships with counterparties who are not willing to post margin.<sup>173</sup>

FINRA has stated that it intends to monitor the proposed rule's implementation and its impact.<sup>174</sup> FINRA stated it remains committed to ensuring that FINRA Rule 4210, as amended, in practice, does not disadvantage smaller broker-dealers who are most focused on community institutions, including those owned by women, minorities and veterans.<sup>175</sup> FINRA also stated that the proposed rule demonstrates FINRA's commitment to smaller firms in action, as FINRA is pro-actively responding to concerns raised by market participants and proposing appropriate amendments to FINRA Rule 4210.<sup>176</sup>

In addition, with respect to comments that FINRA failed to engage in reasoned decision making regarding the 2021

Amendments, FINRA stated it complied with all applicable procedural requirements.<sup>177</sup> FINRA stated that the Petitioners used the record in the 2021 Amendments to take issue with FINRA's adoption of margin requirements for Covered Agency Transactions in the 2016 Amendments.<sup>178</sup> FINRA stated that it was not required to re-do the entire rulemaking process that led to the approval of the 2016 Amendments to make amendments to the current rule, and that the Commission is not required to re-canvass a rulemaking process that stretches back to 2014 to approve the 2021 Amendments to an already-approved rule change.<sup>179</sup> FINRA also stated in response to Petitioner's comments that it did not disclose who it consulted with in the development of the 2021 Amendments as mischaracterizing the record.<sup>180</sup> FINRA stated it set forth the process it undertook to develop the 2021 Amendments in the proposal, and that the record contains a lengthy and detailed analysis of comments received.<sup>181</sup> Finally, FINRA stated that the rationale for SR-FINRA-2021-010 is clearly supported in the administrative record by detailed and rigorous assessments of any burden imposed on competition (including thorough analysis of economic impact assessments, anticipated benefits, anticipated costs, and alternative approaches).<sup>182</sup>

FINRA stated that the proposed rule change promotes competition by leveling the playing field among Covered Agency Transaction market participants of all sizes, thereby reducing disruption in this market without the loss of any investor protection.<sup>183</sup> Further, FINRA stated by limiting the ability of larger members to take a capital charge, the proposal promotes competition in the market, particularly for smaller broker-dealers.<sup>184</sup> FINRA believes that the amendments set forth in the proposed rule change strike an appropriate balance in providing small and medium-sized FINRA member broker-dealers with an alternative to collecting margin, while ensuring that the regulatory objective of FINRA Rule 4210, as amended by the proposed rule, is not undermined by limiting the

<sup>165</sup> See FINRA Letter at 4–7. For example, FINRA stated that BDA and Brean Capital contended that permitting members to take the capital charge in lieu of collecting margin is untenable, that having requirements for Covered Agency Transactions would have the effect of causing a “chain” of fails, that firms will be driven from the market and that FINRA has not addressed critical questions as to how the requirements will work. In response, FINRA stated that these arguments are not novel and that FINRA exhaustively addressed them with industry participants throughout the course of the 2016 Amendments and the development of the proposal. FINRA also stated that it provided extensive further explanations in Amendment No. 1 (2021). See *id.* at 7.

<sup>166</sup> See FINRA Letter at 5, n.17 (citing DERA Report).

<sup>167</sup> See FINRA Letter at 5.

<sup>168</sup> See FINRA Letter at 6. As of the second quarter of 2021, total average daily dollar trading volume for these types of products as reflected in FINRA Trade Reporting and Compliance Engine (“TRACE”) data was approximately \$300 billion. *Id.* at 5–6.

<sup>169</sup> See FINRA Statement at 9, and 21–22.

<sup>170</sup> See FINRA Statement at 24–25.

<sup>171</sup> See FINRA Statement at 25 (citing BDA 2018 Letter). FINRA stated that BDA in reciting its own discussions with two smaller broker-dealers who expressed support for a capital charge in lieu of margin option, wrote that the two smaller broker-dealers believed “the Capital Charge Proposal would give them many options to remain competitive in [Covered Agency Transactions]” and that they were “not concerned that the Capital Charge Proposal [would] be anticompetitive” or force them to “erode away their capital in order to be competitive.” BDA 2018 Letter at 2 (cited in FINRA Statement at 25).

<sup>172</sup> See FINRA Statement at 33.

<sup>173</sup> See FINRA Statement at 33.

<sup>174</sup> See FINRA Statement at 34.

<sup>175</sup> See FINRA Statement at 34.

<sup>176</sup> See FINRA Statement at 34.

<sup>177</sup> See FINRA Statement at 29.

<sup>178</sup> See FINRA Statement at 29.

<sup>179</sup> See FINRA Statement at 29–30.

<sup>180</sup> See FINRA Statement at 30.

<sup>181</sup> See FINRA Statement at 30.

<sup>182</sup> See FINRA Statement at 24.

<sup>183</sup> See FINRA Statement at 26.

<sup>184</sup> See FINRA Statement at 35.

option to take a capital charge with the 25% TNC/\$30MM Threshold.<sup>185</sup>

FINRA stated that it disagrees with commenters' concerns that the 25% TNC/\$30MM Threshold is a flaw in the proposal, as the objective of the proposed rule change is to encourage the collection of margin.<sup>186</sup> FINRA stated that the purpose of FINRA Rule 4210, as amended by the 2016 Amendments and 2021 Amendments, is to shore up the practices in the Covered Agency Transaction market by encouraging the margining of those positions—not to allow members to avoid such requirements through the taking of a large net capital charge. FINRA stated that allowing firms to take a capital charge in lieu of margin is meant to add flexibility to the rule, not to supplant its margin requirements.<sup>187</sup> FINRA stated that in effect, the 25% TNC/\$30MM Threshold is a risk management mechanism given the introduction of the proposed capital charge option.<sup>188</sup> FINRA stated that for some FINRA members, the volume of business may reach the threshold where further capital charges cannot be taken, and at that point, the 25% TNC/\$30MM Threshold would then prevent the member from entering into new Covered Agency Transactions with any counterparty that cannot or will not post margin.<sup>189</sup> While the ability of the FINRA member to inject liquidity into the Covered Agency Transaction market could potentially be reduced, FINRA stated that raising the threshold for permitted capital charges would reduce the effectiveness of the 2021 Amendments by increasing the FINRA member's exposure to the risk of counterparty default and would undermine the goal of promoting and supporting competition in the market by allowing larger FINRA members that are more able to commit capital to avoid collecting margin.<sup>190</sup> In addition, FINRA stated that permitting a capital charge to substitute completely for the collection of margin would undermine the core regulatory objectives of the margin requirements for Covered Agency Transactions to reduce the risk of unsecured exposures to Covered Agency Transactions and to encourage the collection of margin.<sup>191</sup>

FINRA also stated that permitting capital to substitute wholly for the requirement to collect margin would

exacerbate, rather than address, the disparity between small and medium-sized firms and larger competitors, as larger competitors would be able to use their larger balance sheets to effectively avoid the margin requirements altogether, to the disadvantage small and medium-sized firms.<sup>192</sup> Because taking a capital charge is optional, FINRA stated that members will only commit capital in lieu of margin when they believe it appropriately balances the benefits and risks.<sup>193</sup> FINRA stated it intended to keep strong incentives to collect margin and use the amendments only to allow flexibility in complying with the rule.<sup>194</sup>

In response to Petitioners' comments that certain entities, such as pension funds and state agencies, may be unable to post margin, or that registered investment companies are not permitted to re-pledge collateral, FINRA stated that it disagrees, arguing that Petitioners do not explain why registered investment companies could not re-pledge collateral subject to appropriate custody arrangements.<sup>195</sup> In addition, to the extent Petitioners assert that registered investment companies or pension plans cannot post margin, FINRA believes they are incorrect, stating that it believes that registered investment companies can post margin.<sup>196</sup> FINRA stated that these entities are simply required to account for the obligation to post margin as part of their potential exposures with respect to derivative transactions, as a condition to their derivative obligations not being subject to more general restrictions on such companies' ability to incur debt.<sup>197</sup> In addition, FINRA stated that it believed that, under a 2013 Advisory Opinion from the Department of Labor, ERISA pension plans can post both initial and variation margin, and the assets deposited with the counterparty "to support payment obligations that may become necessary for the plan" "would not be plan assets for the

purposes of Title I of ERISA."<sup>198</sup> Finally, FINRA stated that, in any event, the proposed amendment that would permit FINRA members to substitute a capital charge for the collection of margin is intended to provide the very flexibility Petitioners seek to continue to deal with counterparties who are unable or unwilling to post margin, while maintaining the overall effectiveness of the rule.<sup>199</sup>

In response to the comment that the proposed amendment will increase systemic risk or that FINRA failed to consider it, FINRA stated that systemic risk was one of the original reasons FINRA proposed the 2016 Amendments in the first place.<sup>200</sup> Further, FINRA stated that the 2021 Amendments are part of an effort by FINRA to address a significant source of potential systemic risk, and risk to its members: the risk of exposure to counterparty defaults on the purchase of forward-settling Covered Agency Transactions during the often lengthy period between trade and settlement dates.<sup>201</sup> In addition, FINRA stated that to the extent that certain market participants are no longer able to take on the same amount of risk that they were prior to the 2016 Amendments that will reduce systematic risk rather than increase it.<sup>202</sup>

In response to comments that the proposed rule change may result in higher capital or margin charges, FINRA stated that, in some of these scenarios, commenters attributed the higher margin or capital requirements to the fact that the transactions (termed "non-netting" by one commenter and "non-nettable" by another) will not net under the proposed rule change.<sup>203</sup> According to FINRA, the only requirement to be able to net transactions in determining a counterparty's "net mark to market loss" is that the member have a legal right to offset losses on one transaction against gains on the other (or a security interest that would allow it to apply gains on one transaction to the counterparty's losses on the other).<sup>204</sup>

FINRA acknowledged that the margin requirements and capital charges under

<sup>192</sup> See FINRA Statement at 26–27.

<sup>193</sup> See FINRA Statement at 27.

<sup>194</sup> See FINRA Statement at 27.

<sup>195</sup> See FINRA Statement at 27–28.

<sup>196</sup> See FINRA Statement at 28.

<sup>197</sup> See FINRA Statement at 28. Specifically, FINRA cites to a Commission release regarding the use of derivatives by registered investment companies and business development companies to argue that registered investment companies can post margin, but must account for the obligation to post margin as part of their potential exposures to derivatives transactions as a condition to their derivative obligations not being subject to more general restrictions on the ability to incur debt. See Use of Derivatives by Registered Investment Companies and Business Development Companies, Investment Company Act Release No. 34084 (Nov. 20, 2020), 85 FR 83162, 83175 (Dec. 21, 2020) (File No. S7–24–15).

<sup>198</sup> See FINRA Statement at 28; Department of Labor Advisory Opinion 2013–01A (Feb. 7, 2013).

<sup>199</sup> See FINRA Statement at 28.

<sup>200</sup> See FINRA Statement at 42.

<sup>201</sup> See FINRA Statement at 2, 5, 8.

<sup>202</sup> See FINRA Statement at 42. FINRA stated that unmarginated positions in the TBA market could raise systemic concerns, because, if one or more counterparties defaulted, the interconnectedness and concentration in the TBA market may lead to potentially broadening losses and the possibility of substantial disruption to financial markets and participants. *Id.*

<sup>203</sup> See Amendment No. 1 (2021) at 7–8.

<sup>204</sup> See Amendment No. 1 (2021) at 7–8.

<sup>185</sup> See FINRA Statement at 26.

<sup>186</sup> See FINRA Statement at 26.

<sup>187</sup> See FINRA Statement at 26.

<sup>188</sup> See FINRA Statement at 35.

<sup>189</sup> See FINRA Statement at 35.

<sup>190</sup> See FINRA Statement at 35.

<sup>191</sup> See FINRA Statement at 26–27.

both the proposed rule change and the current rule are higher in certain scenarios (and lower in others) than they would be under a commenter's suggestion that (1) there should be no margin requirements applicable to Covered Agency Transactions (up to the second monthly SIFMA settlement date),<sup>205</sup> and (2) members should be required to take capital charges for only ten percent of their counterparties' unmarginated mark to market losses.<sup>206</sup> FINRA stated that it believes that these suggestions would significantly undercut the objective of the rule to protect against the risk of unsecured credit exposure in Covered Agency Transactions.<sup>207</sup> In addition, FINRA stated that the same factors that make smaller firms more sensitive to the margin requirements also make them more vulnerable to the risk of counterparty default, which such firms may be less able to absorb, underscoring the need for the margin requirement regime. Further, FINRA stated that the current rule, would, subject to specified exceptions, require members to collect margin whenever their counterparties' mark to market losses (and two percent maintenance margin deficiency, where applicable) exceeds \$250,000, and would require them to take a capital charge to the extent such margin is not collected by the close of business on the business day after such mark to market loss (or maintenance margin deficiency) arose.<sup>208</sup> FINRA stated that the proposed rule change preserves all of the exceptions in the current rule, eliminates the two percent maintenance margin requirement, and provides an option, subject to specified terms and conditions, to take capital charges in lieu of collecting margin for net mark to market losses in excess of \$250,000.<sup>209</sup> Because the proposed rule change

<sup>205</sup> See section III.F.3. below for FINRA's responses to comments and the Commission's findings related to moving the margin collection date to a longer period.

<sup>206</sup> According to FINRA, under the current rule and the proposed rule change, members are not required to collect margin, or take capital charges in lieu of collecting margin, to cover the net mark to market losses of small cash counterparties, registered clearing agencies, Federal banking agencies (as defined in 12 U.S.C. 1813(z)), central banks, multinational central banks, foreign sovereigns, multilateral development banks, or the Bank for International Settlements. FINRA stated that these exceptions mean that some members engaging in Covered Agency Transactions with these counterparties may have lower margin and capital requirements under the current rule and the proposed rule change than they would under the commenter's suggestion. See Amendment No. 1 (2021) at 9; FINRA Statement at 34.

<sup>207</sup> See Amendment No. 1 (2021) at 8–9; FINRA Statement at 34.

<sup>208</sup> See Amendment No. 1 (2021) at 8.

<sup>209</sup> See Amendment No. 1 (2021) at 8.

eliminates the two percent maintenance margin requirement and related capital charges for uncollected maintenance margin, FINRA stated that the margin requirements and capital charges under the proposed rule change are less than the requirements under the current rule.<sup>210</sup>

#### c. Commission Discussion and Findings

In proposing to permit broker-dealers the option to take a capital charge in lieu of collecting the excess net mark to market loss from a counterparty, FINRA has reasonably balanced the goal of reducing the potential competitive impacts of the current rule on small and medium-sized broker-dealers, while maintaining the objectives of the original rulemaking to reduce a broker-dealer's risk arising from unsecured credit exposures to Covered Agency Transactions, and to encourage the collection of margin. As an initial matter, this aspect of the proposal does not add any new requirements (including any new margin collection requirements); rather, it provides an additional option to broker-dealers to comply with the rule's requirements. This option, therefore, should facilitate securities transactions in the Covered Agency Transaction market by providing additional flexibilities to broker-dealers while continuing to protect investors and the public from potential losses arising from risks of unsecured exposures in the Covered Agency Transaction market.<sup>211</sup>

Further, the current rule includes a number of exceptions designed to alleviate the impact of the Covered Agency Transaction margin requirements on smaller firms and counterparties, including the small cash counterparty exception, an exception from collecting margin or taking a capital charge on the first \$250,000 net mark to market loss from any counterparty, and the exclusion of multifamily housing securities and project loan program securities from the scope of the current rule.<sup>212</sup> The proposal retains these exceptions in the current rule, and builds on them to provide even more flexibility to broker-dealers, including small and medium-sized broker-dealers, through the narrow amendment to permit them the option

<sup>210</sup> See Amendment No. 1 (2021) at 8. The proposal to eliminate the two percent maintenance margin requirement is discussed in section III.A.1. above.

<sup>211</sup> For example, the option to take a capital charge also will give broker-dealers the flexibility to engage in Covered Agency Transactions with counterparties that may be prevented by contract or otherwise from posting margin to a broker-dealer.

<sup>212</sup> See 2016 Approval Order, 81 FR at 40375.

to take a capital charge in lieu of collecting the excess net mark to market loss from a counterparty in a Covered Agency Transaction.<sup>213</sup>

The option to take a capital charge in lieu of collecting excess net mark to market margin will promote competition for smaller broker-dealers in relation to regional banks not subject to margin requirements, and larger broker-dealers which may have more market power to obtain margin agreements and collect margin from their counterparties. The proposed rule reduces regulatory burden for broker-dealers, including smaller broker-dealers, from the requirements under the current rule to collect margin from a counterparty where there is no exception, by providing broker-dealers the option to take a capital charge in lieu of collecting the excess net mark to market loss. This option will permit broker-dealers to attract or retain counterparties from whom they do not collect margin thereby allowing them to more effectively compete with regional banks and large broker-dealers, and to transact with counterparties that may not be able to—or who are unwilling to—post margin.<sup>214</sup> The option to take a capital charge in lieu of collecting the

<sup>213</sup> For example, if a small broker-dealer has a counterparty that has \$9 million in exposure to Covered Agency Transactions in their account, the counterparty would be excluded from the scope of the rule because they are a "small cash counterparty," and the broker-dealer would not need to collect margin or take a capital charge with respect to this account. If the same counterparty's exposure to Covered Agency Transactions increased to \$11 million, the broker-dealer would be required to collect margin or take a capital charge only when the net mark to market loss exceeded \$250,000. The broker-dealer is not required to take a capital charge or collect the net mark to market loss unless it exceeds \$250,000 (i.e., the excess net mark to market loss). When the amount of the net mark to market loss exceeds \$250,000, the broker-dealer must collect the amount that exceeds \$250,000 or take a capital charge, subject to the 25% TNC/\$30MM Threshold. The small cash counterparty exception and the \$250,000 mark to market loss exception also do not count toward the calculation of the 25% TNC/\$30MM Threshold.

<sup>214</sup> Petitioners suggested that certain counterparties cannot post margin. The proposed capital in lieu of margin charge is intended to provide broker-dealers flexibility in cases where the broker-dealer does not collect margin from a counterparty to a Covered Agency Transaction. Petitioners also stated that registered investment companies cannot re-pledge collateral without explaining why or how this would impact the ability of such entities to post margin. While posting margin may not be explicitly prohibited, the Commission notes that any entity that posts margin must do so in compliance with applicable law. For example, registered investment companies are subject to the provisions set forth in Sections 17(f) and 18 of the Investment Company Act of 1940 regarding custody and the issuance of senior securities, respectively, as well as the rules promulgated thereunder (e.g., Rule 18f-4, which addresses the use of derivatives by registered investment companies, among others).

excess net mark to market loss from a counterparty directly responds to comments that counterparties will elect to transact with regional banks that are not subject to margin requirements and the proposal will cause smaller broker-dealers to exit the Covered Agency Transaction market or reduce their Covered Agency Transaction business.

The option to take a capital charge in lieu of collecting the excess net mark to market loss from a counterparty will require a broker-dealer to set aside net capital to address the risks of unsecured credit exposures in the Covered Agency Transaction market that are mitigated through the collection of margin collateral. The net capital set aside will serve as an alternative to obtaining margin collateral for the purpose of reducing the risk of unsecured credit exposures to the broker-dealer, as well as potential losses in the event of a counterparty default. The proposed rule, therefore, should reduce the risk of loss to the broker-dealer, and enhance, rather than, deplete the liquidity of a broker-dealer. The requirement to collect margin or take a capital charge in lieu of collecting the excess mark to market loss from a counterparty also is consistent with other regulatory efforts that have sought to address the risk of uncollateralized exposures arising from different types of bilateral transactions with counterparties.<sup>215</sup>

Further, the Commission agrees with FINRA that the regulatory need for attention to this area is no less than when FINRA initiated the original rulemaking. For example, during March 2020, the prices of agency mortgage-backed securities declined and transaction costs (bid-ask spreads) rose, leading to tightened liquidity in the agency mortgage-backed security repurchase agreement (or “repo”) market.<sup>216</sup> These events highlight the need to reduce the risk of uncollateralized exposures in the Covered Agency Transaction market. Unsecured exposures in the Covered Agency Transaction market could raise systemic concerns, in that if one or more counterparty to a Covered Agency

Transaction defaults, the interconnectedness and concentration in the Covered Agency Transaction market may lead to potentially broadening losses and the possibility of substantial disruption to financial markets and participants. Further, to the extent that certain market participants cannot increase their leverage through unsecured exposures because they must collect the excess net mark to market loss from their counterparties in a Covered Agency Transaction, or take a capital charge, that will serve to reduce systemic risk rather than increase it. Consequently, while the proposed rule does not entirely alleviate the competitive burdens on smaller broker-dealers, the option to take a capital charge in lieu of collecting the excess net mark to market loss reduces competitive burdens in a measured way that retains the protections of the current rule to reduce the risk of unsecured credit exposures in the Covered Agency Transaction market without diminishing investor protection.<sup>217</sup>

The continued requirement to collect margin for the excess net mark to market losses or take a capital charge in lieu of collecting margin for the excess net mark to market losses also will remove the possibility that FINRA members will compete through the implementation of lower margin levels (or no margin requirements) for Covered Agency Transactions. As such, the proposed rule change will require consistent practices among FINRA member broker-dealers in terms of collecting margin for a Covered Agency Transaction or holding sufficient capital to serve as a risk-reducing alternative to collecting margin.

With respect to the comments from small broker-dealers that raised concerns that they will need to rely almost exclusively on the capital in lieu of margin charges,<sup>218</sup> as stated above, the proposal does not add any new requirements; rather, it provides an additional option to broker-dealers to comply with the rule’s requirements through a capital charge. In addition, since the adoption of the current rule, broker-dealers already have been adjusting to the Covered Agency Transaction margin requirements by

negotiating and entering into margin agreements with their customers, which should permit them to collect margin when necessary, and reduce the likelihood of reaching the 25% TNC/\$30MM Threshold.<sup>219</sup> Further, the proposed rule change provides that a broker-dealer with non-margin counterparties must establish and enforce risk management procedures reasonably designed to ensure that the optional capital charges do not exceed \$25 million, and promptly notify FINRA if the amount of specified net capital charges exceeds \$25 million for five consecutive business days. These additional risk management procedures for broker-dealers with non-margin counterparties under the proposed rule change should reduce the likelihood that a smaller broker-dealer will exceed the 25% TNC/\$30MM TNC Threshold.

For some broker-dealers, their volume of business may reach the 25% TNC/\$30MM Threshold where the broker-dealer cannot take further capital charges, and at that point, the 25% TNC/\$30MM Threshold would then prevent the broker-dealer from entering into any new Covered Agency Transaction with a counterparty that is unable or unwilling to post margin. While the ability of a broker-dealer to inject liquidity into the Covered Agency Transaction market could potentially be reduced until it falls below the 25% TNC/\$30MM Threshold, raising the threshold for permitted optional capital charges would undermine the effectiveness of the proposed rule change by increasing the broker-dealer’s uncollateralized exposures to Covered Agency Transactions, and thereby increase the risk of a counterparty’s default. In summary, the option to take a capital charge in lieu of collecting margin, along with the exceptions in the current rule and the additional risk management procedures for non-margin counterparties should provide broker-dealers (including smaller broker-dealers) sufficient flexibilities to enable them to better compete in the Covered Agency Transaction market (including participating in the housing finance sector and providing access to liquidity for underserved communities), while encouraging them to collect margin from their counterparties.<sup>220</sup>

The Commission agrees with FINRA that allowing firms to take a 100 percent capital charge in lieu of collecting excess net mark to market loss without

<sup>215</sup> See, e.g., Exchange Act Rule 18a–3 (imposing margin requirements on non-cleared security-based swap transactions for security-based swap dealers and major security-based swap participants); FINRA Rule 4240 (prescribing margin requirements for non-cleared security-based swaps for FINRA member broker-dealers that are not registered as security-based swap dealers).

<sup>216</sup> See DERA Report at 69; See also Letter from Robert D. Broeksmit, CMB President and Chief Executive Officer, MBA to Robert W. Cook, Chief Executive Officer, FINRA and Jay Clayton, Chairman, Commission (Mar. 29, 2020) (attached as Appendix B to MBA Letter) (“MBA 2020 Letter”) (asking for flexibility in margin practices at broker-dealers during March 2020).

<sup>217</sup> The record also demonstrates that FINRA conducted an Economic Impact Assessment of the proposed rule change, including the anticipated competitive effects, the anticipated costs and benefits and alternatives considered. See Notice, 86 FR 28166–68.

<sup>218</sup> Smaller broker-dealers stated they must rely on the optional capital charge because they cannot or are not able to enter into margin agreements with customers.

<sup>219</sup> See Notice, 86 FR at 28167; MBA 2020 Letter; MBA Letter.

<sup>220</sup> See Notice 86 FR at 28164. In addition to broker-dealers, other market participants such as banks of all sizes may provide liquidity to the Covered Agency Transaction market.

the limitation of the 25% TNC/\$30MM Threshold will exacerbate the competitive disparity between large and small broker-dealers. Because large broker-dealers will have a larger capital base than small broker-dealers, the absence of a threshold would enable large broker-dealers to take more capital charges if they did not wish to collect margin from customers. Consequently, customers of small broker-dealers could opt to enter into transactions with larger broker-dealers instead of transacting with smaller broker-dealers in order to avoid posting margin, allowing larger broker-dealers to use their larger capital base to competitively disadvantage smaller broker-dealers.

In addition, in response to a concern expressed in the Petition for Review,<sup>221</sup> the Commission does not believe that the 25% TNC/\$30MM Threshold will limit a large broker-dealer's ability to provide liquidity to the market in times of stress. As discussed above, larger broker-dealers have more market power to negotiate margin agreements with their counterparties and to collect margin (in contrast to smaller broker-dealers). Consequently, large broker-dealers generally should have the ability to collect the excess net mark to market loss from a counterparty rather than relying on the optional capital charges. Therefore, the 25% TNC/\$30MM Threshold should not limit their ability to engage in Covered Agency Transactions in times of volatility and to provide liquidity to the market.<sup>222</sup>

The Commission disagrees with commenters' statements that despite FINRA's efforts to mitigate the harms to smaller market participants and lessen the burdens the proposed rule change will impose on competition, these burdens remain significant, unnecessary and inappropriate. As described above, the only amendments to the current rule before the Commission under the proposed rule change, as modified by Amendment No. 1 (2021), are to eliminate the two percent maintenance margin requirement, permit capital in lieu of margin charges, and to reorganize and streamline the rule text. These proposed amendments build upon the already existing exceptions adopted in the 2016 Amendments, which, as discussed above in this section III.A.2.c., are retained in the proposed rule. While the Commission appreciates the recommendations made by various commenters, and recognizes that the Amended Margin Collection Requirements may result in increased costs for some FINRA members and

their counterparties, the Commission believes that FINRA responded appropriately to their concerns. Taking into consideration the comment letters, FINRA's responses to the comments, the Petition for Review, and the statements received in response to the Petition for Review, the Commission believes that the proposed rule change, as modified by Amendment No. 1 (2021), is consistent with the Exchange Act. In structuring the proposed rule change, as modified by Amendment No. 1 (2021), to allow for additional flexibilities with the option to take a capital charge in lieu of collecting the excess net mark to market loss, FINRA has reasonably balanced the goal of reducing unsecured credit exposures in the Covered Agency Transaction market and encouraging the collection of margin, with the potential costs and competitive impacts that may result from the proposed rule change.<sup>223</sup> FINRA has stated it remains committed to ensuring that FINRA Rule 4210, as amended, in practice, does not disadvantage smaller broker-dealers who are most focused on community institutions, including those owned by women, minorities and veterans.<sup>224</sup> Finally, the Commission believes that commenters' other suggestions to exclude additional product types or counterparties from the rule, reduce required capital charges from 100 percent to 10 percent, or extend the time periods under which broker-dealers must collect margin would significantly undermine the risk-reducing objective of the current rule and diminish investor protection.<sup>225</sup>

Overall, the Commission believes the flexibility created by the proposed rule change with the optional capital charge will further alleviate the competitive burdens on small broker-dealers, including women, minority and veteran-owned firms, compared to larger broker-dealers and banks, while ensuring a broker-dealer collects margin or sets sufficient capital aside to cover the unsecured counterparty exposure in Covered Agency Transactions. The Commission believes that any limited competitive burdens placed on small broker-dealers are reasonable in light of the benefits the rule provides by strengthening the financial condition of the broker-dealer and addressing the

<sup>223</sup> See section I.B. above (detailing the procedural history and background of Covered Agency Transaction margin requirements for the 2016 and 2021 Amendments).

<sup>224</sup> See FINRA Statement at 34.

<sup>225</sup> See section III.F.3. below (discussing other suggestions by commenters that would undermine the objectives of the rule to reduce the risk of unsecured credit exposures to Covered Agency Transactions and to encourage the collection of margin).

risk of unsecured credit exposures in the Covered Agency Transaction market. Consequently, the Commission believes that the proposed rule change to permit broker-dealers to take a capital charge in lieu of collecting the excess net mark to market loss, which builds on the exceptions in the current rule to mitigate the impact of the proposed rule change on smaller broker-dealers, would further the purposes of the Exchange Act as it is reasonably designed to protect investors and the public interest.

### 3. Streamlining and Consolidation of Rule Language; Conforming Revisions

As discussed above in section II.C., FINRA proposed several amendments designed to streamline and consolidate the rule language and make conforming revisions in support of the proposed amendments regarding the elimination of the two percent maintenance margin requirement, and the option to take a capital charge in lieu of collecting margin.<sup>226</sup> For example, FINRA proposes to delete the Supplemental Material related to monitoring mortgage banker counterparties because they were treated as exempt accounts under the current rule. Because the proposed rule change does not distinguish between exempt and non-exempt accounts, this Supplemental Material is redundant and FINRA proposed to delete it.<sup>227</sup>

The Commission did not receive comments on the proposed streamlining, consolidating and conforming amendments. The Commission believes the proposed rule change to streamline, consolidate, and conform the current rule text to reflect the proposed rule changes is appropriate in light of the elimination of the two percent maintenance margin requirement, and the addition of the optional capital in lieu of margin charge. The conforming amendments to the current rule will align the rule text to reflect the proposed rule changes and, in turn, create operational efficiencies and reduce costs for broker-dealers. For example, the proposed rule text clarified the language with respect to the \$250,000 mark to market loss, thereby making it easier to determine the applicable margin amount.<sup>228</sup> This is expected to reduce costs in determining the required margin when a broker-dealer establishes a trading relationship with a counterparty.

Overall, the amendments to the proposed rule change, as modified by Amendment No. 1 (2021), to streamline, consolidate, and conform the rule text

<sup>226</sup> See Notice, 86 FR at 28165–28166.

<sup>227</sup> See Notice, 86 FR at 28166.

<sup>228</sup> See Notice, 86 FR at 28168.

<sup>221</sup> See Petition for Review at 30.

<sup>222</sup> See Notice, 86 FR at 28162.

language will promote efficiency for broker-dealers and facilitate trading in the Covered Agency Transaction market.

*B. The 2021 Amendments Should Reduce Potential Liquidations and Counterparty and Dealer “Chains” of Fails*

1. Comments Received on Proposal

Commenters expressed concern about requirements to liquidate Covered Agency Transactions stating that market participants often engage in long “chains” of Specified Pool or CMO transactions, where the initial seller contracts to sell a Specified Pool or CMO to the initial buyer, the initial buyer contracts to sell the Specified Pool or CMO to a second buyer, who contracts to sell it to a third buyer, etc.<sup>229</sup> The commenters stated that if any party in the chain (except for the last buyer) terminates its purchase or sale transaction, the buyer in the terminated transaction is unlikely to be able to buy the Specified Pool or CMO elsewhere, and therefore will be unable to perform on its sale transaction—and so will every subsequent buyer and seller in the chain. These commenters also stated that FINRA should eliminate or suspend the liquidation requirement under the proposed rule change to avoid the prospect of a “daisy chain” of fails.<sup>230</sup>

In the Petition for Review, Petitioners stated that they believe FINRA’s responses failed to adequately address the substance of their objection that the proposed rule change creates a new and untenable counterparty risk, *i.e.*, the risk that a transaction will fail because of a failure of another transaction elsewhere in a chain of transactions.<sup>231</sup> Petitioners also believed the proposed rule change will result in counterparties posting margin on the same underlying security in a chain resulting in a drain on liquidity.<sup>232</sup> Petitioners also reiterated their concerns that market participants will be reluctant to engage in Covered Agency Transactions if uncertainties exist as to whether FINRA will grant extensions of time related to liquidations, and under what standards FINRA uses to grant them.<sup>233</sup> Petitioners also continued to raise concerns about the ability of a broker-dealer and a counterparty to resolve valuation disputes within five business days.<sup>234</sup>

<sup>229</sup> See Breen Capital Letter at 12–13, 20; SIFMA Letter at 3.

<sup>230</sup> See Breen Capital Letter at 12–13; SIFMA Letter at 3.

<sup>231</sup> See Petition for Review at 35–36.

<sup>232</sup> See Petition for Review at 37.

<sup>233</sup> See Petition for Review at 38.

<sup>234</sup> See Petition for Review at 38.

2. FINRA’s Response to Comments

FINRA responded that, under the current rule, if a counterparty’s unmarginated net mark to market loss (and two percent maintenance margin deficiency, where applicable) exceeds \$250,000 and is not margined or eliminated within five business days from the date it arises, the member is required to liquidate the counterparty’s positions to satisfy the mark to market loss (and two percent maintenance margin deficiency, where applicable), unless FINRA specifically grants additional time. The proposed rule change eliminates this liquidation requirement.<sup>235</sup>

In addition, FINRA stated that, under the proposed rule change, a member can opt to take a capital charge in lieu of collecting margin to cover a counterparty’s excess net mark to market loss. FINRA stated that if these capital charges<sup>236</sup> exceed the 25% TNC/\$30MM Threshold for five consecutive business days, then the member:

- May not enter into new Covered Agency Transactions with non-margin counterparties other than risk reducing transactions;
- Must, to the extent of its rights, promptly collect margin for each counterparty’s excess net mark to market loss; and
- Must, to the extent of its rights, promptly liquidate the Covered Agency Transactions of any counterparty whose excess net mark to market loss is not margined or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time.<sup>237</sup>

Moreover, FINRA stated that if the member does not have the right to liquidate a counterparty’s Covered Agency Transactions, the proposed rule change does not require the member to liquidate those transactions, even after the member has exceeded the 25% TNC/\$30MM Threshold for five business days.<sup>238</sup> However, according to

<sup>235</sup> See Amendment No. 1 (2021) at 9.

<sup>236</sup> As discussed in more detail in section II.B. above, FINRA stated that it is modifying the proposed rule change so that capital charges for a counterparty’s unmarginated excess net mark to market loss do not count toward the 25% TNC/\$30MM Threshold to the extent that the member, in good faith, expects such excess net mark to market loss to be margined by the close of business on the fifth business day after it arose. See Amendment No. 1 (2021) at 10.

<sup>237</sup> See Amendment No. 1 (2021) at 10; FINRA Statement at 36.

<sup>238</sup> FINRA stated that a member is not required to have a right to liquidate a counterparty’s Covered Agency Transactions. However, if the member does not have that right, the counterparty would be a “non-margin counterparty,” and paragraph (e)(2)(H)(ii)d.1. under the proposed rule change would require the member to establish and enforce

FINRA, if the member has exceeded the 25% TNC/\$30MM Threshold for five business days and the member does have a right to liquidate a counterparty’s Covered Agency Transactions and the counterparty’s excess net mark to market loss has not been margined or eliminated within five business days, only then would a member be required to enforce its liquidation right or obtain an extension from FINRA.<sup>239</sup>

FINRA has also stated that this limited liquidation obligation should not lead to a daisy chain of fails, except possibly in circumstances where a counterparty’s unwillingness or inability to perform its undisputed obligations makes it equally likely that a daisy chain of fails will occur whether or not the member liquidates a transaction with the counterparty.<sup>240</sup> According to FINRA, there are four categories of reasons why a counterparty would fail to margin its excess net mark to market loss by the fifth business day after it arises, and FINRA stated that it believes only one of them has any prospect of leading to a liquidation requirement under the proposed rule change:

- *First Category*—The counterparty is a non-margin counterparty, *i.e.*, the counterparty may not have an obligation, under a written agreement or otherwise, to margin its excess net mark to market losses within five business days after they arise. In this case, the member would not have a right under a written agreement or otherwise to liquidate the counterparty’s Covered Agency Transactions when excess net mark to market losses are not margined or eliminated within five business days after they arise, and so would have no obligation or right under the proposed rule change to liquidate the counterparty’s Covered Agency Transactions.<sup>241</sup>

risk management procedures reasonably designed to ensure that the member would not exceed either of the limits specified in paragraph (e)(2)(I)(i) of the rule as amended by the proposed rule change and that the member’s capital charges in lieu of margin on Covered Agency Transactions for all accounts combined will not exceed \$25 million. According to FINRA, these procedures would likely involve limitations on the extent of the member’s business with its non-margin counterparties. FINRA stated that when a broker-dealer’s risk management procedures function as they are required to be designed, the member will rarely cross the 25% TNC/\$30MM Threshold, much less exceed it for five consecutive business days. See Amendment No. 1 (2021) at 10.

<sup>239</sup> See Amendment No. 1 (2021) at 10; FINRA Statement at 36.

<sup>240</sup> See Amendment No. 1 (2021) at 10–11; FINRA Statement at 36.

<sup>241</sup> See *supra* note 238 (stating that when a broker-dealer’s risk management procedures function as they are required to be designed, the member will rarely cross the 25% TNC/\$30MM

• *Second Category*—An operational issue may cause the counterparty to fail to satisfy its obligation to margin its excess net mark to market losses. FINRA believes that five business days should be more than enough time to resolve any operational issue. However, in the event an extended operational issue, or series of operational issues, prevents a counterparty from providing margin for its excess net mark to market loss within five business days after it arises, a 14-day extension can be obtained from FINRA if the member has exceeded the 25% TNC/\$30MM Threshold for five consecutive business days and would otherwise be under an obligation to enforce a right to liquidate the counterparty's Covered Agency Transactions. FINRA expects that an operational issue should not continue long enough to prevent a counterparty from satisfying its margin obligation past the expiration of a 14-day extension.<sup>242</sup>

• *Third Category*—There may be a disagreement over the amount of the counterparty's excess net mark to market loss, leading the counterparty to believe that it has satisfied its obligation to provide margin but the firm to believe that it has not. Commenters suggested that relatively unique assets, like Specified Pools and CMOs, are more likely to be the subject of valuation disputes. FINRA stated that five business days should be more than enough time to resolve any valuation dispute. Firms whose business involves a significant volume of transactions that are prone to valuation disputes should analyze whether their risk management procedures should require their contracts for such transactions to include or incorporate a procedure for the prompt resolution of valuation disputes.<sup>243</sup> FINRA stated that if an extended valuation dispute leads a counterparty to fail to provide margin for its excess net mark to market loss within five business days after it arises, a 14-day extension can be obtained from FINRA if the member has exceeded the 25% TNC/\$30MM Threshold for five consecutive business days and would

Threshold, much less exceed it for five consecutive business days).

<sup>242</sup> See Amendment No. 1 (2021) at 11.

<sup>243</sup> FINRA stated, by way of example, the current Credit Support Annex to the ISDA Master Agreement contains a provision under which the parties generally agree to resolve disputes over the valuation of over-the-counter ("OTC") derivatives for margin purposes by seeking four actual quotations at mid-market from third parties and taking the average of those obtained. FINRA stated that the OTC derivatives documented under ISDA Master Agreements can be much more difficult to value than any Specified Pool or CMO transaction. See Amendment No. 1 (2021) at 11–12.

otherwise be under an obligation to enforce a right to liquidate the counterparty's Covered Agency Transactions. FINRA stated that a margin valuation dispute should not continue past the expiration of a 14-day extension.<sup>244</sup>

• *Fourth Category*—The counterparty may be unwilling or unable to satisfy an undisputed obligation to margin its excess net mark to market loss. FINRA believes that, when a counterparty is unwilling or unable to satisfy its undisputed margin obligations, there is also reason for significant doubt that the counterparty would be willing and able to satisfy its obligations to pay or deliver on the settlement date of the transaction. When facing such an unreliable counterparty, FINRA stated that it believes it is possible the daisy chain of fails may occur even if the member does not liquidate. FINRA further stated that the daisy chain of fails could be just as easily triggered by the counterparty's unwillingness or inability to perform its obligations as by the member's liquidation of its transaction.<sup>245</sup>

According to FINRA, with regard to this fourth category, to the extent feasible, members should terminate transactions with such counterparties in order to protect themselves against further exposure. However, FINRA stated that if a member believes that it would not be feasible to terminate a transaction with such a counterparty, or that such termination would be unduly disruptive to the member's business or the market, extensions may be available from FINRA if the member has exceeded the 25% TNC/\$30MM Threshold for five consecutive business days and the member would otherwise be under an obligation to enforce a right to liquidate the counterparty's Covered Agency Transactions.<sup>246</sup>

According to FINRA, as described above, in the first category, members have no liquidation obligation under the proposed rule change. In the second and third categories, FINRA believes that the reason why the counterparty has not margined its excess net mark to market loss should be eliminated before the five business day period has ended, and

generally before the expiration of a 14-day extension from FINRA.<sup>247</sup>

Further, in response to the Petition for Review, FINRA stated that Petitioners suggest that the requirement for multiple parties in a chain of Covered Agency Transaction to collect margin or take a capital charge is a flaw.<sup>248</sup> FINRA, however, stated that the proposed rule is designed to protect FINRA members against the risk of counterparty default.<sup>249</sup> In that context, FINRA stated that a given broker-dealer is not protected by the fact that another broker-dealer "up the chain" has already collected margin or taken a capital charge.<sup>250</sup> Rather, that broker-dealer is exposed to the contractual obligation to buy the securities on the settlement date and the credit risk that its counterparty will default on such purchase.<sup>251</sup> FINRA stated that these transactions are not riskless, and the requirement that each FINRA member manage that risk by collecting margin or taking a capital charge is necessary for the safeguards in the Covered Agency Transaction margin regime to work.<sup>252</sup> Further, in response to the Petition for Review, FINRA stated that Petitioners overstate the risk of a daisy chain of fails.<sup>253</sup> FINRA reiterated that it believes that the only reasonable circumstance in which liquidation would be required under the proposal is one in which the broker-dealer has a contractual right to liquidate the transaction and the counterparty is unwilling or unable to post collateral.<sup>254</sup> FINRA stated that in these circumstances the risk of default is particularly acute, that it is prudent in those circumstances to require the member to liquidate the position, and that it is likely that there would be a "daisy chain failure" regardless of the liquidation requirement because the counterparty would likely be unable to pay or deliver on the Covered Agency Transaction's settlement date.<sup>255</sup> FINRA stated that, on balance, the benefits of the margin requirement outweigh a risk that is only likely to manifest in a scenario that raises a high probability of the very type of default that the margin requirements are designed to protect against is a valid and reasonable conclusion. Finally, in response to the Petition for Review, FINRA stated that the proposed 25% TNC/\$30MM

<sup>244</sup> See Amendment No. 1 (2021) at 11–12.

<sup>245</sup> See Amendment No. 1 (2021) at 12.

<sup>246</sup> FINRA stated that although an initial 14-day extension will be granted upon application citing the applicable circumstances, any application for a lengthy extension, or series of extensions, must describe the reason for the request and the member's plans for protecting itself (now and in the future) against the risk posed by a counterparty that has demonstrated itself to be unwilling or unable to perform its undisputed obligations. See Amendment No. 1 (2021) at 12.

<sup>247</sup> See Amendment No. 1 (2021) at 13.

<sup>248</sup> See FINRA Statement at 42.

<sup>249</sup> See FINRA Statement at 42.

<sup>250</sup> See FINRA Statement at 42.

<sup>251</sup> See FINRA Statement at 42–43.

<sup>252</sup> See FINRA Statement at 43.

<sup>253</sup> See FINRA Statement at 36.

<sup>254</sup> See FINRA Statement at 36.

<sup>255</sup> See FINRA Statement at 36–37.

Threshold is intended to limit FINRA members' risk exposure, with the goal of ensuring that a counterparty default does not cause a firm to fail and therefore to be unable to meet its obligations to customers and counterparties.<sup>256</sup>

### 3. Commission Discussion and Findings

The Commission agrees with FINRA that the probability of a liquidation causing a chain of fails would most likely occur when a counterparty to a Covered Agency Transaction cannot or will not meet a margin call, and that such a counterparty would likely be in default at settlement regardless of any liquidation requirement. The proposed rule change will provide broker-dealers the flexibility to collect margin for the excess net mark to market loss from a counterparty to a Covered Agency Transaction or take a capital charge in lieu of collecting the margin, subject to specified terms and conditions. A broker-dealer that employs the capital charge option—because it does not require the counterparty to post margin—eliminates the potential risk of a “daisy chain” of fails arising from the broker-dealer needing to liquidate a position of the counterparty for failing to post required margin.

Further, the current rule requires a broker-dealer to collect variation and/or maintenance margin from every counterparty unless there is an exception, and liquidate a Covered Agency Transaction after five business days if they fail to collect required margin. The proposed rule change eliminates this requirement and instead proposes a more limited requirement to liquidate a counterparty's position in cases where the member has the contractual right to liquidate a counterparty's Covered Agency Transactions. The elimination of the two percent maintenance margin requirement also will reduce margin posting requirements of counterparties and, therefore, reduce the likelihood that a counterparty will fail to provide required margin in a manner that triggers the liquidation requirement. Under the proposed rule change, the requirement to liquidate a transaction will be triggered if: (1) the counterparty or product is not subject to any exceptions (including the \$250,000 mark to market exception); (2) the broker-dealer has the contractual right to liquidate the transaction; (3) the 25% TNC/\$30MM Threshold has been exceeded for five business days; and (4) FINRA has not granted any extensions. Thus, the liquidation requirement

generally will be triggered in limited circumstances and, as discussed above, when those circumstances arise it is likely that the chain of fails would occur irrespective of the liquidation requirement.

With respect to concerns regarding whether FINRA will grant extension requests related to liquidations (if a broker-dealer has a right to liquidate a transaction and has exceeded the 25%/ \$30MM Threshold for five business days), including cases where there is a valuation dispute,<sup>257</sup> FINRA has indicated that an initial 14-day extension will be granted upon an application that describes the reasons for the extension request.<sup>258</sup> FINRA also has previously addressed these concerns in its Frequently Asked Questions and Guidance for Covered Agency Transactions under Rule 4210 (“FAQs”) issued for the current rule.<sup>259</sup> The ability to receive extensions of time beyond the five business day period will help to protect broker-dealers where liquidation is infeasible or would unduly disrupt the FINRA member's business or the markets.<sup>260</sup> These extension procedures are consistent with longstanding practice and guidance for margin extensions under Rule 4210.

### C. FINRA has Appropriately Responded to the Comments Regarding Introducing and Clearing Firm Matters

#### 1. Comments Received on Proposal

Commenters stated the proposed rule change does not address the role of clearing firms or reflect that FINRA has considered the actual way in which introducing brokers clear trades in

<sup>257</sup> One way to reduce the potential risks arising from valuation disputes is for a broker-dealer to incorporate procedures for resolving valuation disputes in margin agreements with counterparties. See Amendment No. 1 (2021) at 11–12.

<sup>258</sup> Any application for a lengthy extension, or series of extensions, must describe the reason for the request and the member's plans for protecting itself (now and in the future) against the risk posed by a counterparty that has demonstrated itself to be unwilling or unable to perform its undisputed obligations. See *supra* note 246.

<sup>259</sup> These FAQs (Frequently Asked Questions & Guidance: Covered Agency Transactions Under FINRA Rule 4210) are available at [www.finra.org](http://www.finra.org). FINRA has stated that the FAQs will be updated following approval of the proposed rule change. See section III.D.8. below. The electronic system to request extensions of time is FINRA's Regulatory Extension system or REX system. FINRA has previously indicated in its FAQs that it will update the REX system to accommodate broker-dealers' requests for extensions of time related to Covered Agency Transactions, and that it will announce an online education tool on how to use the REX system for extension requests in connection with such transactions. See, e.g., FINRA FAQs 8 through 10.

<sup>260</sup> See Amendment No. 1 (2021) at 12–13.

Covered Agency Transactions.<sup>261</sup> One commenter expressed concern about the costs of implementing the proposed rule change and stated the rule would be difficult to administer without the direct participation and support of clearing firms.<sup>262</sup> Another commenter suggested that FINRA continue to facilitate dialogue among introducing and clearing firms.<sup>263</sup>

Further, introducing broker-dealers stated that the proposed amendments could result in requirements for firms to post margin to clearing firms under a contractual arrangement, in addition to taking capital charges because they do not or cannot enter into margin agreements with their counterparties. They stated that this scenario would double the financial obligations to these firms with respect to Covered Agency Transactions.<sup>264</sup>

Further, in response to the 2022 Approval Order, Petitioners stated that neither FINRA nor the Division staff analyzed how FINRA's margin requirements would interact with the contractual requirements that clearing firms impose, and stated that they believe an after-the-fact promise to fix a problem with the original rulemaking is not an argument for approving the proposed rule change.<sup>265</sup> The Petitioners stated that Amendment No. 1 (2021) to the proposed rule change did not reference any data supporting that collateral a clearing firm currently collects is insufficient to protect against the risk the proposed rule change seeks to address.<sup>266</sup>

#### 2. FINRA's Response to Comments

FINRA responded to the comments regarding clearing firms by stating that it has conducted extensive dialogue with introducing and clearing firms regarding the requirements of the current rule and the proposed rule change in the context of introducing and clearing arrangements, and such dialogue informed several of the proposed rule change's clarifying changes to the original rulemaking.<sup>267</sup>

<sup>261</sup> See Brean Capital Letter at 13. For example, commenters stated that many regional broker-dealers cannot receive margin even if a customer posts it with a clearing firm, since the proposal does not provide a mechanism by which an introducing broker will receive a credit for collecting margin if the customer deposits the margin with the clearing broker. See BDA and Brean Capital Letter at 35–36; Petition for Review at 39; BDA Small Firms Letter at 2.

<sup>262</sup> See Stephens Letter at 3.

<sup>263</sup> See SIFMA Letter at 3.

<sup>264</sup> See Duncan-Williams/SouthState Letter at 3; Petition for Review at 34; BDA Small Firms Letter at 3.

<sup>265</sup> See Petition for Review at 34–35.

<sup>266</sup> See Petition for Review at 39.

<sup>267</sup> See Amendment No. 1 (2021) at 20.

<sup>256</sup> See FINRA Statement at 37.

Further, FINRA stated that it intends to continue to facilitate discussions with introducing and clearing firms as it implements the proposed rule change.<sup>268</sup>

In addition, FINRA stated, in response to the comment in the Petition for Review that it failed to account for the fact that clearing firms already collect margin for Covered Agency Transactions from introducing firms, that this comment undermines the Petitioners' arguments that margining Covered Agency Transactions is unnecessary.<sup>269</sup>

### 3. Commission Discussion and Findings

The fact that a clearing firm collects margin for Covered Agency Transactions from its introducing firms under a contractual agreement highlights the importance of protecting broker-dealers against the risk of unsecured credit exposures in the Covered Agency Transaction market through the collection of margin or capital charges. The proposed rule provides broker-dealers with the flexibility to take a capital charge in lieu of collecting the excess net mark to market loss from a counterparty; it does not prescribe any new margin collection requirements. Where it chooses to collect margin, a broker-dealer would collect margin from its counterparty consistent with other margin requirements in FINRA Rule 4210. The proposed rule change, consistent with other Rule 4210 requirements, does not address the margin or other contractual requirements that a clearing firm may impose on its introducing firms, or the requirements that such firms must comply with under current FINRA rules. For example, FINRA Rule 4311 governs carrying and clearing firm arrangements, including allocations of responsibility with respect to extensions of credit.<sup>270</sup>

Finally, FINRA's response is appropriate that it will continue to engage in dialogue with introducing firms and clearing firms in implementing the proposed rule change.<sup>271</sup> This is consistent with other proposed rule changes where FINRA answered questions or provided further guidance to market participants

regarding implementation of new rules.<sup>272</sup>

#### *D. FINRA's Responses to Other Comments, Requests for Clarifications, and Technical Revisions to the Proposed Rule Change are Appropriate and Consistent With the Exchange Act*

In response to the Notice and the 2021 Order Instituting Proceedings commenters raised additional matters regarding other aspects of the proposed rule change or requested clarifications or technical revisions to the proposed rule change, as modified by Amendment No. 1 (2021). These comments, FINRA's response to comments, and the Commission's discussion and findings are set forth below.

##### 1. Definition of "Net Mark to Market Loss" and Use of Phrase "Legally Enforceable Netting Agreement" in the Definition of "Net Mark to Market Loss"

A commenter requested confirmation that the definition of "net mark to market loss" would include the calculations utilized under the MSFTA form SIFMA publishes.<sup>273</sup> In addition, Petitioners requested that FINRA identify which party is responsible for marking securities to market.<sup>274</sup> In response, FINRA stated that it does not require or endorse any particular form of agreement for margining Covered Agency Transactions, and as such, declines to provide the requested confirmation because it relates to a commercial matter between the parties.<sup>275</sup>

A commenter also suggested that FINRA should remove the phrase "legally enforceable right of offset or security" from the definition of "net mark to market loss."<sup>276</sup> In response to this suggestion, FINRA stated that this phrase is necessary.<sup>277</sup> FINRA stated that, if the phrase is removed, then the amount of the counterparty's mark to market losses which are subject to margining would be reduced by the

<sup>272</sup> See, e.g., FINRA Rules & Guidance/ Interpreting the Rules, available at: <https://www.finra.org/rules-guidance/interpreting-rules>.

<sup>273</sup> See SIFMA Letter at 4.

<sup>274</sup> See Petition for Review at 38–39; Stephens Letter at 2–3 (stating that larger firms have an advantage in dictating the terms when determining the price in calculating margin).

<sup>275</sup> See Amendment No. 1 (2021) at 14. Similarly, FINRA stated that it also declines a commenter's request to confirm that an MSFTA with a cure period (or similar provision after the expiration of which liquidating action may be taken) of less than or equal to five business days would provide the rights described in the definition of "non-margin counterparty" under paragraph (e)(2)(H)(i)e. under the proposed rule change. See Amendment No. 1 (2021) at 14 and SIFMA AMG Letter at 4.

<sup>276</sup> See SIFMA Letter at 4.

<sup>277</sup> See Amendment No. 1 (2021) at 14.

counterparty's mark to market gains on other transactions, without regard to whether the member has any legally enforceable right to apply those gains to cover the counterparty's losses. FINRA stated, for example, that if a counterparty defaults when it has a mark to market loss of \$10 million on one transaction, and a mark to market gain of \$10 million on another transaction, having a legally enforceable right of offset would allow the member to apply the counterparty's gains to cover its losses. In the absence of a legally enforceable right of offset or security, however, FINRA stated that the member could have an obligation to pay the counterparty \$10 million for its gains, without any guaranty of collecting the full amount of the counterparty's \$10 million loss. If the counterparty enters insolvency proceedings, the lack of a legally enforceable right of offset or security could result in the member being obliged to pay the full \$10 million of the defaulted counterparty's gains and only collecting cents on the dollar for the counterparty's losses.<sup>278</sup>

In addition, one commenter requested confirmation that the phrase "first-priority perfected security interest" applies only to pledges of Covered Agency Transactions with third parties rather than to margin cash or securities posted to the broker-dealer.<sup>279</sup> In response, FINRA stated that the phrase "first-priority perfected security interest" in paragraph (e)(2)(H)(i)d.2. under the proposed rule change only applies to pledges of a counterparty's rights under Covered Agency Transactions with third parties.<sup>280</sup>

In response to the comments about SIFMA's MSFTA form, the Commission agrees that FINRA appropriately responded that the proposed rule change does not require any specific form, agreement, or contract for margining Covered Agency Transactions. Each FINRA member and its counterparty may agree to use a particular form or agreement. This practice is consistent with other provisions of Rule 4210 that do not specify which party is responsible for calculating the mark to market gain or loss.

Further, the Commission agrees with FINRA that retaining the phrase "legally enforceable right of offset or security" in the definition of net mark to market loss is appropriate because it will allow a FINRA member to apply the counterparty's gains to cover its losses

<sup>278</sup> See Amendment No. 1 (2021) at 14.

<sup>279</sup> See SIFMA Letter at 4.

<sup>280</sup> See Amendment No. 1 (2021) at 14–15.

<sup>268</sup> See Amendment No. 1 (2021) at 20.

<sup>269</sup> See FINRA Statement at 39.

<sup>270</sup> See FINRA Rule 4311 and Covered Agency Transactions FAQs at [www.finra.org](http://www.finra.org).

<sup>271</sup> See, e.g., section III.D.8. below (discussing FAQs).

only when there is a legally enforceable right to do so, which will reduce a broker-dealer's financial exposure to a counterparty in the event of insolvency. This will provide more certainty as to which transactions are nettable in the event of a counterparty's insolvency. If broker-dealers were permitted to net transactions from different counterparties where there is no legal right to do so, it would increase the risk under the proposed rule change that the broker-dealer would be exposed to additional losses in the event of a counterparty default. This result would undermine the effectiveness of the proposed rule change to reduce the risk of unsecured exposures in the Covered Agency Transaction market. Finally, FINRA's clarification with respect to the phrase "first-priority perfected security interest" is appropriate because FINRA clarified that it only applies to pledges of a counterparty's rights under Covered Agency Transactions with third parties. This clarification will assist broker-dealers and their counterparties in complying with the amendments under the proposed rule change.

## 2. Definition of "Excess Net Mark to Market Loss"

Some commenters requested confirmation from FINRA that broker-dealers would only be required to collect the excess net mark to market loss (or take capital charges for such amount subject to specified terms and conditions) to cover the amount by which a counterparty's net mark to market loss exceeds \$250,000.<sup>281</sup>

In response to this request for confirmation, FINRA stated that the commenters are correct. According to FINRA, under the proposed rule change, paragraph (e)(2)(H)(ii)c. of FINRA Rule 4210 states the rule does not require members "to collect margin, or take capital charges, for counterparties' mark to market losses on Covered Agency Transactions other than excess net mark to market losses" and a counterparty's "excess net mark to market losses" are defined in paragraph (e)(2)(H)(i)c. as "such counterparty's net mark to market loss to the extent it exceeds \$250,000."<sup>282</sup> FINRA stated that, for example, if a member's counterparty has a net mark to market loss of \$300,000, its excess net mark to market loss is \$50,000, which would be the amount of margin the proposed rule change would require the member to collect, or take a capital charge in lieu of collecting (unless there is an applicable

exemption). FINRA stated that the counterparty's excess net mark to market loss is the minimum amount of margin that (subject to the exceptions) the member must collect (or take a capital charge in lieu of collecting). FINRA also stated that the proposed rule change does not prevent members and their counterparties from agreeing that the counterparty will transfer additional margin.<sup>283</sup>

One commenter requested that FINRA clarify that broker-dealers may elect to treat the \$250,000 as a minimum transfer amount (and collect the entire market to market loss once it exceeds \$250,000), rather than a threshold below which the first \$250,000 of the mark to market loss does not need to be collected.<sup>284</sup> In response to this comment, FINRA stated that if a member has a right under a written agreement to collect margin for a counterparty's entire net mark to market loss whenever the amount of that loss exceeds \$250,000, for purposes of the proposed rule change, it would view this as a right under a written agreement to collect margin for such counterparty's excess net mark to market loss, since the counterparty's excess net mark to market loss is \$250,000 less than the counterparty's entire net mark to market loss (or zero if the net mark to market loss does not exceed \$250,000).<sup>285</sup>

FINRA's responses are consistent with the definition of "excess net mark to market loss" in the proposed rule change, *i.e.*, that broker-dealers must collect the margin amount in excess of \$250,000 or take a capital charge in lieu of collecting the excess net mark to the market loss. Further, broker-dealers also may agree with a counterparty to collect margin above the rule's requirements (*i.e.*, collect the first \$250,000 of the mark to market loss and treat the amount as a minimum transfer amount), which will further protect the broker-dealer from counterparty credit risk.

## 3. Definition of "Non-Margin Counterparty"

Under the proposed rule change, with respect to the five business day period, paragraph (e)(2)(h)(i)e.1. of FINRA Rule 4210 provides in part that a counterparty is a non-margin counterparty if the member "does not have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net

mark to market loss is not margined or eliminated within five business days from the date it arises."<sup>286</sup> A commenter stated that this proposed rule text effectively requires imposing a margin collection timing which is stricter than required under other rules or the standard under paragraph (f)(6) of FINRA Rule 4210.<sup>287</sup>

In response to this comment, FINRA stated that it disagrees for several reasons. First, FINRA stated that current rule requires a broker-dealer to liquidate positions whenever a mark to market loss (or maintenance deficiency) on Covered Agency Transactions is not margined or otherwise eliminated within five business days (and no extension has been obtained).<sup>288</sup> FINRA stated that the proposed rule change uses a five business-day period but applies it more flexibly than under the current rule.<sup>289</sup>

FINRA stated that if a member does not have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net mark to market loss is not margined or eliminated within five business days from the date it arises, that counterparty is a "non-margin counterparty."<sup>290</sup> As consequence, the member must take capital charges in cases where it is not collecting margin for a non-margin counterparty, and the member would become subject to the enhanced risk management requirements under the rule which requires firms with non-margin counterparties to establish and enforce risk management procedures reasonably designed to ensure that the capital charges in lieu of collecting margin do not exceed \$25 million, and promptly notify FINRA if the amount of specified net capital charges exceeds \$25 million for five consecutive business days.<sup>291</sup> FINRA stated that the proposed rule also requires that if the member's specified net capital deductions exceed the 25% TNC/\$30MM Threshold for five consecutive business days, the member would not be able to enter into transactions with a non-margin counterparty, other than risk reducing transactions, while those net capital deductions continue to exceed the threshold.<sup>292</sup> FINRA stated that if the member has a right to

<sup>281</sup> See SIFMA Letter at 4; SIFMA AMG Letter at 4.

<sup>282</sup> See Amendment No. 1 at 13.

<sup>283</sup> See Amendment No. 1 (2021) at 13–14.

<sup>284</sup> See SIFMA AMG Letter at 4.

<sup>285</sup> See Amendment No. 1 (2021) at 15.

<sup>286</sup> See Amendment No. 1 (2021) at 15.

<sup>287</sup> See SIFMA Letter at 4.

<sup>288</sup> See Amendment No. 1 (2021) at 15.

<sup>289</sup> See Amendment No. 1 (2021) at 15.

<sup>290</sup> See Amendment No. 1 (2021) at 15.

<sup>291</sup> See Amendment No. 1 (2021) at 15–16.

<sup>292</sup> See Amendment No. 1 (2021) at 16.

liquidate a counterparty's Covered Agency Transactions if the counterparty's excess net mark to market loss is not margined or eliminated within five business days, the member is not required to enforce that right (that is, not required to liquidate the counterparty's Covered Agency Transactions), unless and until the member's specified net capital deductions exceed the 25% TNC/\$30MM Threshold for five consecutive business days (and the member has not obtained an extension from FINRA).<sup>293</sup>

Second, FINRA stated that even if members were required to have a contractual right to liquidate when margin is not collected within five business days, that would not, in the commenter's terms, "impos[e] a margin collection timing that is stricter than that which is required under the rules (or other aspects of FINRA Rule 4210 generally)" because paragraph (f)(6) of FINRA Rule 4210 requires margin to be collected "as promptly as possible," and the rule as approved pursuant to the original rulemaking (as stated above) requires liquidation when a mark to market or maintenance deficiency has not been margined or eliminated within five business days (unless an extension has been obtained).<sup>294</sup>

The Commission agrees with FINRA's response to the comment that the reference to a five business-day requirement in the definition of non-margin counterparty effectively imposes a margin collection-timing requirement that is stricter than under current margin rules. A counterparty is a non-margin counterparty under the proposed rule change if the broker-dealer does not

have a right under a written agreement or otherwise to collect margin for such counterparty's excess net mark to market loss and to liquidate such counterparty's Covered Agency Transactions if any such excess net mark to market loss is not margined or eliminated within five business days from the date it arises. The five business day reference in the definition of non-margin counterparty is used to classify counterparties as non-margin counterparties for purpose of the proposed rule change. The reference does not impose a five-day margin collection requirement. Therefore, it does not impose a margin requirement stricter than under current rules.

Further, the current rule contains a liquidation requirement if a mark to market loss (or maintenance deficiency) on Covered Agency Transactions is not margined or otherwise eliminated within five business days (and no extension has been obtained). The proposed rule eliminates this requirement and permits greater flexibility with respect to whether a broker-dealer must liquidate a counterparty's positions if it has a right to do so (*i.e.*, only after certain conditions occur and if no extensions of time have been obtained). Therefore, the reference to five business days in the term non-margin counterparty in the proposed rule changes does not effectively impose a margin collection or liquidation requirement whenever that counterparty's excess net mark to market loss is not margined or eliminated within five business days.

#### 4. Exclusion of Exempted Counterparties From Definition of Non-Margin Counterparty

A commenter suggested that FINRA explicitly exclude small cash counterparties and other exempted counterparties covered by paragraph (e)(2)(H)(ii)a.1. of FINRA Rule 4210 under the proposed rule change from the definition of "non-margin counterparty."<sup>295</sup> FINRA stated that this request is consistent with the purpose of paragraph (e)(2)(H)(ii)a.1. and has modified the definition of "non-margin counterparty" to implement the requested exclusion.<sup>296</sup>

The Commission agrees with FINRA that the modification of the definition of "non-margin counterparty" to exclude small cash counterparties and certain other counterparties from the scope of the rule, except with respect to the written risk limit determinations, is

appropriate as it alerts broker-dealers subject to the rule that small cash counterparties and other exempted counterparties are specifically excluded from the definition and therefore do not count toward the 25% TNC/\$30MM Threshold.

#### 5. Computation of the 25% TNC/\$30MM Threshold

A commenter requested confirmation that margin not collected from small cash counterparties does not count toward the 25% TNC/\$30MM Threshold.<sup>297</sup> In response to this comment, FINRA stated that margin not collected from small cash counterparties does not count toward the 25% TNC/\$30MM Threshold.<sup>298</sup> Further, FINRA stated that paragraph (e)(2)(H)(ii)d.3. of FINRA Rule 4210 only counts capital charges under paragraph (e)(2)(H)(ii)d.1. toward the 25% TNC/\$30MM Threshold. In addition, FINRA stated that, under the proposed rule change, paragraph (e)(2)(H)(ii)a.1. of FINRA Rule 4210 does not require members "to collect margin, or to take capital charges in lieu of collecting such margin, for a counterparty's excess net mark to market loss if such counterparty is a small cash counterparty, registered clearing agency, Federal banking agency, as defined in 12 U.S.C. 1813(z), central bank, multinational central bank, foreign sovereign, multilateral development bank, or the Bank for International Settlements." FINRA stated that because the proposed rule change does not require members to take capital charges for these counterparties' unmargined excess net mark to market losses, they do not count toward the 25% TNC/\$30MM Threshold.<sup>299</sup>

The Commission agrees with FINRA's response to the commenter's request for confirmation regarding whether margin not collected from small cash counterparties counts toward the 25% TNC/\$30MM Threshold. FINRA's response appropriately addresses the commenter's concerns and it reflects the plain language of the proposed rule change. Finally, while small cash counterparties do not count toward the 25% TNC/\$30MM Threshold, the proposed rule prescribes additional protection through overall concentration thresholds under paragraph (e)(2)(I) of FINRA Rule 4210.<sup>300</sup>

With respect to counterparties yet to post margin, a commenter suggested

<sup>293</sup> See Amendment No. 1 (2021) at 16. Further, FINRA stated that classification of a counterparty as a non-margin counterparty depends on (a) whether the member has the right to collect margin for the counterparty's excess net mark to market loss, (b) whether the member regularly collects margin for the counterparty's excess net mark to market loss, and (c) whether the member has the right to liquidate such counterparty's Covered Agency Transactions if the counterparty's excess net mark to market loss is not margined or eliminated within five business days from the date it arises. According to FINRA, classification of a counterparty as a margin counterparty (that is, as not a non-margin counterparty) does not require the member to exercise the right to liquidate whenever that counterparty's excess net mark to market loss is not margined or eliminated within five business days. However, FINRA stated that the counterparty would need to be reclassified as a non-margin counterparty if the member does not regularly collect margin for the counterparty's excess net mark to market loss. FINRA stated that the exercise of the right to liquidate is only required by the proposed rule change if the member's capital charges have exceeded the 25% TNC/\$30MM Threshold for five consecutive business days (and the member has not obtained an extension from FINRA). See Amendment No. 1 (2021) at 16 and SIFMA Letter at 4–5.

<sup>294</sup> See Amendment No. 1 (2021) at 16–17.

<sup>295</sup> See SIFMA Letter at 5.

<sup>296</sup> See Amendment No. 1 (2021) at 17; Exhibit 4 to Amendment No. 1 (2021).

<sup>297</sup> See SIFMA Letter at 5.

<sup>298</sup> See Amendment No. 1 (2021) at 17.

<sup>299</sup> See Amendment No. 1 (2021) at 17.

<sup>300</sup> See section II.B. above (discussing paragraph (e)(2)(I) of FINRA Rule 4210 under the proposed rule change).

that the proposed rule change be modified so that any capital charge under paragraph (e)(2)(H)(ii)d.1. of FINRA Rule 4210 not count toward the 25% TNC/\$30MM Threshold until the fifth business day after the relevant excess net mark to market loss arose.<sup>301</sup> The commenter stated that many counterparties that are regularly margined are unable to post margin on a consistent T+1 basis due, for example, to those counterparties being in an overseas jurisdiction, or to operational or custodial issues.<sup>302</sup> Moreover, the commenter stated good faith disputes over the amount of margin to be posted may mean that a counterparty does not post margin by T+1 even when the counterparty is ready, willing, and able to post margin promptly after the proper amount is determined.<sup>303</sup> Finally, the commenter stated that, without a grace period, members may continuously exceed the 25% TNC/\$30MM Threshold based on ordinary levels of margin not yet collected from counterparties who are expected to post required margin.<sup>304</sup>

In response to this comment, FINRA stated that the proposed rule change does not require counting toward the 25% TNC/\$30MM Threshold capital charges taken for excess net mark to market losses that the member in good faith expects to be margined by the fifth business day after they arise.<sup>305</sup> Accordingly, FINRA proposed to revise paragraph (e)(2)(H)(ii)d.3. of FINRA Rule 4210 so that capital charges under paragraph (e)(2)(H)(ii)d.1. with respect to a counterparty's unmargined excess net mark to market loss do not count towards the thresholds in paragraph (e)(2)(H)(ii)d.3. to the extent that the member, in good faith, expects such unmargined excess net mark to market losses to be margined within five business days.<sup>306</sup> According to FINRA,

<sup>301</sup> See SIFMA Letter at 6. The proposed rule would require a capital charge whenever a counterparty's excess net mark to market loss is not margined or eliminated by the close of business on the business day after the business day on which it arises. See proposed paragraph (e)(2)(H)(ii)d.1. in Exhibit 5 to the proposal.

<sup>302</sup> See SIFMA Letter at 5.

<sup>303</sup> See SIFMA Letter at 5.

<sup>304</sup> See SIFMA Letter at 5–6.

<sup>305</sup> See Amendment No. 1 (2021) at 18.

<sup>306</sup> See Amendment No. 1 (2021) at 18. More specifically, FINRA has revised paragraph (e)(2)(H)(ii)d.3. of FINRA Rule 4210 to refer to a member's "specified net capital deductions" (rather than to all net capital deductions under paragraph (e)(2)(H)(ii)d.1.) and inserted the following definition into paragraph (e)(2)(H)(i): i. A member's "specified net capital deductions" are the net capital deductions required by paragraph (e)(2)(H)(ii)d.1. of this Rule with respect to all unmargined excess net mark to market losses of its counterparties, except to the extent that the member, in good faith, expects such excess net mark to market losses to be margined by the close

members would still be required to protect themselves by taking net capital deductions while the excess net mark to market losses are unmargined, but, under the proposed rule change, as modified by Amendment No. 1 (2021), will have more flexibility to address operational issues and valuation disputes before they impact the 25% TNC/\$30MM Threshold.<sup>307</sup>

The proposed change related to the 25% TNC/\$30MM Threshold is appropriate as it provides additional time and flexibility for member firms to address operational and related issues related to the collection of margin, thereby avoiding unnecessary disruptions to the Covered Agency Transaction market. The proposed change related to the 25% TNC/\$30MM Threshold also enhances transparency with respect to the scope of transactions which count toward the threshold. This will enable broker-dealers to calculate the 25% TNC/\$30MM Threshold more efficiently, which, in turn, may increase operational efficiencies for broker-dealers.

#### 6. Requirement To Enforce Rights To Collect Margin and Liquidate Covered Agency Transactions

A commenter requested clarification with respect to the application of the requirement of paragraph (e)(2)(H)(ii)d.3. of FINRA Rule 4210 under the proposed rule change, which provides that a member whose specified net capital deductions exceed the 25% TNC/\$30MM Threshold for five consecutive business days "shall also, to the extent of its rights, promptly collect margin for each counterparty's excess net mark to market loss and promptly liquidate the Covered Agency Transactions of any counterparty whose excess net mark to market loss is not margined or eliminated within five business days from the date it arises, unless FINRA has specifically granted the member additional time."<sup>308</sup> More specifically, FINRA stated these requirements apply once the member's specified net capital deductions exceed the 25% TNC/\$30MM Threshold for five consecutive business days and cease as soon as those capital charges fall below that threshold. Accordingly, FINRA stated that once the member's specified net capital deductions fall below that 25% TNC/\$30MM Threshold (for example, because of market movements, or because the member collects enough margin from some, but

of business on the fifth business day after they arose. *Id.*

<sup>307</sup> See Amendment No. 1 (2021) at 18.

<sup>308</sup> See SIFMA Letter at 5–6.

not all, of its counterparties), the member is under no further obligation to enforce its contractual rights to collect margin or liquidate Covered Agency Transactions (and could, if it chooses, rescind outstanding margin calls and halt any liquidations of its counterparties' Covered Agency Transactions).<sup>309</sup>

The Commission finds that FINRA's explanation addresses the commenter's request for clarification and enhances transparency with respect to the application of 25% TNC/\$30MM Threshold. The Commission believes that FINRA's explanation also appropriately provides guidance with respect to a broker-dealer's ability to rescind outstanding margin calls and halt any liquidations of a counterparty's transactions if it chooses to do so, once the specified net capital deductions fall below the 25% TNC/\$30MM Threshold.

#### 7. Reporting by Members With Non-Margin Counterparties

FINRA stated that, pursuant to paragraph (e)(2)(H)(ii)d.4. of FINRA Rule 4210 under the proposed rule change, a member with non-margin counterparties would be required to "submit to FINRA such information regarding its unmargined net mark to market losses, non-margin counterparties and related capital charges, in such form and manner, as FINRA shall prescribe by *Regulatory Notice* or similar communication." A commenter indicated that the building of systems and information tracking is a significant build for many firms and requested FINRA to clarify in advance what information it may require.<sup>310</sup> In response to this comment, FINRA stated that it is considering what information it will require broker-dealers to submit and expects to engage members and industry participants in developing appropriately tailored reporting pursuant to this provision.<sup>311</sup>

FINRA's response to the comment about the reporting by firms with non-margin counterparties is appropriate. FINRA is currently considering what information it will require and it expects to engage with member firms and industry participants in developing tailored reporting requirements. This engagement will provide industry

<sup>309</sup> See Amendment No. 1 (2021) at 19. FINRA also stated that a member, so long as it acts promptly to bring itself below the 25% TNC/\$30MM Threshold, may choose the manner and order in which it enforces its rights to collect margin or liquidate Covered Agency Transactions, and may halt those actions once its specified net capital deductions fall below the 25% TNC/\$30MM Threshold. *Id.*

<sup>310</sup> See SIFMA Letter at 6.

<sup>311</sup> See Amendment No. 1 at 19.

participants the opportunity to provide input into the reporting requirements before FINRA announces them by *Regulatory Notice* or similar communication. The reporting requirements announced in a *Regulatory Notice* or similar communication will provide firms with advance notice with respect to what reporting FINRA will require to enable them to build out their systems to meet such requirements.

#### 8. Status of Published FAQs

A commenter asked whether the Covered Agency Transactions FAQs<sup>312</sup> will apply if the Commission approves the proposed rule change.<sup>313</sup> FINRA responded that if the Commission approves the proposed rule change, FINRA would update the FAQs with Commission staff, members, and industry participants as appropriate.<sup>314</sup> FINRA's response to the comment related to the status of the FAQs appropriately confirms that FINRA would re-examine the application of the FAQs, as appropriate, if the Commission approves the proposal. With the approval of the proposal, FINRA will need to conform the FAQs to the rule, as amended by the proposal.

#### *E. FINRA's Proposed Implementation Schedule for the Amended Margin Requirements Is Appropriate and Consistent With the Requirements of the Exchange Act*

##### 1. Comments Received on Proposal

In response to the proposed rule change, several commenters requested that FINRA adopt an implementation period of at least 18 months after publication of a final rule before compliance is required, stating that a constrained time period for implementation could present market access risk, and citing the need to build operations and technology and to negotiate necessary documentation.<sup>315</sup> In response to Amendment No. 1 (2021), a commenter reiterated its previous comments requesting an implementation period of 18 months, or, in the alternative, an implementation timeframe of at least one year.<sup>316</sup>

Further, the Petitioners requested that the Commission clarify that the

<sup>312</sup> After the original rulemaking was approved, FINRA made available a set of FAQs and guidance clarifying certain of the requirements, available at: [www.finra.org](http://www.finra.org).

<sup>313</sup> See SIFMA Letter at 6–7.

<sup>314</sup> See Amendment No. 1 (2021) at 20.

<sup>315</sup> See SIFMA AMG letter at 1–3; SIFMA Letter at 2; BDA Letter at 5.

<sup>316</sup> See Letter from Chris Killian, Managing Director, Securitization, Corporate Credit, Libor, SIFMA (Sept. 10, 2021) at 1–2. The comment letter was submitted jointly by SIFMA and SIFMA AMG.

proposed rule change would under no circumstances take effect earlier than nine to ten months after the full Commission renders its final decision.<sup>317</sup> In requesting this clarification, the Petitioners stated that broker-dealers would require the full implementation period to bring their policies and procedures, as well as their back office systems and information technology infrastructure, into compliance.<sup>318</sup>

#### 2. FINRA's Response to Comments

FINRA responded to these comments by stating it believes that the subject matter is well understood by member firms and industry participants. FINRA stated it would announce the effective date no later than 60 days following approval (if the Commission approves the proposed rule change) and would provide an effective date between nine and ten months following such approval.<sup>319</sup>

FINRA stated that an extended implementation timeframe of 18 months would undermine the objectives of the Covered Agency Transaction requirements. FINRA also stated that Covered Agency Transactions have been under discussion for a considerable time, both prior to and since approval of the 2016 Amendments. As a result, FINRA believes that the public interest would not be served by continuing to delay effective date, and that the timeframe set forth in Amendment No. 1 (2021) is appropriate.<sup>320</sup>

#### 3. Commission Discussion and Findings

FINRA's proposed implementation schedule is appropriate and consistent with the requirements of the Exchange Act. FINRA member firms and industry participants are aware of the current requirements of the Covered Agency Transaction margin rule and have had time to work toward implementation. The proposed rule change eliminates the two percent maintenance margin requirements and the need for firms to monitor whether a counterparty is an exempt or non-exempt account under the rule. The proposed rule change also does not prescribe any new margin collection requirements; it is reducing regulatory burdens for broker-dealers by providing flexibility to broker-dealers to take a capital charge subject to specified terms and conditions in lieu of collecting the excess net mark to market loss. The modifications provided by the proposed rule change and the timeframe

<sup>317</sup> See Petitioners' Statement at 2–3.

<sup>318</sup> See Petitioners' Statement at 2.

<sup>319</sup> See Amendment No. 1 (2021) at 20.

<sup>320</sup> See FINRA Letter at 7–8.

of nine to ten months as described in Amendment No. 1 (2021) will provide sufficient flexibilities and time for FINRA-member broker-dealers to come into compliance with the rule. Finally, in response to commenters requesting clarification regarding the implementation timeframe of the proposed rule change, the implementation timeframe is measured starting from the time of the Commission's approval under this order.

#### *F. Issues Relating to 2016 Amendments*

##### 1. This Order Relates Only to the Commission's Review of the Division's Approval of the 2021 Amendments by Delegated Authority

###### a. Comments on the Proposal

As part of their comments on the proposed rule change, Petitioners requested that the Commission repeal the current rule approved by the 2016 Approval Order, except for the written risk limit determinations that are already implemented.<sup>321</sup> In addition, Petitioners requested that the Commission indefinitely delay the effectiveness of the current rule under SR-FINRA-2015-036 so that Covered Agency Transaction margin collection requirements would not apply to any broker-dealer.<sup>322</sup>

Several commenters also stated that proposed rule and the 2016 Amendments are designed for a market that settles on a T+2 basis,<sup>323</sup> and that

<sup>321</sup> See Petition for Review at 45; SR-FINRA-2015-036 and 2016 Approval Order.

<sup>322</sup> See Petitioners' Statement at 3–4. Petitioners stated that because the margin collection requirements set in the current rule approved under SR-FINRA-2015-036 have not been implemented and would take effect now only if the Commission approved the implementation schedule under review in SR-FINRA-2021-010, the Commission could prevent both the margin collection requirements under the current rule and the proposed rule change from taking effect simply by disapproving the proposed rule change. See Petitioners' Statement at 3, n.4.

<sup>323</sup> See definition of Covered Agency Transaction in Exhibit 4 to Amendment No. 1 (2021). For example, the current rule and proposed rule change defines TBA transactions, as transactions defined in Rule 6710(u), inclusive ARM transactions, for which the difference between the trade date and contractual settlement date is greater than one business day. In addition, the proposed rule generally requires a broker-dealer to collect margin from a counterparty or take a capital charge within if the excess net mark to market loss has not been margined or eliminated by the close of business on the next business day after the business day on which such excess net mark to market loss arises. See paragraph (e)(2)(H)(ii)d.1. of Exhibit 4 to Amendment No. 1 (2021). Commenters have argued that these definitions and capital charge requirements presume a T+2 settlement date. This is not the case as the timeframes are solely used to determine which Covered Agency Transactions are in scope for purposes of the rule (under both the

the procedures for clearing and settling mortgage-backed security trades are forward looking and involve monthly closing dates that are established and proven to function well. These commenters requested that the Commission reject the amendments in the proposed rule change and instead direct FINRA to revise FINRA–2015–036 to conform with long established market practices governing the clearance and settlement of Covered Agency Transactions (*i.e.*, repeal the Covered Agency Transaction margin requirements).<sup>324</sup>

#### b. FINRA's Response to Comments

FINRA stated that Petitioners are using the proposed rule change as a vehicle to reopen the current rule under SR–FINRA–2015–036, an already concluded rulemaking process in which the Petitioners participated, including through the submission of numerous comment letters and participation in multiple meetings and telephone calls with Commission staff.<sup>325</sup> FINRA stated that Petitioners' overall issue is with the original rulemaking and the idea that FINRA can or should require broker-dealers to collect margin on Covered Agency Transactions.<sup>326</sup> FINRA further stated that Petitioners' efforts are, at best, untimely, and that Petitioners had an opportunity to request Commission and judicial review of SR–FINRA–2015–036 at the appropriate time and chose not to do so.<sup>327</sup> Further, FINRA stated that permitting a subsequent review of a previously approved proposed rule change such as SR–FINRA–2015–036 would invite serial litigation of SRO rulemaking processes, which would disincentivize SROs from proposing and implementing improvements to their existing rules through rule changes. Finally, FINRA stated it would create significant uncertainty for SRO members, their counterparties, and other market participants, who would be uncertain as to what SRO rules are final and what approved rules could undergo further Commission review.<sup>328</sup>

#### c. Commission Discussion and Findings

The 2022 Scheduling Order granted the Petitioner's Petition for Review to review the Division staff's approval,

2016 and 2021 Amendments) or when a broker-dealer must begin to take capital charges. They are not used to determine clearance or settlement dates or standards.

<sup>324</sup> See Mesrirow Letter at 2; Weichert Letters at 2–3; Performance Trust Capital Letter at 2; Loop Capital Letter at 2; Siebert Letter at 2; Petitioners' Statement at 3–4; CastleOak Securities Letter at 2.

<sup>325</sup> See FINRA Statement at 21.

<sup>326</sup> See FINRA Statement at 12.

<sup>327</sup> See FINRA Statement at 12.

<sup>328</sup> See FINRA Statement at 12.

pursuant to delegated authority, of FINRA's proposed rule change to amend the requirements for Covered Agency Transactions under FINRA Rule 4210, that is, the 2021 Amendments. The 2016 Amendments approved under the 2016 Approval Order are not before the Commission today and are outside the scope of this order.<sup>329</sup> If the Commission were to disapprove the proposed rule change, as modified by Amendment No. 1 (2021), the margin collection requirements under the current rule would be implemented under the implementation dates for SR–FINRA–2015–036 that are not a part of this proposed rule change.<sup>330</sup>

#### 2. The Proposed Rule Change Does not Propose Additional Margin Requirements

##### a. Comments on the Proposal

Some commenters stated that FINRA and the Commission lack the authority to prescribe margin requirements for Covered Agency Transactions.<sup>331</sup>

##### b. FINRA's Response to Comments

FINRA stated that it addressed Petitioners' concern in the original rulemaking approved in the 2016 Approval Order, and the Covered Agency Transaction margin requirements are consistent with the provisions of Section 15A(b)(6) of the Exchange Act.<sup>332</sup> FINRA also stated that Section 7 of the Exchange Act sets forth the parameters of the margin setting authority of the Federal Reserve Board and does not bar action by FINRA.<sup>333</sup>

##### c. Commission Discussion and Findings

The current rule requires a FINRA member broker-dealer to collect margin from its counterparties with respect to Covered Agency Transactions. The 2016 Approval Order previously addressed the question of whether FINRA has the authority to prescribe margin requirements for FINRA member broker-dealers, stating that it is within FINRA's authority to impose margin requirements on its members.<sup>334</sup>

<sup>329</sup> See File No. SR–FINRA–2015–036.

<sup>330</sup> See Exchange Act Release No. 97062 (Mar. 7, 2023), 88 FR 15473 (Mar. 13, 2023) (File No. SR–FINRA–2023–002) (extending the implementation date of the margin collection requirements under SR–FINRA–2015–036 until October 25, 2023).

<sup>331</sup> See Brean Capital Letter at 21–23; Melton Letter; BDA and Brean Capital Letter at 20–25; Boozman et al Letter at 2; Stephens Letter at 2; Petition for Review at 20–26; Petitioners' Statement at 3.

<sup>332</sup> See FINRA Letter at 7; FINRA Statement at 13–15.

<sup>333</sup> See FINRA Letter at 7; FINRA Statement at 15–21.

<sup>334</sup> See 2016 Approval Order, 81 FR at 40374 (“The stated goals of the proposal are consistent

As discussed above, the proposed rule change contains narrow amendments to the current rule to reduce regulatory burdens on broker-dealers through the elimination of the two percent maintenance margin requirement for non-exempt accounts, and the addition of the option to take a capital charge in lieu of collecting the excess net mark to market loss, subject to specified terms and conditions. It does not propose any new margin collection requirements. Because the proposed rule change for the 2021 Amendments does not propose any new margin collection requirements, FINRA's authority to impose such requirements is not at issue with respect to the proposed rule change under review.

#### 3. FINRA Previously Addressed Comments Related to the 2016 Amendments

##### a. Comments Received in Response to Proposal

In addition to the comments above, the Commission received several comments on the proposal that were consistent with comments previously received regarding the current rule approved under the 2016 Approval Order. Commenters suggested that the counterparty exceptions in the rule be expanded to include U.S. Federal Home Loan Banks and mortgage originators.<sup>335</sup> Other commenters suggested that market participants should enhance central clearing through MBS for Specified Pools and CMOs and exclude Specified Pools from the scope of the requirements of the rule.<sup>336</sup> Other commenters stated that FINRA should not require posting of margin until the next two SIFMA good day settlements.<sup>337</sup> In addition, several commenters stated that sales of new mortgage-backed securities do not settle on a T+2 basis, and suggested the trades at issue should be marginable only if they settle outside of the SIFMA good-day settlement schedule.<sup>338</sup>

with the purposes of the Exchange Act and with FINRA's authority to impose margin requirements on its members.”)

<sup>335</sup> See SIFMA Letter at 6; MBA Letter at 2–3.

<sup>336</sup> See Brean Capital Letter at 23–25; Melton Letter.

<sup>337</sup> See Brean Capital Letter at 25. Generally, a TBA trade is a transaction where the securities to be delivered are agreed upon on the trade date and are delivered in the future according to a monthly settlement schedule established by SIFMA, through consultation with its members. These settlement dates are generally referred to as “good day” settlement dates.

<sup>338</sup> See BDA Letter at 2; Weichert Letters at 2; Stephens Letter at 3–4; Duncan-Williams/SouthState Bank Letter at 2, 4; BDA Small Firms Letter at 2, 3.

## b. FINRA's Responses to Comments

As discussed in section III.A.2.b. above, in response to the comments to the Notice, FINRA stated that it has engaged with industry participants extensively on their concerns, and has addressed them on multiple occasions since the process of soliciting comment on requirements for Covered Agency Transactions began in January 2014 with the publication of *Regulatory Notice* 14–02 and in 2015 with FINRA's original rulemaking for Covered Agency Transactions.<sup>339</sup> FINRA also stated that the original rulemaking is necessary because of the risks posed by unsecured credit exposures in the Covered Agency Transactions market.<sup>340</sup>

FINRA also stated that it has addressed, on multiple occasions, the need to include Specified Pool Transactions and CMOs within the scope of the requirements,<sup>341</sup> and made key revisions in finalizing the original rulemaking expressly to mitigate any potential impact on smaller firms and on activity in the Covered Agency Transaction market, including increasing the small cash counterparty exception from \$2.5 million to \$10 million, subject to specified conditions, and modifying the two percent maintenance margin requirement, as adopted pursuant to the original rulemaking, to create an exception for cash investors that otherwise would have been subject to the requirement.<sup>342</sup>

FINRA also stated that it exempted mortgage bankers from the maintenance margin requirements in the original rulemaking; exempted multifamily housing securities and project loan program securities from the new margin requirements;<sup>343</sup> and established a \$250,000 de minimis transfer amount, for a single counterparty, subject to specified conditions, up to which members need not collect margin or take a charge to their net capital.<sup>344</sup> Finally, FINRA responded that it does not propose to make the suggested modification to exclude the U.S. Federal Home Loan Banks from the scope of the rule because it would undermine the rule's purpose of reducing risk.<sup>345</sup>

## c. Commission Discussion and Findings

The Commission agrees with FINRA that some comments have been previously addressed in the original rulemaking, including whether to: (1) exclude additional products or counterparties from the scope of the rule, such as Specified Pools and CMOs; or (2) adjust the requirement to collect margin based on SIFMA's good day settlements.<sup>346</sup> Nevertheless, while the Commission agrees that these comments have been addressed previously, to the extent that they relate to the proposed rule changes set forth in the 2021 Amendments, and not solely to the 2016 Amendments, by suggesting alternative approaches to the 2021 Amendments that should be considered, the Commission disagrees with commenters' recommendations. Specifically, the Commission believes that excluding additional products or counterparties would undermine the purpose of the rule to address the risk of unsecured credit from Covered Agency Transaction for broker-dealers and encourage the collection of margin. In addition, excluding additional products from the scope of the rule would result in a mismatch between FINRA margin requirements and TMPG best practices of exchanging variation margin for Covered Agency Transactions which may potentially distort trading in the Covered Agency Transaction market by incentivizing counterparties to trade in non-margined products.

Moreover, the option to take a capital charge in lieu of collecting margin for the excess net mark to market loss will provide broker-dealers with the flexibility to choose not to collect margin from specific counterparties or for specific transactions, while continuing to protect broker-dealers from the risk of unsecured credit exposures arising from Covered Agency Transactions. In addition, adjusting the time to collect margin or take capital charges related to SIFMA good settlement dates or other longer time periods also would undermine the effectiveness of the rule because these suggested changes would have the effect of generally requiring no margin or minimal capital charges (that is, they would have the effect of essentially reverting back to current and

inconsistent margin practices among FINRA broker-dealers).

Finally, proposals to expand clearing for Covered Agency Transactions through MBSD is outside the scope of this proposed rule change.

## IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as modified by Amendment No. 1 (2021), is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

It is Therefore Ordered, pursuant to Rule 431 of the Commission's Rules of Practice, that the earlier action taken by delegated authority, Exchange Act Release No. 94013 (Jan. 20, 2022), 87 FR 4076 (Jan. 26, 2022), is set aside and, pursuant to Section 19(b)(2) of the Act,<sup>347</sup> the proposed rule change (SR–FINRA–2021–010), as modified by Amendment No. 1 (2021), hereby is approved.

By the Commission.

**J. Matthew DeLesDernier,**  
Deputy Secretary.

[FR Doc. 2023–16267 Filed 7–31–23; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–155, OMB Control No. 3235–0123]

## Proposed Collection; Comment Request; Extension: Rule 17a–5

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (“Commission”) is soliciting comments on the existing collection of information provided for in Rule 17a–5 (17 CFR 240.17a–5), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (“OMB”) for extension and approval.

Rule 17a–5 is the basic financial reporting rule for brokers and dealers.<sup>1</sup> Rule 17a–5 applies to broker-dealers, including some broker-dealers that are

<sup>347</sup> 15 U.S.C. 78s(b)(2).

<sup>1</sup> Rule 17a–5(c) requires a broker or dealer to furnish certain of its financial information to customers and is subject to a separate PRA filing (OMB Control Number 3235–0199).

<sup>339</sup> See Amendment No. 1 (2021) at 4.

<sup>340</sup> See Amendment No. 1 (2021) at 4–5; 2015 Notice, 80 FR at 63615–16.

<sup>341</sup> See Amendment No. 1 (2021) at 5; 2016 Approval Order, 81 FR at 40371.

<sup>342</sup> See Amendment No. 1 (2021) at 5; 2015 Notice, 80 FR at 63608.

<sup>343</sup> See Amendment No. 1 (2021) at 6; Partial Amendment No. 1 to SR–FINRA–2015–036, available at <https://www.finra.org/rules-guidance/rule-filings/sr-finra-2015-036>.

<sup>344</sup> See Amendment No. 1 (2021) at 17; 2016 Approval Order, 81 FR at 40368.

<sup>345</sup> See Amendment No. 1 (2021) at 17.

<sup>346</sup> See, e.g., 2016 Approval Order, 81 FR at 40375–76 (“[E]xcluding additional products from the rule or modifying the settlement dates in the definition of Covered Agency Transactions potentially may “undermine the effectiveness of the proposal” if counterparties are permitted to maintain unsecured credit exposures on these positions.”).

OTC derivatives dealers; broker-dealers, other than OTC derivatives dealers, that are also registered security-based swap dealers; and broker-dealers, including OTC derivatives dealers, that are also registered as major security-based swap participants. The rule requires the filing of Form X-17A-5, the Financial and Operational Combined Uniform Single Report (“FOCUS Report”), which was the result of years of study and comments by representatives of the securities industry through advisory committees and through the normal rule proposal methods. The FOCUS Report was designed to eliminate the overlapping regulatory reports required by various self-regulatory organizations and the Commission and to reduce reporting burdens as much as possible. The rule also requires the filing of annual reports, which include a financial report and a compliance or exemption report as well as reports of an independent public accountant covering the financial report and the compliance or exemption report. In addition, the rule requires a broker-dealer that computes certain capital charges in accordance with Appendix E to Exchange Act Rule 15c3-1 (17 CFR 240.15c3-1e) to file additional monthly or quarterly reports and a supplemental report on management controls concurrently with its annual reports.

The Commission estimates that the total hour burden under Rule 17a-5 is approximately 397,467 hours per year, and the total cost burden is approximately \$31,295,048 per year.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission’s estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by October 2, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington,

DC 20549, or send an email to: *PRA\_Mailbox@sec.gov*.

Dated: July 26, 2023.

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-16226 Filed 7-31-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98002; File No. SR-NYSE-2023-12]

### Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

July 26, 2023.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 14, 2023, NYSE National, Inc. (“NYSE National” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (the “Fee Schedule”) to add the services available to third party telecommunications service providers in the two Mahwah data center meet me rooms. The proposed rule change is available on the Exchange’s website at *www.nyse.com*, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the Fee Schedule to add the services available to third party telecommunications service providers<sup>4</sup> in the two Mahwah, New Jersey data center (“MDC”) meet me rooms (“MMRs”).<sup>5</sup>

Meet me rooms are standard within the data center industry. A meet me room is a location within a data center where circuits from outside of the data center “meet” and connect with the circuits within the data center, such as those of collocated customers. As a general description, telecommunications service provider’s circuits from outside a data center are brought into a meet me room, where those circuits connect to a telecommunications service provider’s equipment in a meet me room cabinet. From there, a cross connect will complete the connection to a customer’s equipment in the data center’s colocation hall. The data center customer uses the circuit supplied by the telecommunications service provider to connect to locations outside of the data center, e.g., the customers’ back offices.

Before 2013, the MDC did not have a MMR, and all connectivity into and out of the MDC was provided by ICE’s predecessor, NYSE Euronext. In response to customer demand for more connectivity options, the MMRs opened to Telecoms in January 2013. The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS

<sup>4</sup> In this filing, telecommunications service providers that choose to purchase MMR services at the MDC are referred to as “Telecoms.” Telecoms are licensed by the Federal Communications Commission (“FCC”) and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

<sup>5</sup> Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange is an indirect subsidiary of ICE and is an affiliate of NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change. See SR-NYSEAMER-2023-36, SR-NYSEARCA-2023-47, SR-NYSECHX-2023-14, and SR-NYSE-2023-12.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

In the ten years since the MMRs opened, 19 Telecoms established services in the MMRs, of which three exited the MMRs. As of June 30, 2023, the 16 Telecoms had 27 cabinets in the MMRs, providing each market participant that requests to receive collocation services directly from the Exchange (“User”)<sup>6</sup> with connectivity options.

It is clear that the MMRs are useful to Users. Although FIDS offers Users circuits,<sup>7</sup> all but a few Users use circuits supplied by Telecoms instead: as of June 1, 2023, more than 95% of the circuits for which Users contracted were supplied by the Telecoms.<sup>8</sup> Indeed, all but two of the Users that use FIDS circuits also connect to Telecom circuits in the MMRs.<sup>9</sup>

The Exchange seeks to amend the Fee Schedule to add the services offered to Telecoms and the related fees. Such fees include cabinet and power-related fees, cross-connect fees, and several other fees pertaining to the suite of services that the Exchange offers to Telecoms that operate in the MMR environment.

**The MMR Structure**

Every User requires a circuit into and out of the MDC in order to connect its equipment outside of the MDC to its equipment within the MDC. As noted above, most Users choose to utilize Telecom circuits for these purposes.

A Telecom completes a circuit by placing equipment in a MMR and installing carrier circuits between one or more points outside the MDC and the Telecom’s MMR equipment.<sup>10</sup> A User

<sup>6</sup> Other than Telecoms, Users are the only FIDS customers with equipment physically located in the MDC.

<sup>7</sup> The Exchange notes that the FIDS circuits do not have a distance or latency advantage over the Telecoms within the MDC. FIDS has normalized (a) the distance between the MMRs and colocation and (b) the distance from the MPOE rooms, where the FIDS circuits are, and the colocation hall. As a result, there is no difference in the distances or latency within the MDC. In addition, FIDS itself is a Telecom customer. It is not a Telecom, does not own circuits and must contract with Telecoms to provide its services. The fact that the FIDS circuits do not have an advantage is reflected by the fact that FIDS circuits represent a small portion of the MDC circuits.

<sup>8</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

<sup>9</sup> The Exchange believes that many Users that have FIDS circuits use the FIDS circuits for backup purposes.

<sup>10</sup> A User may use a wireless connection, including a third party wireless connection, to the MDC. In such a case, the portion of the connection

that has contracted with the Telecom then connects to the Telecom’s MMR equipment using a cross connect from the User’s co-located equipment. Once connected to the Telecom’s equipment, the User can use the Telecom’s circuit to transport data into and out of the MDC.

A Telecom may sell access to its circuits to a second Telecom, so that the second Telecom may use the first Telecom’s circuit to access the MDC. In this way, the second Telecom can install its equipment in an MMR and sell the sublet circuits to its customers without incurring the cost of installing its own circuits to the MDC.<sup>11</sup>

**MMR Services**

The Exchange proposes to add the following MMR services and fees to the end of the Fee Schedule, under the heading “D. Meet-Me-Room (‘MMR’) Services.” With the exception of cross connects, which may be paid for by the Telecom or by the Telecom’s customer, the proposed services and fees are specific to Telecoms.

**Cabinet-Related Services**

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the cabinets that FIDS provides Telecoms to set up their servers in the MMRs (collectively, the “Cabinet-Related Services”).

*Initial Fee per MMR Cabinet and MMR Monthly Fee for Cabinets:* FIDS offers Telecoms dedicated cabinets in the MMRs to house their equipment. The cabinets come in sizes based on the number of kilowatts (“kW”) allocated, subject to a minimum of 4 kW and maximum of 8 kW per cabinet. Telecoms pay an initial fee for each cabinet and a monthly fee based on the number of kW allocated to all the Telecom’s cabinets.<sup>12</sup> To indicate how the fee is calculated, the Exchange proposes to add a note stating that the monthly fee is based on the total kW allocated to all of a Telecom’s cabinets.

The Exchange proposes to add the following fees and language to the Fee Schedule for the Cabinet-Related Services:

closest to the MDC is wired. Accordingly, the present description applies to wireless connections as well as those that are wired. A Telecom elects which MMR it will use, or if it will use both.

<sup>11</sup> FIDS does not have to consent to, and need not be informed of, a Telecom’s sale of a circuit to another Telecom. In addition, neither FIDS nor the Exchange knows the termination point of a Telecom’s circuit or the content of any data sent on a circuit.

<sup>12</sup> For example, a Telecom that had two cabinets with a total power allocation of 12 kW would have a monthly charge of \$1,200 per kW for the first eight kW and \$1,050 per kW for the next four kW (between 9 kW and 12 kw), for a total of \$13,800.

Initial Fee per MMR Cabinet: Dedicated Cabinet of between 4 kW and 8 kW ...	\$5,000
MMR Monthly Fee for Cabinets: Monthly fee is based on total kW allocated to all of a Telecom’s cabinets.	
Number of kW	Per kW fee monthly
4–8 .....	\$1,200
9–20 .....	1,050
21–40 .....	950
41 + .....	900

**Access and Service Fees**

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the access and services FIDS provides to Telecoms (collectively, the “Access and Service Fees”).

*Data Center Fiber Cross Connect:* FIDS offers fiber cross connects for an initial and monthly charge. Cross connects may run between a Telecom’s cabinets, between its cabinet and the cabinet of another Telecom, or between its cabinet and its customer’s equipment. Cross connects may be bundled (*i.e.*, multiple cross connects within a single sheath) such that a single sheath can hold either one cross connect or six cross connects.

Importantly, a cross connect to MMR cabinets may be paid for by the Telecom or by the Telecom’s customer, who may be a User or another Telecom. The same fee applies irrespective of which entity purchases the cross connect.

*Carrier Connection Fee:* Telecoms contract with their customers for circuits into and out of the MDC. A Telecom is charged a monthly fee for providing such circuits to Users, on a per connection basis. Unlike cross connects, which may be purchased by either the Telecom or its customer, the Carrier Connection Fee is always charged to the Telecom.

*Conduit Sleeve Fee:* A Telecom’s circuits into and out of the MDC run through FIDS conduits. There are currently three FIDS conduit paths leading into the MDC. A Telecom determines which conduit or conduits it will use to carry its circuits, which are carried in individual conduit sleeves. The Telecom is charged an initial charge for the installation of circuits in the FIDS conduit, which covers up to five hours of work, and a monthly fee per conduit sleeve for using the FIDS conduit.<sup>13</sup>

<sup>13</sup> The number of conduit sleeves a Telecom uses is dependent on the equipment and technology it uses and the size of the circuits it sells to its

*Connection to Time Protocol Feed:* FIDS offers Telecoms the option to purchase connectivity to the Precision Time Protocol, with monthly and initial charges. Telecoms may make use of time feeds to receive time and to synchronize

clocks between computer systems or throughout a computer network, and time feeds may assist Telecoms in other functions, including record keeping or measuring response times.  
*Expedite Fee:* FIDS offers Telecoms the option to expedite the completion of

MMR services purchased or ordered by the Telecoms, for which the Exchange charges an “Expedite Fee.”  
The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
Data Center Fiber Cross Connect .....	Furnish and install 1 cross connect ..... Furnish and install bundle of 6 cross connects	\$500 initial charge plus \$600 monthly charge. \$500 initial charge plus \$1,800 monthly charge.
Conduit Sleeve Fee .....	Install (5 hrs) and maintain conduit sleeve supporting Telecom circuit into data center.	\$1,000 initial charge plus \$2,000 monthly charge per conduit sleeve.
Carrier Connection Fee .....	Maintain Telecom’s connections to its non-Telecom data center customers.	\$1,150 monthly charge per connection.
Connection to Time Protocol Feed .....	Precision Time Protocol .....	\$1,000 initial charge plus \$250 monthly charge.
Expedite Fee .....	Expedited installation/completion of MMR service.	\$4,000 per request.

**Service-Related Fees**

The Exchange proposes to add the following services and fees relating to services FIDS provides to Telecoms (collectively, the “Service-Related Fees”) to the Fee Schedule.

*Change Fee:* FIDS charges a Telecom a “Change Fee” if the Telecom requests a change to one or more existing MMR services that FIDS has already established or completed for the Telecom. The Change Fee is charged per order. If a Telecom orders two or more services at one time (for example,

through submitting an order form requesting multiple services) the Telecom is charged a one-time Change Fee, which would cover the multiple services.

*Hot Hands Service:* FIDS offers Telecoms a “Hot Hands Service,” which allows Telecoms to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack a server in a Telecom’s cabinet, power recycling, and install and document the fitting of cable in a Telecom’s cabinet(s). The Hot Hands fee is charged per half hour.

*Shipping and Receiving:* FIDS offers shipping and receiving services to Telecoms, with a per shipment fee for the receipt of one shipment of goods at the MDC from the Telecom or supplier.

*Visitor Security Escort:* Telecom representatives are required to be accompanied by a visitor security escort during visits to the MDC. A fee per visit is charged.

To reflect the above FIDS services and fees, the Exchange proposes to add the following to the Fee Schedule:

Type of service	Description	Amount of charge
Change Fee .....	Change to a service that has already been installed/completed for a Telecom.	\$950 per request.
Hot Hands Service .....	Allows Telecom to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack, power recycling, and install and document cable.	\$100 per half hour.
Shipping and Receiving .....	Receipt of one shipment of goods at data center on behalf of Telecom (includes coordination of shipping and receiving).	\$100 per shipment.
Visitor Security Escort .....	All Telecom representatives are required to be accompanied by a visitor security escort during visits to the data center.	\$75 per visit.

**Application and Impact of the Proposed Changes**

The proposed change would apply equally to all telecommunications service providers that choose to purchase MMR services (*i.e.*, Telecoms). With the exception of cross connects, which may be paid for by a Telecom or by the Telecom’s customer, the proposed services and fees are specific to Telecoms.

Under the proposed rule, a Telecom could select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no

conduit sleeves, and three carrier connections.

It is the Exchange’s understanding that Telecoms do not have to purchase a large number of cabinets or amount of power in order to have a MMR presence. For example, as of June 1, 2023, nine of the 16 Telecoms had one cabinet and five Telecoms had two cabinets. Only two Telecoms had four cabinets. Similarly, half of the Telecoms had only

customers, who may be Users or other Telecoms.

Most Telecoms use one conduit sleeve or none at all.

4 kW of power, and only two Telecoms reached 16 kW of power.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>15</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>16</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

### The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable, for the following reasons.

#### Proposed MMR Fees

It is in the Exchange's interest to set MMR prices at a reasonable level so that Telecoms will maximize their use of the MDC. When the MMR fees are set at a reasonable level, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers<sup>17</sup>

to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted.<sup>18</sup>

The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

The proposed rule is reasonable because it would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

If the Exchange were to set the MMR fees at an unreasonable level, it could expect the competitive environment among Telecoms in the MMRs to wither. Some Telecoms would likely exit the MDC market, while others would reduce the scope of their operations there, and some may never enter at all, as telecommunications service providers are not required to be in the MMRs. Fewer Telecoms in the MMRs would lead to less competition between the Telecoms for the sale of circuits to

Users, which would likely cause the prices of circuits to rise. This, in turn, would increase Users' overall costs of doing business in the MDC. Some customers might choose to exit the MDC altogether, while others might seek to reduce their footprint in colocation by decreasing the number of cabinets, ports, and power they use, or by reducing the number of third-party data feeds they connect to at the MDC. The Exchange thus has every incentive to set the MMR fees at a rate that is reasonable for Telecoms, and no incentive to charge any more than that.

The Exchange's belief that the MMR fees are reasonable is supported by the fact that the MMR fees are very low when compared to both (1) the revenues that Telecoms earn by selling circuits in financial data centers and (2) the total connectivity fees that market participants pay at the MDC.

First, using public information, the Exchange reviewed the MMR fees in the context of Telecoms' business opportunities and expense. Specifically, the Exchange reviewed the public filings and financial statements of the parent company of some of the 16 Telecoms that currently operate in the MMRs.<sup>19</sup>

The parent company's financial statements disclose that the "financial services" share of its "fiber site rental revenue" for the fourth quarter of 2021 was 9%. Based on this disclosure, the Exchange estimated the parent company's annual financial services-related fiber site rental revenue for 2021, and then compared that figure to the MMR fees that the parent's Telecoms paid that year, as a percentage of the parent's revenue.<sup>20</sup> The Exchange concluded that the MMR fees paid by those Telecoms represent just 0.9% of the parent's financial services fiber site rental revenue.

Second, the Exchange sought to calculate the portion of market participants' total connectivity spend at the MDC that is attributable to MMR fees. Using data from February 2023, the Exchange summed the following connectivity costs: (1) colocation fees paid by market participants to FIDS; (2) MMR fees paid by Telecoms to FIDS;<sup>21</sup>

<sup>19</sup>The other Telecoms either are not obligated to make any information public or do not break out their financial information in a manner that would allow the Exchange to assess the impact of the MMR fees.

<sup>20</sup>Because the Exchange is obligated to keep customer identities confidential, it is not disclosing the name of the parent company in this filing, but will provide it to the Commission confidentially upon request.

<sup>21</sup>The analysis assumes that Telecoms pass the MMR fees on to the Users.

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> "Hosting" is a service offered by a User to another entity in the User's space within the MDC. The Exchange allows Users to act as Hosting Users for a monthly fee. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR

60190 (October 5, 2015) (SR-NYSE-2015-40). Hosting Users' customers are referred to as "Hosted Customers."

<sup>18</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

and (3) a proxy<sup>22</sup> for the circuit and wireless connectivity fees that market participants pay to Telecoms and FIDS. MMR revenue for the same period was then divided by the summation of the connectivity costs. The Exchange determined that the MMR fees represented less than 5 percent of the total connectivity spend.<sup>23</sup>

In sum, the proposed MMR fees are a very small fraction of the overall fees that market participants pay for connectivity services at the MDC. This is further support for the Exchange's position that the MMR fees proposed herein are reasonable.

#### Security of the MDC

The Exchange's belief that the proposed rule change is reasonable takes into account the fact that no third party can establish a meet me room in the MDC, leaving FIDS the sole entity that can control a MMR. FIDS's operation and maintenance of the MDC MMRs is both rational and consistent with the normal commercial practice of data centers.<sup>24</sup> While the Exchange understands that most data centers offer meet me rooms, it is not aware of any data center operator, within or outside the U.S., that allows a third party to run a meet me room.

Safeguarding the security of the U.S. national market system—in this case, the MDC where the Exchange and the Affiliate SROs maintain trading engines and publish market data, and where the Securities Industry Automation Corporation (“SIAC”) publishes the National Market System (“NMS”) data feeds for which it is the exclusive securities information processor—is a key part of the operation of a free and open market and national market system and protecting investors and the public interest. The MMR structure furthers that goal.

Having FIDS control the MMRs limits third parties' need to enter the MDC, minimizing security risks. Because it controls the MMRs, FIDS can establish

<sup>22</sup> The Exchange cannot know actual circuit fee revenue because Telecoms are not required to report what they charge their customers for circuits or to charge all customers the same amount. Accordingly, the Exchange used the fees for FIDS circuits as a proxy for the Telecom circuit fees. To estimate the “total circuit fee revenue,” the Exchange multiplied what one User would pay for a FIDS circuit by the number of carrier connections.

<sup>23</sup> That percentage varies slightly within the range of 4.28% to 5.30% based on the precise proxy that is used for part (3) of the calculation above, depending on the share of connections one assumes to be wired vs. wireless and the circuit fees.

<sup>24</sup> In addition to the security aspects outlined herein, the Exchange notes that, because FIDS controls the MMRs, it can ensure that all cross connects between Telecoms and Users are normalized.

and enforce usage policies designed to protect the MMRs' security and treat the Telecoms equally and consistently. FIDS's control also ensures that the Telecoms' equipment and connections do not extend further into the MDC than the MMRs, and essentially makes the MMRs the demarcation or “hand-off” point for Telecom circuits coming into the MDC. If a third party established a meet me room in the MDC, FIDS could not ensure its control of any of these matters.

This structure reduces security risks because it allows the trading engines of the Exchange and the Affiliate SROs, SIAC's NMS market data publishers, and the ICE Global Network, including the FIDS circuits, to be physically and logically segregated from vendors and other third party service providers, including Telecoms.

In addition, the MMR structure provides Users with the opportunity to use Telecom circuits to create systems that are potentially more redundant and resilient than if they relied on just one exclusive provider. For example, while the original exclusive NYSE Euronext connectivity option to the MDC was designed to be redundant and resilient,<sup>25</sup> today 16 additional Telecoms make circuits available to Users and help to maintain a securities market infrastructure that is stronger and more robust. The Exchange believes that the fact that most customers for FIDS circuits also purchase Telecom circuits shows the structural importance of the MMRs.

#### The Proposed Change Is Equitable

The Exchange believes that the proposed change is equitable, for the following reasons.

The Exchange believes that the proposed rule change is equitable because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in a MMR, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

<sup>25</sup> See, e.g., oral testimony of Robert L.D. Colby, Deputy Director, Division of Market Regulation, Securities and Exchange Commission, before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services (February 12, 2003) (Testimony Concerning Recovery and Renewal: Protecting the Capital Markets Against Terrorism Post 9/11), at <https://www.sec.gov/news/testimony/021203tsrc.htm>.

The proposed rule is also equitable because it would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably so that Telecoms will maximize their use of the MDC. When the MMR fees are set equitably, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees equitably for Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

#### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in the MMRs of the MDC, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

The proposed rule is also not unfairly discriminatory because it would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of

April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably in a non-discriminatory way so that Telecoms will maximize their use of the MDC. When the MMR fees are set in a non-discriminatory fashion, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees in a way that does not unfairly discriminate against any Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of section 6(b)(8) of the Act.<sup>26</sup>

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather encourages competition between Telecoms in the MMRs. It is in the Exchange's interest to set MMR prices at a reasonable level so that Telecoms are attracted to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC. The Exchange directly benefits from such competition between Telecoms because it increases the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and

connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted were supplied by the Telecoms.<sup>27</sup>

The proposed rule encourages competition between Telecoms because a Telecom may select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections. The proposed rule would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models.

In sum, the MMR structure creates incentives for Telecoms to compete against each other in providing their customers with connectivity services. These customers, which are both Users and other Telecoms, directly and indirectly participate in the national market system. As a result, the MMR structure fosters cooperation and coordination with persons facilitating transactions in securities.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act<sup>28</sup> and Rule 19b-4(f)(6) thereunder.<sup>29</sup> Because the

proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)<sup>30</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSENAT-2023-12 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-NYSENAT-2023-12. 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

<sup>27</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

<sup>30</sup> 15 U.S.C. 78s(b)(2)(B).

<sup>26</sup> 15 U.S.C. 78f(b)(8).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2023-12 and should be submitted on or before August 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Sherry R. Haywood,**  
Assistant Secretary.

[FR Doc. 2023-16246 Filed 7-31-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97998; File No. SR-NYSE-2023-27]

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

July 26, 2023.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 ("Act")<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 14, 2023, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (the "Fee Schedule") to add the services available to third party telecommunications service providers in the two Mahwah data center meet me rooms. The proposed rule change is available on the Exchange's website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend the Fee Schedule to add the services available to third party telecommunications service providers<sup>4</sup> in the two Mahwah, New Jersey data center ("MDC") meet me rooms ("MMRs").<sup>5</sup>

Meet me rooms are standard within the data center industry. A meet me room is a location within a data center where circuits from outside of the data center "meet" and connect with the circuits within the data center, such as those of colocated customers. As a general description,

<sup>4</sup> In this filing, telecommunications service providers that choose to purchase MMR services at the MDC are referred to as "Telecoms." Telecoms are licensed by the Federal Communications Commission ("FCC") and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

<sup>5</sup> Through its Fixed Income and Data Services ("FIDS") (previously ICE Data Services) business, Intercontinental Exchange, Inc. ("ICE") operates the MDC. The Exchange is an indirect subsidiary of ICE and is an affiliate of NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the "Affiliate SROs"). Each Affiliate SRO has submitted substantially the same proposed rule change. See SR-NYSEAMER-2023-36, SR-NYSEARCA-2023-47, SR-NYSECHX-2023-14, and SR-NYSE-2023-12.

telecommunications service provider's circuits from outside a data center are brought into a meet me room, where those circuits connect to a telecommunications service provider's equipment in a meet me room cabinet. From there, a cross connect will complete the connection to a customer's equipment in the data center's colocation hall. The data center customer uses the circuit supplied by the telecommunications service provider to connect to locations outside of the data center, e.g., the customers' back offices.

Before 2013, the MDC did not have a MMR, and all connectivity into and out of the MDC was provided by ICE's predecessor, NYSE Euronext. In response to customer demand for more connectivity options, the MMRs opened to Telecoms in January 2013. The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

In the ten years since the MMRs opened, 19 Telecoms established services in the MMRs, of which three exited the MMRs. As of June 30, 2023, the 16 Telecoms had 27 cabinets in the MMRs, providing each market participant that requests to receive colocation services directly from the Exchange ("User")<sup>6</sup> with connectivity options.

It is clear that the MMRs are useful to Users. Although FIDS offers Users circuits,<sup>7</sup> all but a few Users use circuits supplied by Telecoms instead: as of June 1, 2023, more than 95% of the circuits for which Users contracted were supplied by the Telecoms.<sup>8</sup> Indeed, all

<sup>6</sup> Other than Telecoms, Users are the only FIDS customers with equipment physically located in the MDC.

<sup>7</sup> The Exchange notes that the FIDS circuits do not have a distance or latency advantage over the Telecoms within the MDC. FIDS has normalized (a) the distance between the MMRs and colocation and (b) the distance from the MPOE rooms, where the FIDS circuits are, and the colocation hall. As a result, there is no difference in the distances or latency within the MDC. In addition, FIDS itself is a Telecom customer. It is not a Telecom, does not own circuits and must contract with Telecoms to provide its services. The fact that the FIDS circuits do not have an advantage is reflected by the fact that FIDS circuits represent a small portion of the MDC circuits.

<sup>8</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

<sup>31</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

but two of the Users that use FIDS circuits also connect to Telecom circuits in the MMRs.<sup>9</sup>

The Exchange seeks to amend the Fee Schedule to add the services offered to Telecoms and the related fees. Such fees include cabinet and power-related fees, cross-connect fees, and several other fees pertaining to the suite of services that the Exchange offers to Telecoms that operate in the MMR environment.

**The MMR Structure**

Every User requires a circuit into and out of the MDC in order to connect its equipment outside of the MDC to its equipment within the MDC. As noted above, most Users choose to utilize Telecom circuits for these purposes.

A Telecom completes a circuit by placing equipment in a MMR and installing carrier circuits between one or more points outside the MDC and the Telecom’s MMR equipment.<sup>10</sup> A User that has contracted with the Telecom then connects to the Telecom’s MMR equipment using a cross connect from the User’s co-located equipment. Once connected to the Telecom’s equipment, the User can use the Telecom’s circuit to transport data into and out of the MDC.

A Telecom may sell access to its circuits to a second Telecom, so that the second Telecom may use the first Telecom’s circuit to access the MDC. In this way, the second Telecom can install its equipment in an MMR and sell the sublet circuits to its customers without incurring the cost of installing its own circuits to the MDC.<sup>11</sup>

**MMR Services**

The Exchange proposes to add the following MMR services and fees to the end of the Fee Schedule, under the heading “D. Meet-Me-Room (‘MMR’) Services.” With the exception of cross connects, which may be paid for by the

Telecom or by the Telecom’s customer, the proposed services and fees are specific to Telecoms.

**Cabinet-Related Services**

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the cabinets that FIDS provides Telecoms to set up their servers in the MMRs (collectively, the “Cabinet-Related Services”).

*Initial Fee per MMR Cabinet and MMR Monthly Fee for Cabinets:* FIDS offers Telecoms dedicated cabinets in the MMRs to house their equipment. The cabinets come in sizes based on the number of kilowatts (“kW”) allocated, subject to a minimum of 4 kW and maximum of 8 kW per cabinet.

Telecoms pay an initial fee for each cabinet and a monthly fee based on the number of kW allocated to all the Telecom’s cabinets.<sup>12</sup> To indicate how the fee is calculated, the Exchange proposes to add a note stating that the monthly fee is based on the total kW allocated to all of a Telecom’s cabinets.

The Exchange proposes to add the following fees and language to the Fee Schedule for the Cabinet-Related Services:

Initial Fee per MMR Cabinet: Dedicated Cabinet of between 4 kW and 8 kW ...	\$5,000
MMR Monthly Fee for Cabinets: Monthly fee is based on total kW allocated to all of a Telecom’s cabinets.	
Number of kW	Per kW fee monthly
4–8 .....	\$1,200
9–20 .....	1,050
21–40 .....	950
41 + .....	900

**Access and Service Fees**

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the access and services FIDS provides to Telecoms (collectively, the “Access and Service Fees”).

*Data Center Fiber Cross Connect:* FIDS offers fiber cross connects for an initial and monthly charge. Cross connects may run between a Telecom’s cabinets, between its cabinet and the

cabinet of another Telecom, or between its cabinet and its customer’s equipment. Cross connects may be bundled (*i.e.*, multiple cross connects within a single sheath) such that a single sheath can hold either one cross connect or six cross connects.

Importantly, a cross connect to MMR cabinets may be paid for by the Telecom or by the Telecom’s customer, who may be a User or another Telecom. The same fee applies irrespective of which entity purchases the cross connect.

*Carrier Connection Fee:* Telecoms contract with their customers for circuits into and out of the MDC. A Telecom is charged a monthly fee for providing such circuits to Users, on a per connection basis. Unlike cross connects, which may be purchased by either the Telecom or its customer, the Carrier Connection Fee is always charged to the Telecom.

*Conduit Sleeve Fee:* A Telecom’s circuits into and out of the MDC run through FIDS conduits. There are currently three FIDS conduit paths leading into the MDC. A Telecom determines which conduit or conduits it will use to carry its circuits, which are carried in individual conduit sleeves. The Telecom is charged an initial charge for the installation of circuits in the FIDS conduit, which covers up to five hours of work, and a monthly fee per conduit sleeve for using the FIDS conduit.<sup>13</sup>

*Connection to Time Protocol Feed:* FIDS offers Telecoms the option to purchase connectivity to the Precision Time Protocol, with monthly and initial charges. Telecoms may make use of time feeds to receive time and to synchronize clocks between computer systems or throughout a computer network, and time feeds may assist Telecoms in other functions, including record keeping or measuring response times.

*Expedite Fee:* FIDS offers Telecoms the option to expedite the completion of MMR services purchased or ordered by the Telecoms, for which the Exchange charges an “Expedite Fee.”

The Exchange proposes to add the following fees and language to the Fee Schedule:

<sup>13</sup> The number of conduit sleeves a Telecom uses is dependent on the equipment and technology it uses and the size of the circuits it sells to its customers, who may be Users or other Telecoms. Most Telecoms use one conduit sleeve or none at all.

<sup>9</sup> The Exchange believes that many Users that have FIDS circuits use the FIDS circuits for backup purposes.

<sup>10</sup> A User may use a wireless connection, including a third party wireless connection, to the MDC. In such a case, the portion of the connection closest to the MDC is wired. Accordingly, the present description applies to wireless connections as well as those that are wired. A Telecom elects which MMR it will use, or if it will use both.

<sup>11</sup> FIDS does not have to consent to, and need not be informed of, a Telecom’s sale of a circuit to another Telecom. In addition, neither FIDS nor the Exchange knows the termination point of a Telecom’s circuit or the content of any data sent on a circuit.

<sup>12</sup> For example, a Telecom that had two cabinets with a total power allocation of 12 kW would have a monthly charge of \$1,200 per kW for the first eight kW and \$1,050 per kW for the next four kW (between 9 kW and 12 kW), for a total of \$13,800.

Type of service	Description	Amount of charge
Data Center Fiber Cross Connect .....	Furnish and install 1 cross connect ..... Furnish and install bundle of 6 cross connects	\$500 initial charge plus \$600 monthly charge. \$500 initial charge plus \$1,800 monthly charge.
Conduit Sleeve Fee .....	Install (5 hrs) and maintain conduit sleeve supporting Telecom circuit into data center.	\$1,000 initial charge plus \$2,000 monthly charge per conduit sleeve.
Carrier Connection Fee .....	Maintain Telecom's connections to its non-Telecom data center customers.	\$1,150 monthly charge per connection.
Connection to Time Protocol Feed .....	Precision Time Protocol .....	\$1,000 initial charge plus \$250 monthly charge.
Expedite Fee .....	Expedited installation/completion of MMR service.	\$4,000 per request.

Service-Related Fees

The Exchange proposes to add the following services and fees relating to services FIDS provides to Telecoms (collectively, the "Service-Related Fees") to the Fee Schedule.

*Change Fee:* FIDS charges a Telecom a "Change Fee" if the Telecom requests a change to one or more existing MMR services that FIDS has already established or completed for the Telecom. The Change Fee is charged per order. If a Telecom orders two or more services at one time (for example,

through submitting an order form requesting multiple services) the Telecom is charged a one-time Change Fee, which would cover the multiple services.

*Hot Hands Service:* FIDS offers Telecoms a "Hot Hands Service," which allows Telecoms to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack a server in a Telecom's cabinet, power recycling, and install and document the fitting of cable in a Telecom's cabinet(s). The Hot Hands fee is charged per half hour.

*Shipping and Receiving:* FIDS offers shipping and receiving services to Telecoms, with a per shipment fee for the receipt of one shipment of goods at the MDC from the Telecom or supplier.

*Visitor Security Escort:* Telecom representatives are required to be accompanied by a visitor security escort during visits to the MDC. A fee per visit is charged.

To reflect the above FIDS services and fees, the Exchange proposes to add the following to the Fee Schedule:

Type of service	Description	Amount of charge
Change Fee .....	Change to a service that has already been installed/completed for a Telecom.	\$950 per request.
Hot Hands Service .....	Allows Telecom to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack, power recycling, and install and document cable.	\$100 per half hour.
Shipping and Receiving .....	Receipt of one shipment of goods at data center on behalf of Telecom (includes coordination of shipping and receiving).	\$100 per shipment.
Visitor Security Escort .....	All Telecom representatives are required to be accompanied by a visitor security escort during visits to the data center.	\$75 per visit.

Application and Impact of the Proposed Changes

The proposed change would apply equally to all telecommunications service providers that choose to purchase MMR services (*i.e.*, Telecoms). With the exception of cross connects, which may be paid for by a Telecom or by the Telecom's customer, the proposed services and fees are specific to Telecoms.

Under the proposed rule, a Telecom could select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no

conduit sleeves, and three carrier connections.

It is the Exchange's understanding that Telecoms do not have to purchase a large number of cabinets or amount of power in order to have a MMR presence. For example, as of June 1, 2023, nine of the 16 Telecoms had one cabinet and five Telecoms had two cabinets. Only two Telecoms had four cabinets. Similarly, half of the Telecoms had only 4 kW of power, and only two Telecoms reached 16 kW of power.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>15</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 because it is not

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>16</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

#### The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable, for the following reasons.

#### Proposed MMR Fees

It is in the Exchange's interest to set MMR prices at a reasonable level so that Telecoms will maximize their use of the MDC. When the MMR fees are set at a reasonable level, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers<sup>17</sup> to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted.<sup>18</sup>

The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a

service that the Exchange and FIDS cannot, because the Exchange and FIDS are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

The proposed rule is reasonable because it would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

If the Exchange were to set the MMR fees at an unreasonable level, it could expect the competitive environment among Telecoms in the MMRs to wither. Some Telecoms would likely exit the MDC market, while others would reduce the scope of their operations there, and some may never enter at all, as telecommunications service providers are not required to be in the MMRs. Fewer Telecoms in the MMRs would lead to less competition between the Telecoms for the sale of circuits to Users, which would likely cause the prices of circuits to rise. This, in turn, would increase Users' overall costs of doing business in the MDC. Some customers might choose to exit the MDC altogether, while others might seek to reduce their footprint in colocation by decreasing the number of cabinets, ports, and power they use, or by reducing the number of third-party data feeds they connect to at the MDC. The Exchange thus has every incentive to set the MMR fees at a rate that is reasonable for Telecoms, and no incentive to charge any more than that.

The Exchange's belief that the MMR fees are reasonable is supported by the fact that the MMR fees are very low when compared to both (1) the revenues that Telecoms earn by selling circuits in financial data centers and (2) the total connectivity fees that market participants pay at the MDC.

First, using public information, the Exchange reviewed the MMR fees in the context of Telecoms' business opportunities and expense. Specifically, the Exchange reviewed the public filings and financial statements of the parent company of some of the 16

Telecoms that currently operate in the MMRs.<sup>19</sup>

The parent company's financial statements disclose that the "financial services" share of its "fiber site rental revenue" for the fourth quarter of 2021 was 9%. Based on this disclosure, the Exchange estimated the parent company's annual financial services-related fiber site rental revenue for 2021, and then compared that figure to the MMR fees that the parent's Telecoms paid that year, as a percentage of the parent's revenue.<sup>20</sup> The Exchange concluded that the MMR fees paid by those Telecoms represent just 0.9% of the parent's financial services fiber site rental revenue.

Second, the Exchange sought to calculate the portion of market participants' total connectivity spend at the MDC that is attributable to MMR fees. Using data from February 2023, the Exchange summed the following connectivity costs: (1) colocation fees paid by market participants to FIDS; (2) MMR fees paid by Telecoms to FIDS;<sup>21</sup> and (3) a proxy<sup>22</sup> for the circuit and wireless connectivity fees that market participants pay to Telecoms and FIDS. MMR revenue for the same period was then divided by the summation of the connectivity costs. The Exchange determined that the MMR fees represented less than 5 percent of the total connectivity spend.<sup>23</sup>

In sum, the proposed MMR fees are a very small fraction of the overall fees that market participants pay for connectivity services at the MDC. This is further support for the Exchange's position that the MMR fees proposed herein are reasonable.

#### Security of the MDC

The Exchange's belief that the proposed rule change is reasonable

<sup>19</sup>The other Telecoms either are not obligated to make any information public or do not break out their financial information in a manner that would allow the Exchange to assess the impact of the MMR fees.

<sup>20</sup>Because the Exchange is obligated to keep customer identities confidential, it is not disclosing the name of the parent company in this filing, but will provide it to the Commission confidentially upon request.

<sup>21</sup>The analysis assumes that Telecoms pass the MMR fees on to the Users.

<sup>22</sup>The Exchange cannot know actual circuit fee revenue because Telecoms are not required to report what they charge their customers for circuits or to charge all customers the same amount. Accordingly, the Exchange used the fees for FIDS circuits as a proxy for the Telecom circuit fees. To estimate the "total circuit fee revenue," the Exchange multiplied what one User would pay for a FIDS circuit by the number of carrier connections.

<sup>23</sup>That percentage varies slightly within the range of 4.28% to 5.30% based on the precise proxy that is used for part (3) of the calculation above, depending on the share of connections one assumes to be wired vs. wireless and the circuit fees.

<sup>16</sup> 15 U.S.C. 78f(b)(4).

<sup>17</sup> "Hosting" is a service offered by a User to another entity in the User's space within the MDC. The Exchange allows Users to act as Hosting Users for a monthly fee. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR-NYSE-2015-40). Hosting Users' customers are referred to as "Hosted Customers."

<sup>18</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

takes into account the fact that no third party can establish a meet me room in the MDC, leaving FIDS the sole entity that can control a MMR. FIDS's operation and maintenance of the MDC MMRs is both rational and consistent with the normal commercial practice of data centers.<sup>24</sup> While the Exchange understands that most data centers offer meet me rooms, it is not aware of any data center operator, within or outside the U.S., that allows a third party to run a meet me room.

Safeguarding the security of the U.S. national market system—in this case, the MDC where the Exchange and the Affiliate SROs maintain trading engines and publish market data, and where the Securities Industry Automation Corporation (“SIAC”) publishes the National Market System (“NMS”) data feeds for which it is the exclusive securities information processor—is a key part of the operation of a free and open market and national market system and protecting investors and the public interest. The MMR structure furthers that goal.

Having FIDS control the MMRs limits third parties' need to enter the MDC, minimizing security risks. Because it controls the MMRs, FIDS can establish and enforce usage policies designed to protect the MMRs' security and treat the Telecoms equally and consistently. FIDS's control also ensures that the Telecoms' equipment and connections do not extend further into the MDC than the MMRs, and essentially makes the MMRs the demarcation or “hand-off” point for Telecom circuits coming into the MDC. If a third party established a meet me room in the MDC, FIDS could not ensure its control of any of these matters.

This structure reduces security risks because it allows the trading engines of the Exchange and the Affiliate SROs, SIAC's NMS market data publishers, and the ICE Global Network, including the FIDS circuits, to be physically and logically segregated from vendors and other third party service providers, including Telecoms.

In addition, the MMR structure provides Users with the opportunity to use Telecom circuits to create systems that are potentially more redundant and resilient than if they relied on just one exclusive provider. For example, while the original exclusive NYSE Euronext connectivity option to the MDC was designed to be redundant and

resilient,<sup>25</sup> today 16 additional Telecoms make circuits available to Users and help to maintain a securities market infrastructure that is stronger and more robust. The Exchange believes that the fact that most customers for FIDS circuits also purchase Telecom circuits shows the structural importance of the MMRs.

#### The Proposed Change Is Equitable

The Exchange believes that the proposed change is equitable, for the following reasons.

The Exchange believes that the proposed rule change is equitable because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in a MMR, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

The proposed rule is also equitable because it would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably so that Telecoms will maximize their use of the MDC. When the MMR fees are set equitably, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange

can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees equitably for Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

#### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in the MMRs of the MDC, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

The proposed rule is also not unfairly discriminatory because it would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably in a non-discriminatory way so that Telecoms will maximize their use of the MDC. When the MMR fees are set in a non-discriminatory fashion, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees in a way that does not

<sup>24</sup> In addition to the security aspects outlined herein, the Exchange notes that, because FIDS controls the MMRs, it can ensure that all cross connects between Telecoms and Users are normalized.

<sup>25</sup> See, e.g., oral testimony of Robert L.D. Colby, Deputy Director, Division of Market Regulation, Securities and Exchange Commission, before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services (February 12, 2003) (Testimony Concerning Recovery and Renewal: Protecting the Capital Markets Against Terrorism Post 9/11), at <https://www.sec.gov/news/testimony/021203src.htm>.

unfairly discriminate against any Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of section 6(b)(8) of the Act.<sup>26</sup>

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather encourages competition between Telecoms in the MMRs. It is in the Exchange's interest to set MMR prices at a reasonable level so that Telecoms are attracted to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC. The Exchange directly benefits from such competition between Telecoms because it increases the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted were supplied by the Telecoms.<sup>27</sup>

The proposed rule encourages competition between Telecoms because a Telecom may select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one

cabinet, 4 kW, no conduit sleeves, and three carrier connections. The proposed rule would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models.

In sum, the MMR structure creates incentives for Telecoms to compete against each other in providing their customers with connectivity services. These customers, which are both Users and other Telecoms, directly and indirectly participate in the national market system. As a result, the MMR structure fosters cooperation and coordination with persons facilitating transactions in securities.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act<sup>28</sup> and Rule 19b-4(f)(6) thereunder.<sup>29</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)<sup>30</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSE-2023-27 on the subject line.

##### *Paper Comments*

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-NYSE-2023-27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR-NYSE-2023-27 and should be submitted on or before August 22, 2023.

<sup>26</sup> 15 U.S.C. 78f(b)(8).

<sup>27</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

<sup>30</sup> 15 U.S.C. 78s(b)(2)(B).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-16241 Filed 7-31-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-98000; File No. SR-NYSEARCA-2023-47]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Connectivity Fee Schedule

July 26, 2023.

Pursuant to section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that on July 14, 2023, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Connectivity Fee Schedule (the “Fee Schedule”) to add the services available to third party telecommunications service providers in the two Mahwah data center meet me rooms. The proposed rule change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries,

set forth in sections A, B, and C below, of the most significant parts of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the Fee Schedule to add the services available to third party telecommunications service providers<sup>4</sup> in the two Mahwah, New Jersey data center (“MDC”) meet me rooms (“MMRs”).<sup>5</sup>

Meet me rooms are standard within the data center industry. A meet me room is a location within a data center where circuits from outside of the data center “meet” and connect with the circuits within the data center, such as those of colocated customers. As a general description, telecommunications service provider’s circuits from outside a data center are brought into a meet me room, where those circuits connect to a telecommunications service provider’s equipment in a meet me room cabinet. From there, a cross connect will complete the connection to a customer’s equipment in the data center’s colocation hall. The data center customer uses the circuit supplied by the telecommunications service provider to connect to locations outside of the data center, e.g., the customers’ back offices.

Before 2013, the MDC did not have a MMR, and all connectivity into and out of the MDC was provided by ICE’s predecessor, NYSE Euronext. In response to customer demand for more connectivity options, the MMRs opened to Telecoms in January 2013. The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS

are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

In the ten years since the MMRs opened, 19 Telecoms established services in the MMRs, of which three exited the MMRs. As of June 30, 2023, the 16 Telecoms had 27 cabinets in the MMRs, providing each market participant that requests to receive colocation services directly from the Exchange (“User”)<sup>6</sup> with connectivity options.

It is clear that the MMRs are useful to Users. Although FIDS offers Users circuits,<sup>7</sup> all but a few Users use circuits supplied by Telecoms instead: as of June 1, 2023, more than 95% of the circuits for which Users contracted were supplied by the Telecoms.<sup>8</sup> Indeed, all but two of the Users that use FIDS circuits also connect to Telecom circuits in the MMRs.<sup>9</sup>

The Exchange seeks to amend the Fee Schedule to add the services offered to Telecoms and the related fees. Such fees include cabinet and power-related fees, cross-connect fees, and several other fees pertaining to the suite of services that the Exchange offers to Telecoms that operate in the MMR environment.

#### The MMR Structure

Every User requires a circuit into and out of the MDC in order to connect its equipment outside of the MDC to its equipment within the MDC. As noted above, most Users choose to utilize Telecom circuits for these purposes.

A Telecom completes a circuit by placing equipment in a MMR and installing carrier circuits between one or more points outside the MDC and the Telecom’s MMR equipment.<sup>10</sup> A User

<sup>6</sup> Other than Telecoms, Users are the only FIDS customers with equipment physically located in the MDC.

<sup>7</sup> The Exchange notes that the FIDS circuits do not have a distance or latency advantage over the Telecoms within the MDC. FIDS has normalized (a) the distance between the MMRs and colocation and (b) the distance from the MPOE rooms, where the FIDS circuits are, and the colocation hall. As a result, there is no difference in the distances or latency within the MDC. In addition, FIDS itself is a Telecom customer. It is not a Telecom, does not own circuits and must contract with Telecoms to provide its services. The fact that the FIDS circuits do not have an advantage is reflected by the fact that FIDS circuits represent a small portion of the MDC circuits.

<sup>8</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

<sup>9</sup> The Exchange believes that many Users that have FIDS circuits use the FIDS circuits for backup purposes.

<sup>10</sup> A User may use a wireless connection, including a third party wireless connection, to the MDC. In such a case, the portion of the connection

<sup>31</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

<sup>4</sup> In this filing, telecommunications service providers that choose to purchase MMR services at the MDC are referred to as “Telecoms.” Telecoms are licensed by the Federal Communications Commission (“FCC”) and are not required to be, or be affiliated with, a member of the Exchange or an Affiliate SRO.

<sup>5</sup> Through its Fixed Income and Data Services (“FIDS”) (previously ICE Data Services) business, Intercontinental Exchange, Inc. (“ICE”) operates the MDC. The Exchange is an indirect subsidiary of ICE and is an affiliate of NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (together, the “Affiliate SROs”). Each Affiliate SRO has submitted substantially the same proposed rule change. See SR-NYSEAMER-2023-36, SR-NYSEARCA-2023-47, SR-NYSECHX-2023-14, and SR-NYSEENAT-2023-12.

that has contracted with the Telecom then connects to the Telecom's MMR equipment using a cross connect from the User's co-located equipment. Once connected to the Telecom's equipment, the User can use the Telecom's circuit to transport data into and out of the MDC.

A Telecom may sell access to its circuits to a second Telecom, so that the second Telecom may use the first Telecom's circuit to access the MDC. In this way, the second Telecom can install its equipment in an MMR and sell the sublet circuits to its customers without incurring the cost of installing its own circuits to the MDC.<sup>11</sup>

**MMR Services**

The Exchange proposes to add the following MMR services and fees to the end of the Fee Schedule, under the heading "D. Meet-Me-Room ('MMR') Services." With the exception of cross connects, which may be paid for by the Telecom or by the Telecom's customer, the proposed services and fees are specific to Telecoms.

**Cabinet-Related Services**

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the cabinets that FIDS provides Telecoms to set up their servers in the MMRs (collectively, the "Cabinet-Related Services").

*Initial Fee per MMR Cabinet and MMR Monthly Fee for Cabinets:* FIDS offers Telecoms dedicated cabinets in the MMRs to house their equipment. The cabinets come in sizes based on the number of kilowatts ("kW") allocated, subject to a minimum of 4 kW and maximum of 8 kW per cabinet. Telecoms pay an initial fee for each cabinet and a monthly fee based on the number of kW allocated to all the

Telecom's cabinets.<sup>12</sup> To indicate how the fee is calculated, the Exchange proposes to add a note stating that the monthly fee is based on the total kW's allocated to all of a Telecom's cabinets.

The Exchange proposes to add the following fees and language to the Fee Schedule for the Cabinet-Related Services:

Initial Fee per MMR Cabinet: Dedicated Cabinet of between 4 kW and 8 kW ...	\$5,000
MMR Monthly Fee for Cabinets: Monthly fee is based on total kW's allocated to all of a Telecom's cabinets.	
Number of kW's	Per kW fee monthly
4-8 .....	\$1,200
9-20 .....	1,050
21-40 .....	950
41 + .....	900

**Access and Service Fees**

The Exchange proposes to add to the Fee Schedule the following services and fees relating to the access and services FIDS provides to Telecoms (collectively, the "Access and Service Fees").

*Data Center Fiber Cross Connect:* FIDS offers fiber cross connects for an initial and monthly charge. Cross connects may run between a Telecom's cabinets, between its cabinet and the cabinet of another Telecom, or between its cabinet and its customer's equipment. Cross connects may be bundled (i.e., multiple cross connects within a single sheath) such that a single sheath can hold either one cross connect or six cross connects.

Importantly, a cross connect to MMR cabinets may be paid for by the Telecom or by the Telecom's customer, who may

be a User or another Telecom. The same fee applies irrespective of which entity purchases the cross connect.

*Carrier Connection Fee:* Telecoms contract with their customers for circuits into and out of the MDC. A Telecom is charged a monthly fee for providing such circuits to Users, on a per connection basis. Unlike cross connects, which may be purchased by either the Telecom or its customer, the Carrier Connection Fee is always charged to the Telecom.

*Conduit Sleeve Fee:* A Telecom's circuits into and out of the MDC run through FIDS conduits. There are currently three FIDS conduit paths leading into the MDC. A Telecom determines which conduit or conduits it will use to carry its circuits, which are carried in individual conduit sleeves. The Telecom is charged an initial charge for the installation of circuits in the FIDS conduit, which covers up to five hours of work, and a monthly fee per conduit sleeve for using the FIDS conduit.<sup>13</sup>

*Connection to Time Protocol Feed:* FIDS offers Telecoms the option to purchase connectivity to the Precision Time Protocol, with monthly and initial charges. Telecoms may make use of time feeds to receive time and to synchronize clocks between computer systems or throughout a computer network, and time feeds may assist Telecoms in other functions, including record keeping or measuring response times.

*Expedite Fee:* FIDS offers Telecoms the option to expedite the completion of MMR services purchased or ordered by the Telecoms, for which the Exchange charges an "Expedite Fee."

The Exchange proposes to add the following fees and language to the Fee Schedule:

Type of service	Description	Amount of charge
Data Center Fiber Cross Connect .....	Furnish and install 1 cross connect ..... Furnish and install bundle of 6 cross connects	\$500 initial charge plus \$600 monthly charge. \$500 initial charge plus \$1,800 monthly charge.
Conduit Sleeve Fee .....	Install (5 hrs) and maintain conduit sleeve supporting Telecom circuit into data center.	\$1,000 initial charge plus \$2,000 monthly charge per conduit sleeve.
Carrier Connection Fee .....	Maintain Telecom's connections to its non-Telecom data center customers.	\$1,150 monthly charge per connection.
Connection to Time Protocol Feed .....	Precision Time Protocol .....	\$1,000 initial charge plus \$250 monthly charge.
Expedite Fee .....	Expedited installation/completion of MMR service.	\$4,000 per request.

closest to the MDC is wired. Accordingly, the present description applies to wireless connections as well as those that are wired. A Telecom elects which MMR it will use, or if it will use both.

<sup>11</sup> FIDS does not have to consent to, and need not be informed of, a Telecom's sale of a circuit to another Telecom. In addition, neither FIDS nor the Exchange knows the termination point of a

Telecom's circuit or the content of any data sent on a circuit.

<sup>12</sup> For example, a Telecom that had two cabinets with a total power allocation of 12 kW would have a monthly charge of \$1,200 per kW for the first eight kW and \$1,050 per kW for the next four kW (between 9 kW and 12 kw), for a total of \$13,800.

<sup>13</sup> The number of conduit sleeves a Telecom uses is dependent on the equipment and technology it uses and the size of the circuits it sells to its customers, who may be Users or other Telecoms. Most Telecoms use one conduit sleeve or none at all.

Service-Related Fees

The Exchange proposes to add the following services and fees relating to services FIDS provides to Telecoms (collectively, the “Service-Related Fees”) to the Fee Schedule.

*Change Fee:* FIDS charges a Telecom a “Change Fee” if the Telecom requests a change to one or more existing MMR services that FIDS has already established or completed for the Telecom. The Change Fee is charged per order. If a Telecom orders two or more services at one time (for example,

through submitting an order form requesting multiple services) the Telecom is charged a one-time Change Fee, which would cover the multiple services.

*Hot Hands Service:* FIDS offers Telecoms a “Hot Hands Service,” which allows Telecoms to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack a server in a Telecom’s cabinet, power recycling, and install and document the fitting of cable in a Telecom’s cabinet(s). The Hot Hands fee is charged per half hour.

*Shipping and Receiving:* FIDS offers shipping and receiving services to Telecoms, with a per shipment fee for the receipt of one shipment of goods at the MDC from the Telecom or supplier.

*Visitor Security Escort:* Telecom representatives are required to be accompanied by a visitor security escort during visits to the MDC. A fee per visit is charged.

To reflect the above FIDS services and fees, the Exchange proposes to add the following to the Fee Schedule:

Type of service	Description	Amount of charge
Change Fee .....	Change to a service that has already been installed/completed for a Telecom.	\$950 per request.
Hot Hands Service .....	Allows Telecom to use on-site data center personnel to maintain Telecom equipment, support network troubleshooting, rack and stack, power recycling, and install and document cable.	\$100 per half hour.
Shipping and Receiving .....	Receipt of one shipment of goods at data center on behalf of Telecom (includes coordination of shipping and receiving).	\$100 per shipment.
Visitor Security Escort .....	All Telecom representatives are required to be accompanied by a visitor security escort during visits to the data center.	\$75 per visit.

Application and Impact of the Proposed Changes

The proposed change would apply equally to all telecommunications service providers that choose to purchase MMR services (*i.e.*, Telecoms). With the exception of cross connects, which may be paid for by a Telecom or by the Telecom’s customer, the proposed services and fees are specific to Telecoms.

Under the proposed rule, a Telecom could select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is the Exchange’s understanding that Telecoms do not have to purchase a large number of cabinets or amount of power in order to have a MMR presence. For example, as of June 1, 2023, nine of the 16 Telecoms had one cabinet and five Telecoms had two cabinets. Only two Telecoms had four cabinets. Similarly, half of the Telecoms had only 4 kW of power, and only two Telecoms reached 16 kW of power.

The proposed changes are not otherwise intended to address any other issues relating to services related to the MDC and/or related fees, and the Exchange is not aware of any problems

that market participants would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>15</sup> in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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 because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange further believes that the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>16</sup> because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposed Change Is Reasonable

The Exchange believes that the proposed rule change is reasonable, for the following reasons.

Proposed MMR Fees

It is in the Exchange’s interest to set MMR prices at a reasonable level so that Telecoms will maximize their use of the MDC. When the MMR fees are set at a reasonable level, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers<sup>17</sup> to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

<sup>17</sup> “Hosting” is a service offered by a User to another entity in the User’s space within the MDC. The Exchange allows Users to act as Hosting Users for a monthly fee. See Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40). Hosting Users’ customers are referred to as “Hosted Customers.”

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(5).

<sup>16</sup> 15 U.S.C. 78f(b)(4).

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the circuits for which Users contracted.<sup>18</sup>

The Telecoms have an expertise that the Exchange and FIDS do not have, and can provide their customers with a range of circuit options. More importantly, the Telecoms provide a service that the Exchange and FIDS cannot, because the Exchange and FIDS are not telecommunications service providers. In fact, the circuits that FIDS provides to customers are circuits that FIDS itself purchases as a customer from Telecoms.

The proposed rule is reasonable because it would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

If the Exchange were to set the MMR fees at an unreasonable level, it could expect the competitive environment among Telecoms in the MMRs to wither. Some Telecoms would likely exit the MDC market, while others would reduce the scope of their operations there, and some may never enter at all, as telecommunications service providers are not required to be in the MMRs. Fewer Telecoms in the MMRs would lead to less competition between the Telecoms for the sale of circuits to Users, which would likely cause the prices of circuits to rise. This, in turn, would increase Users' overall costs of doing business in the MDC. Some customers might choose to exit the MDC altogether, while others might seek to reduce their footprint in colocation by decreasing the number of cabinets, ports, and power they use, or by reducing the number of third-party data feeds they connect to at the MDC. The Exchange thus has every incentive to set the MMR fees at a rate that is reasonable for Telecoms, and no incentive to charge any more than that.

<sup>18</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

The Exchange's belief that the MMR fees are reasonable is supported by the fact that the MMR fees are very low when compared to both (1) the revenues that Telecoms earn by selling circuits in financial data centers and (2) the total connectivity fees that market participants pay at the MDC.

First, using public information, the Exchange reviewed the MMR fees in the context of Telecoms' business opportunities and expense. Specifically, the Exchange reviewed the public filings and financial statements of the parent company of some of the 16 Telecoms that currently operate in the MMRs.<sup>19</sup>

The parent company's financial statements disclose that the "financial services" share of its "fiber site rental revenue" for the fourth quarter of 2021 was 9%. Based on this disclosure, the Exchange estimated the parent company's annual financial services-related fiber site rental revenue for 2021, and then compared that figure to the MMR fees that the parent's Telecoms paid that year, as a percentage of the parent's revenue.<sup>20</sup> The Exchange concluded that the MMR fees paid by those Telecoms represent just 0.9% of the parent's financial services fiber site rental revenue.

Second, the Exchange sought to calculate the portion of market participants' total connectivity spend at the MDC that is attributable to MMR fees. Using data from February 2023, the Exchange summed the following connectivity costs: (1) colocation fees paid by market participants to FIDS; (2) MMR fees paid by Telecoms to FIDS;<sup>21</sup> and (3) a proxy<sup>22</sup> for the circuit and wireless connectivity fees that market participants pay to Telecoms and FIDS. MMR revenue for the same period was then divided by the summation of the connectivity costs. The Exchange determined that the MMR fees

<sup>19</sup> The other Telecoms either are not obligated to make any information public or do not break out their financial information in a manner that would allow the Exchange to assess the impact of the MMR fees.

<sup>20</sup> Because the Exchange is obligated to keep customer identities confidential, it is not disclosing the name of the parent company in this filing, but will provide it to the Commission confidentially upon request.

<sup>21</sup> The analysis assumes that Telecoms pass the MMR fees on to the Users.

<sup>22</sup> The Exchange cannot know actual circuit fee revenue because Telecoms are not required to report what they charge their customers for circuits or to charge all customers the same amount. Accordingly, the Exchange used the fees for FIDS circuits as a proxy for the Telecom circuit fees. To estimate the "total circuit fee revenue," the Exchange multiplied what one User would pay for a FIDS circuit by the number of carrier connections.

represented less than 5 percent of the total connectivity spend.<sup>23</sup>

In sum, the proposed MMR fees are a very small fraction of the overall fees that market participants pay for connectivity services at the MDC. This is further support for the Exchange's position that the MMR fees proposed herein are reasonable.

#### Security of the MDC

The Exchange's belief that the proposed rule change is reasonable takes into account the fact that no third party can establish a meet me room in the MDC, leaving FIDS the sole entity that can control a MMR. FIDS's operation and maintenance of the MDC MMRs is both rational and consistent with the normal commercial practice of data centers.<sup>24</sup> While the Exchange understands that most data centers offer meet me rooms, it is not aware of any data center operator, within or outside the U.S., that allows a third party to run a meet me room.

Safeguarding the security of the U.S. national market system—in this case, the MDC where the Exchange and the Affiliate SROs maintain trading engines and publish market data, and where the Securities Industry Automation Corporation ("SIAC") publishes the National Market System ("NMS") data feeds for which it is the exclusive securities information processor—is a key part of the operation of a free and open market and national market system and protecting investors and the public interest. The MMR structure furthers that goal.

Having FIDS control the MMRs limits third parties' need to enter the MDC, minimizing security risks. Because it controls the MMRs, FIDS can establish and enforce usage policies designed to protect the MMRs' security and treat the Telecoms equally and consistently. FIDS's control also ensures that the Telecoms' equipment and connections do not extend further into the MDC than the MMRs, and essentially makes the MMRs the demarcation or "hand-off" point for Telecom circuits coming into the MDC. If a third party established a meet me room in the MDC, FIDS could not ensure its control of any of these matters.

This structure reduces security risks because it allows the trading engines of

<sup>23</sup> That percentage varies slightly within the range of 4.28% to 5.30% based on the precise proxy that is used for part (3) of the calculation above, depending on the share of connections one assumes to be wired vs. wireless and the circuit fees.

<sup>24</sup> In addition to the security aspects outlined herein, the Exchange notes that, because FIDS controls the MMRs, it can ensure that all cross connects between Telecoms and Users are normalized.

the Exchange and the Affiliate SROs, SIAC's NMS market data publishers, and the ICE Global Network, including the FIDS circuits, to be physically and logically segregated from vendors and other third party service providers, including Telecoms.

In addition, the MMR structure provides Users with the opportunity to use Telecom circuits to create systems that are potentially more redundant and resilient than if they relied on just one exclusive provider. For example, while the original exclusive NYSE Euronext connectivity option to the MDC was designed to be redundant and resilient,<sup>25</sup> today 16 additional Telecoms make circuits available to Users and help to maintain a securities market infrastructure that is stronger and more robust. The Exchange believes that the fact that most customers for FIDS circuits also purchase Telecom circuits shows the structural importance of the MMRs.

#### The Proposed Change Is Equitable

The Exchange believes that the proposed change is equitable, for the following reasons.

The Exchange believes that the proposed rule change is equitable because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in a MMR, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

The proposed rule is also equitable because it would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. That selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no

conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably so that Telecoms will maximize their use of the MDC. When the MMR fees are set equitably, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees equitably for Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

#### The Proposed Change Is Not Unfairly Discriminatory

The Exchange believes its proposal is not unfairly discriminatory because it applies equally to all Telecoms. Any telecommunications service provider licensed by the FCC is eligible to be a Telecom operating in the MMRs of the MDC, irrespective of its size or type. All of the proposed services are available to all Telecoms on an equal basis at standardized pricing. A Telecom could change what services it receives at any time. Each Telecom could choose how it would like to structure and price its services for Users.

The proposed rule is also not unfairly discriminatory because it would not force Telecoms to accept a "one-size-fits-all" suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections.

It is in the Exchange's interest to set MMR prices equitably in a non-discriminatory way so that Telecoms will maximize their use of the MDC. When the MMR fees are set in a non-discriminatory fashion, the Exchange believes that Telecoms are more likely to install equipment in the MMRs and

to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC, which directly benefits the Exchange by increasing the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees in a way that does not unfairly discriminate against any Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposal will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of section 6(b)(8) of the Act.<sup>26</sup>

The proposed change does not affect competition among national securities exchanges or among members of the Exchange, but rather encourages competition between Telecoms in the MMRs. It is in the Exchange's interest to set MMR prices at a reasonable level so that Telecoms are attracted to install equipment in the MMRs and to sell circuits to Users for connecting into and out of the MDC. These Telecoms then compete with each other by pricing such circuits at competitive rates. These competitive rates for circuits help draw in more Users and Hosted Customers to the MDC. The Exchange directly benefits from such competition between Telecoms because it increases the customer base to whom the Exchange can sell its colocation services, which include cabinets, power, ports, and connectivity to hundreds of third-party data feeds, and because more Users and Hosted Customers leads, in many cases, to greater participation on the Exchange. In this way, by setting the MMR fees at a level attractive to Telecoms, the Exchange spurs demand for all of the services it sells at the MDC.

The Exchange's experience with the MMRs bears this out. Since the MMRs opened in 2013, 19 Telecoms established services in the MMRs, of which only three exited the MMRs. As of June 1, 2023, the 16 Telecoms in the MMR supplied more than 95% of the

<sup>25</sup> See, e.g., oral testimony of Robert L.D. Colby, Deputy Director, Division of Market Regulation, Securities and Exchange Commission, before the House Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises, Committee on Financial Services (February 12, 2003) (Testimony Concerning Recovery and Renewal: Protecting the Capital Markets Against Terrorism Post 9/11), at <https://www.sec.gov/news/testimony/021203src.htm>.

<sup>26</sup> 15 U.S.C. 78f(b)(8).

circuits for which Users contracted were supplied by the Telecoms.<sup>27</sup>

The proposed rule encourages competition between Telecoms because a Telecom may select the MMR services that best suit its needs. The selection may vary depending on the size, customer base, and needs of the Telecom at issue. For example, as of April 30, 2023, the Telecom with the largest MMR presence had four cabinets, 16 kW, four conduit sleeves, and 105 carrier connections. The Telecom with the smallest MMR presence had one cabinet, 4 kW, no conduit sleeves, and three carrier connections. The proposed rule would not force Telecoms to accept a “one-size-fits-all” suite of MMR services, but would instead permit them to tailor their service selection and fees to meet their own individual business models.

In sum, the MMR structure creates incentives for Telecoms to compete against each other in providing their customers with connectivity services. These customers, which are both Users and other Telecoms, directly and indirectly participate in the national market system. As a result, the MMR structure fosters cooperation and coordination with persons facilitating transactions in securities.

*C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act<sup>28</sup> and Rule 19b-4(f)(6) thereunder.<sup>29</sup> Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act and Rule 19b-4(f)(6)(iii) thereunder.

<sup>27</sup> To estimate the number of circuits, FIDS totaled the numbers of (a) carrier connection fees and (b) cross connects to FIDS circuits.

<sup>28</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>29</sup> 17 CFR 240.19b-4(f)(6).

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)<sup>30</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission’s internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-NYSEARCA-2023-47 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-NYSEARCA-2023-47. 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

<sup>30</sup> 15 U.S.C. 78s(b)(2)(B).

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-NYSEARCA-2023-47 and should be submitted on or before August 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-16239 Filed 7-31-23; 8:45 am]

BILLING CODE 8011-01-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-97996; File No. SR-CBOE-2023-034]

**Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Its Fees Schedule**

July 26, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 14, 2023, Cboe Exchange, Inc. (“Exchange” or “Cboe Options”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change**

Cboe Exchange, Inc. (the “Exchange” or “Cboe Options”) proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website (<http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx>), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

<sup>31</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule.<sup>3</sup> Particularly, the Exchange proposes to (i) adopt a New External Credit applicable to Cboe Options Top, (ii) adopt a credit towards the monthly Distribution fees for Cboe Options Top, (iii) modify the Cboe Options Top Enterprise Fee; and (iv) establish fees for the Cboe One Options Feed.

#### Cboe Top Data

By way of background, the Exchange offers the Cboe Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange's System. The Cboe Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in Cboe Options Top Data. The Exchange's affiliated options exchanges (*i.e.*, Cboe C2 Exchange, Inc. ("C2 Options"), Cboe BZX Exchange, Inc. ("BZX Options"), and Cboe EDGX Exchange, Inc. ("EDGX Options") (collectively, "Affiliates" and together with the Exchange, "Cboe Options Exchanges") also offer similar top-of-book data feeds.<sup>4</sup> Particularly, each of the Exchange's Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information

<sup>3</sup> The Exchange initially filed the proposed fee changes on March 1, 2023 (SR-CBOE-2023-014). On March 10, 2023, the Exchange withdrew that filing and submitted SR-CBOE-2023-015. On May 9, the Exchange withdrew that filing and submitted SR-CBOE-2023-026. On May 15, 2023, the Exchange withdrew that filing and submitted SR-CBOE-2023-027. On July 14, 2023, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> See C2 Options Fees Schedule, EDGX Rule 21.15, and BZX Rule 21.15.

provided by the Exchange through the Cboe Options Top. The Exchange proposes to make the following fee changes relating to Cboe Options Top.

#### New External Distributor Credit

The Exchange first proposes to adopt a New External Distributor Credit which will provide that new External Distributors of the Cboe Options Top feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize External Distributors to enlist new users to receive Cboe Options Top feed.<sup>5</sup> The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges, offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to External Distributors of top-of-book data feeds.<sup>6</sup> They also offer a three (3) month new External Credit applicable to External Distributors of summary depth-of-book feeds.<sup>7</sup>

#### Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the Cboe Options Top equal to the amount of its monthly User Fees up to a maximum of the External Distributor Fee for the Cboe Options Top feed.<sup>8</sup> The proposed Enterprise Fees discussed below would also be counted towards the Distributor Fee credit, equal to the amount of an External Distributor's monthly Cboe Options Top External Distribution fee. For example, an External Distributor will be subject to a \$5,000 monthly Distributor Fee where they elect to receive the Cboe Options Top. If that External Distributor reports User

<sup>5</sup> Any applicable User fees or Enterprise fee will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for Cboe Options Top. External Distributors who receive Cboe Options Top on a trial basis are still eligible for the New Distributor Credit and such free trial basis will not count towards the three (3) months. For example, if an External Distributor has a trial usage period from June 1 through June 30, the New External Distributor Credit will apply for July, August and September.

<sup>6</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>7</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees, Id.

<sup>8</sup> The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for Cboe Options Top. The Exchange also proposes to update Footnote 50 relating to the trial usage period to make clear that first time Users and Distributors of Exchange Market Data Products will not receive any applicable credits during their trial usage period.

quantities totaling \$5,000 or more of monthly usage of the Cboe Options Top, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$4,000 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees applicable to Cboe Options Top. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently \$5,000, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least \$5,000 in connection with the distribution of the Cboe Options Top (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>9</sup>

#### Enterprise Fee Tiers

The Exchange currently offers Distributors the ability to purchase a monthly (and optional) Enterprise license to receive the Cboe Options Top Feed for distribution to an unlimited number of Professional<sup>10</sup> and Non-Professional<sup>11</sup> Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and permits a Distributor to pay a flat fee for an unlimited number of Professional and Non-Professional Users and is in addition to the Distribution fees. The Exchange currently assesses a flat monthly Enterprise fee of \$300,000. The

<sup>9</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Id.

<sup>10</sup> A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

<sup>11</sup> A "Non-Professional User" of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

Exchange proposes to modify the current Enterprise Fee and adopt a tiered structure based on the number of Users a Distributor has. The Exchange proposes to adopt the following monthly Enterprise Fees: \$300,000 for up to 1,500,000 Users (Tier 1), \$450,000 for 1,500,001 to 2,500,000 Users (Tier 2) and \$600,000 for 2,500,001 or greater Users (Tier 3). The proposed fees are non-progressive (e.g., if a Distributor has 2,000,000 Users, it will be subject to \$450,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1.4 million Non-Professional Users who each receive Cboe Options Top at \$0.30 per month, then that Distributor will pay \$420,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (tier 1), it would alternatively pay a flat fee of \$300,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.<sup>12</sup> The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (e.g., if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Tier fee.<sup>13</sup> The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so.

<sup>12</sup> See Cboe Global Markets North American Data Policies, which provides that Distributors that have obtained an Enterprise license are required to report quantities monthly unless they reach the highest Enterprise Tier available (i.e., Tier 3), in which case they are required to report user quantities only every six months..

<sup>13</sup> The discount will be taken off the applicable fee assessed for the applicable Enterprise Tier each month. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be \$3,847,500 (\$300,000 – 5% × 9 months + \$450,000 – 5% × 3 months) as compared to \$4,050,000 (\$300,000 × 9 months + \$450,000 × 3 months).

### Cboe One Options Feed

By way of background, the Exchange recently adopted a new market data product called Cboe One Options Feed, which launched March 1, 2023.<sup>14</sup> Cboe One Options Feed will provide top-of-book quotation and last sale information based on the quotation and trading activity on the Exchange and each of its Affiliates, which the Exchange believes offers a comprehensive and highly representative view of US options pricing to market participants. More specifically, Cboe One Options Feed will contain the aggregate best bid and offer (“BBO”) of all displayed orders for options traded on the Exchange and its Affiliates, as well as individual last sale information and volume, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed.

The Cboe One Options Feed will also consist of Symbol Summary,<sup>15</sup> Market Status,<sup>16</sup> Trading Status,<sup>17</sup> and Trade Break<sup>18</sup> messages for the Exchange and each of its Affiliates.

The Exchange will use the following data feeds to create the Cboe One Options Feed, each of which is available to other vendors and/or distributors: Cboe Options Top Data, C2 Options Top Data, EDGX Options Top and BZX Options Top. A vendor and/or distributor that wishes to create a product like the Cboe One Options Feed could instead subscribe to each of the aforementioned data feeds. Any entity that receives, or elects to receive, the individual data feeds or the feeds that may be used to create a product like the Cboe One Options Feed would be able

<sup>14</sup> See SR-CBOE-2023-012.

<sup>15</sup> The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

<sup>16</sup> The Market Status message is disseminated to reflect a change in the status of one of the Cboe Options Exchanges. For example, the Market Status message will indicate whether one of the Cboe Options Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the Cboe One Options Feed as part of the aggregated BBO. The Market Status message will also indicate when a Cboe Options Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

<sup>17</sup> The Trade Break message will indicate when an execution on a Cboe Options Exchange is broken in accordance with the individual Cboe Options Exchange’s rules (e.g., Cboe Options Rule 6.5, C2 Option Rule 6.5, BZX Options Rule 20.6, EDGX Options Rule 20.6).

<sup>18</sup> The Trading Status message will indicate the current trading status of an option contract on each individual Cboe Options Exchange. A Trading Status message will also be sent whenever a security’s trading status changes. For example, a Trading Status message will be sent when a symbol is open for trading or when a symbol is subject to a trading halt or when it resumes trading.

to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients.

The Exchange proposes to amend its fee schedule to incorporate fees related to the Cboe One Options Feed. The Exchange has taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to assure that vendors<sup>19</sup> would be able to offer a similar product on the same terms as the Exchange from a cost perspective. Although Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that compose the proposed Cboe One Options Feed. Distributors and/or vendors would be able, if they chose, to create a data feed with the same information as the Cboe One Options Feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange’s proposed Cboe One Options Feed. The pricing the Exchange proposes to charge for the Cboe One Options Feed, as described more fully below, is not lower than the cost to a distributor or vendor to obtain the underlying data feeds. In fact, the Distribution and User (Professional and Non-Professional) fees, as well as the optional Enterprise Fees, that the Exchange proposes to adopt for the Cboe One Options Feed are equal to the respective combined fees for subscribing to each individual data feed. The Exchange also proposes to adopt a “Data Consolidation Fee,” which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, vendors would

<sup>19</sup> For purposes of this filing, a “vendor”, which is a type of distributor, will refer to any entity that receives an exchange market data product directly from the exchange or indirectly from another entity (for example, from an extranet) and then resell that data to a third-party customer (e.g., a data provider that resells exchange market data to a retail brokerage firm). The term “distributor” herein, will refer to any entity that receives an exchange market data product, directly from the exchange or indirectly from another entity (e.g., from a data vendor) and then distributes to individual internal or external end-users (e.g., a retail brokerage firm who distributes exchange data to its individual employees and/or customers). An example of a vendor’s “third-party customer” or “customer” is an institutional broker dealer or a retail broker dealer, who then may in turn distribute the data to their customers who are individual internal or external end-users.

be enabled to create a competing product based on the individual data feeds and charge their clients a fee that they believe reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

The proposed Cboe One Options Feed fees include the following, each of which are described in further detail below: (i) Distributor Fees; (ii) User Fees for both Professional and Non-Professional Users; (iii) Enterprise Fees; and (iv) a Data Consolidation Fee. The Exchange also proposes to adopt a New External Distributor credit and a credit against the monthly External Distribution Fee equal to the amount of monthly User Fees or Enterprise Fees, up to a maximum of the External Distributor Fee. To ensure consistency across the Cboe Options Exchanges, C2 Options, EDGX Options, and BZX Options will be filing companion proposals to reflect this proposal in their respective fee schedules.

#### Distributor Fees

As proposed, each Internal Distributor that receives the Cboe One Options Feed shall pay a fee of \$15,000 per month. The proposed Internal Distribution Fee equals the combined monthly Internal Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.*, the monthly Internal Distribution fees are \$3,000 for BZX Options Top, \$500 for EDGX Options Top, \$2,500 for C2 Options Top and \$9,000 for Cboe Options Top). The Exchange also proposes to assess External Distributors a monthly fee of \$10,000. The proposed External Distribution fee equals the combined monthly External Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.*, the monthly External Distribution fees are \$5,000 per month for the Cboe Options Top, \$2,500 per month for C2 Options Top, \$2,000 per month for BZX Options Top, and \$500 for EDGX Options Top). As noted above, the Exchange is proposing to charge Internal Distributors an Internal Distribution Fee, and External Distributors an External Distribution Fee, that equals the combined respective Distribution fees of each individual Top feed to ensure the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds are no greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors

could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to assess Professional User and Non-Professional User Fees. The proposed monthly Professional User fee for the Cboe Options Exchanges is \$30.50 per Professional User, which equals the combined monthly Professional User fees of the underlying individual Cboe Options Exchanges Top feeds (*i.e.*, \$15.50 per Professional User for the Cboe Options Top, \$5 per Professional User for C2 Options Top, \$5 per Professional User for BZX Options Top, and \$5 per Professional User for EDGX Options Top). The Exchange also proposes to adopt a monthly Non-Professional User fee of \$0.60 per Non-Professional User, which similarly represents the combined total Non-Professional User fee for the individual data feeds of the Cboe Options (*i.e.*, \$0.30 per Non-Professional User for Cboe Options Top, \$0.10 per Non-Professional User for C2 Options Top, \$0.10 per Non-Professional User for BZX Options Top, and \$0.10 per Non-Professional User for EDGX Options Top). Similar to the individual underlying feeds, Distributors that receive Cboe One Options Feed will be required to count Professional and Non-Professional Users to which they provide the data feed. The Exchange is proposing to charge Professional and Non-Professional User fees that equal the combined respective Professional and Non-Professional User fees of each individual Top feed to ensure the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds are no greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### Enterprise Fees

The Exchange also proposes to establish Enterprise Fees that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the Cboe One Options Feed for distribution to a specified number of Professional and Non-Professional Users. The Enterprise Fee will be an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for a specified number of Professional and Non-Professional Users, which the Exchange proposes to

make clear in the Fee Schedule. Like User fees, the Enterprise Fee would be assessed in addition to the Distribution Fees. The Exchange proposes to adopt the following monthly Enterprise Fees: \$350,000 for up to 1,500,000 Users (Tier 1), \$550,000 for 1,500,001 to 2,500,000 Users (Tier 2) and \$750,000 for 2,500,001 or greater Users (Tier 3). The proposed fee amounts for each Tier equals the combined Enterprise Fees for the respective tiers for the underlying individual Cboe Options Exchanges Top feeds (*i.e.*, \$300,000, \$450,000 and \$600,000 for Tiers 1, 2 and 3 respectively for the Cboe Options Top; \$10,000, \$20,000 and \$30,000 for Tiers 1, 2 and 3 respectively for C2 Options Top; \$20,000, \$40,000 and \$60,000 for Tiers 1, 2 and 3 respectively for BZX Options Top; and \$20,000, \$40,000 and \$60,000 for Tiers 1, 2 and 3 respectively for EDGX Options Top). The proposed fees are non-progressive (*e.g.*, if a Distributor has 2,000,000 Users, it will be subject to \$550,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive Cboe One Options Feed at \$0.60 per month (as proposed), then that Distributor will pay \$600,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (Tier 1), it would alternatively pay a flat fee of \$350,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of Cboe One Options Feed if it wishes for such Users to be covered by an Enterprise Fee rather than by per User fees.<sup>20</sup> A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.<sup>21</sup> The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.*, if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month,

<sup>20</sup> For example, if a Distributor that distributes Cboe Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

<sup>21</sup> See Cboe Global Markets North American Data Policies, which provides that Distributors that have obtained an Enterprise license are required to report quantities monthly unless they reach the highest Enterprise Tier available (*i.e.*, Tier 3), in which case they are required to report user quantities only every six months).

the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Fee tier.<sup>22</sup> The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so. The Exchange is proposing to charge Enterprise Fees that equal the combined respective Enterprise Fees of each individual Top feed and is also proposing to adopt a 5% discount for those that purchase an Annual license for Cboe Options Top (with a corresponding change will also be proposed by the Exchange's Affiliates) to ensure the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds will be the same as those that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### New External Distributor Credit

The Exchange proposes to adopt a New External Distributor Credit which would provide that new External Distributors of the Cboe One Options Feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize them to enlist new Users to receive the Cboe One Options Feed.<sup>23</sup> The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to

<sup>22</sup> The discount will be taken off the applicable fee assessed for the applicable Enterprise Tier each month. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be \$4,560,000 (\$350,000 – 5% × 9 months + \$550,000 – 5% × 3 months) as compared to \$4,800,000 (\$350,000 × 9 months + \$550,000 × 3 months). 3150000 [sic]

<sup>23</sup> Any applicable User fees will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for Cboe One Options and such free trial basis will not count towards the three (3) months. For example, if an External Distributor has a trial usage period from June 1 through June 30, the New External Distributor Credit will apply for July, August and September.

the Cboe One Summary Feed and a three (3) month New External Distributor Credit applicable to the distribution of the Cboe One Premium Feed.<sup>24</sup> To alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Options Feed based on the underlying data feeds, the Exchange is proposing, as discussed above, to also adopt a three-month New External Distributor Credit for the underlying top-of-book data feeds for the Cboe Options Exchanges. The respective proposals to adopt a three-month credit ensures the proposed New External Distributor Credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for new External Distributors to be greater than those that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly External Distributor Fee for the Cboe One Options Feed equal to the amount of its monthly User Fees up to a maximum of the External Distributor Fee for the Cboe One Options Feed.<sup>25</sup> The proposed Enterprise Fees discussed above would also be counted towards the Distributor Fee credit, equal to the amount of its monthly Cboe One Options External Distribution fee. For example, an External Distributor will be subject to a \$10,000 monthly Distributor Fee where they elect to receive the Cboe One Options Feed. If that External Distributor reports User quantities totaling \$10,000 or more of monthly User fees of the Cboe Options One Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$9,000 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently \$10,000, since the proposed

<sup>24</sup> See e.g., EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>25</sup> The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for Cboe One Options.

Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least \$10,000 in connection with the distribution of the Cboe One Options Feed (through a combination of the External Distribution Fee and per User Fees or the Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>26</sup> The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### Data Consolidation Fee

The Exchange also proposes to charge Distributors of the Cboe One Options Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed.<sup>27</sup> As stated above, the Exchange creates the Cboe One Options Feed from data derived from the Cboe Options Top, C2 Options Top, BZX Options Top, and EDGX Options Top Feeds. Distributors (including vendors) could similarly create a competing product to the Cboe One Options Feed based on these individual data feeds offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. Accordingly, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of

<sup>26</sup> See e.g., EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>27</sup> If a vendor distributes the Cboe One Options Feed to another firm, who then re-distributes the Cboe One Options Feed, both entities would be subject to the Data Consolidation Fee. A vendor will only be assessed a single Data Consolidated Fee, even if it distributes Cboe One Options Feed to more than one entity.

section 6(b) of the Act.<sup>28</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>29</sup> requirements that the rules of an exchange be 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. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>30</sup> In addition, the Exchange believes that the proposed rule change is consistent with section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.<sup>31</sup> The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>32</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.<sup>33</sup> The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient,

reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.<sup>34</sup> Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the Cboe Options Top Data Feed. Further, the quote and last sale data contained in the Cboe Data Feed is identical to the data sent to OPRA for redistribution to the public.<sup>35</sup> Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the Cboe Options Top Data Feed and Cboe One Options Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Accordingly, Distributors (including vendors) and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information<sup>36</sup> from OPRA for the same

<sup>34</sup> See e.g., NYSE Arca Options Proprietary Market Data Fees Schedule, MIAX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

<sup>35</sup> The Exchange makes available the top-of-book data and last sale data that is included in the Cboe Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

<sup>36</sup> "Consolidated Options Information" means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed "equivalent" if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC ("OPRA Plan"), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.<sup>37</sup> As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>38</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of Cboe Options Top Data and Cboe One Options Feed.

The Exchange has also taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to ensure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the Cboe One Options Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the Cboe One Options Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients with no greater cost than the Exchange.

In addition, vendors and Distributors that do not wish to purchase the Cboe One Options Feed may separately purchase the individual underlying

<sup>37</sup> *Id.*

<sup>38</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

<sup>28</sup> 15 U.S.C. 78f(b).

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78f(b)(8).

<sup>31</sup> 15 U.S.C. 78k-1.

<sup>32</sup> 15 U.S.C. 78f(b)(4).

<sup>33</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 24, 2023), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the Cboe One Options Feed. To enable such competition, the Exchange is offering the Cboe One Options Feed on terms that a vendor of those underlying feeds could offer a competing product if it so chooses.

In addition, the fees that are the subject of this rule filing are constrained by competition. Particularly, the Exchange competes with other exchanges (and their affiliates) that may choose to offer similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute a similar product than the Exchange charges to consolidate and distribute the Cboe One Options Feed, prospective Users likely could choose to not subscribe to, or would cease subscribing to, the Cboe One Options Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the Cboe One Options Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the Cboe One Options Feed.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

*User Fees.* The Exchange believes that the proposed Professional and Non-Professional User fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Professional and Non-Professional User fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. Combining the Professional and Non-Professional User fees, of each individual Top feed, respectively, further ensures vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors has long been used by other exchanges, including the Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and

make it more broadly available.<sup>39</sup> The Exchange also believes offering Cboe One Options Feed to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

*Enterprise Fee.* The Exchange believes the proposed Enterprise Fees for the Cboe One Options Feed and proposed changes to the Enterprise Fee for the Cboe Options Top feed are reasonable as the fees proposed could result in a fee reduction for Distributors of the respective products with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional or Non-Professional Users of the Cboe One Options Feed or Cboe Options Top Feed, then it may continue using the per User structure and benefit from the per User Fee reductions for each respective product. By reducing prices for Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the Cboe One Options Feed or Cboe Options Top feeds, thereby expanding the distribution of this market data for the benefit of investors. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess incrementally higher fees for higher tiers, because such tier covers a higher number of users (and indeed for those in Tier 3, an unlimited number of users). The Exchange believes it's reasonable to require monthly reporting only for proposed Tiers 1 and 2 because such tiers cover a defined number of Users that need to be accounted for billing purposes, as compared to Tier 3 which covers unlimited Users. Also as described above, the Enterprise Fees are

<sup>39</sup> See, e.g., Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR-NYSE-2008-131) (establishing the \$15 Non-Professional User Fee (Per User) for NYSE OpenBook); See, e.g., Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA's definition of the term "Nonprofessional"); and See Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR-CBOE-2013-087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of a license, or purchase of a specific tier level, need not do so. The Exchange believes the proposed discount for an Annual license is also reasonable, equitable and not unfairly discriminatory as it provides Distributors an opportunity to be assessed lower fees and is available to any Distributor who chooses to make a one-year commitment via the Annual license. The Exchange believes the proposed 5% discount will attract Distributors to purchase and make available Cboe Options Top Data and Cboe One Options Feed for at least one year, thereby fostering and expanding the distribution of these market data products for the benefit of investors, and particularly retail investors. The Exchange lastly notes that the proposed Enterprise Fees for Cboe One Options and the proposed 5% discount for an Annual license equal the combined respective Enterprise Fees and discount, respectively, of each individual Top feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

*Distributor Fees.* The Exchange believes that the proposed Distributor fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Internal and External Distributor fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal and External Distributors. The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the Cboe One Options Feed. Although the proposed distribution fee charged to External Distributors will be lower than the distribution fee charged to Internal Distributors, External Distributors are subject to Non-Professional user fees to which Internal Distributors are not subject, in addition to Professional User fees (or alternatively the proposed Enterprise Fee). The Exchange also notes that Cboe One Options Feed, like the underlying top-of-book feeds, are more likely to be distributed externally as such data is expected to be used more frequently by Non-Professional Users who, by definition, do not receive the data for commercial purposes (e.g., retail investors) and are therefore not internal. The Exchange therefore believes that the proposed reduced fee

for External Distributors is reasonable because it may encourage more distributors to choose to offer the Cboe One Options, thereby expanding the distribution of this market data for the benefit of investors, and particularly retail investors.

The proposed Distributor Fees for the Cboe One Options Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as they equal the combined fee of subscribing to each individual data feed of the Cboe Options Exchanges, which have been previously published by the Commission.

#### New External Distributor Credit

In addition, the Exchange believes it is reasonable to not charge External Distributors of Cboe Options Top and Cboe One Options Feed a Distribution Fee during their first three (3) months because such Distributors will not be subject to any External Distribution fees for those months.<sup>40</sup> Additionally, the Exchange's affiliated equities exchanges offer a similar credit for a similar market data product.<sup>41</sup> The proposed credit is also intended to incentivize new External Distributors to enlist Users to subscribe to the Cboe Options Top or Cboe One Options Feed in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive so that External Distributors have sufficient time to test the data within their own systems prior to going live externally. The Exchange also does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the Cboe One Options Feed could do so by subscribing to the underlying individual data feeds, all of which will also include a New External Distributor Credit identical to that proposed for the Cboe One Options Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such

free period for a competing product and may do so on the same terms as the Exchange.

*Distributor Fee Credit.* The Exchange believes the proposal to provide External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fee or Enterprise Fees, is reasonable as it could result in the External Distributor paying a discounted, or no, External Distribution fee.<sup>42</sup> The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>43</sup> Further, in every case the Exchange will receive at least the amount of the External Distribution fee for Cboe Options Top or Cboe One Options, as applicable, in connection with the distribution of each respective feed (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange believes it is also equitable and not unfairly discriminatory to apply the credit to External Distributors only because, like the free-three month credit described above, it is also intended to incentivize new External Distributors to enlist Users, including Non-Profession Users such as retail investors, to subscribe to the Cboe Options Top or Cboe One Options Feed in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive to only External Distributors. The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed in particular also ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed (*i.e.*, purchasing the underlying data feeds and aggregating

the feeds themselves) to sell to their clients.

The Exchange also believes updating Footnote 50 relating to Trial Usage avoids potential confusion as to whether new Users or Distributors would be entitled to any credits, including the proposed Distributor Fee Credit (and New External Distributor Credit), during the trial usage period. The Exchange believes its reasonable not to provide such credits as such new users are not paying assessed any fees during their trial period.

*Data Consolidation Fee.* The Exchange believes that the proposed \$500 per month Data Consolidation Fee charged to Distributors (including vendors) who receive the Cboe One Options Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all Distributors who obtain the Cboe One Options Feed will be charged the same fee. Accordingly, the Exchange believes that Distributors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable and would not permit unfair discrimination.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their respective needs for market information. Often, the choice comes down to price, as market data participants look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not

<sup>40</sup> As noted above, Distributors are additionally not assessed any Distribution fee during any trial usage period, under the existing Trial Usage period offered by the Exchange.

<sup>41</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>42</sup> A Distributor that does not qualify to receive the New External Distributor Credit, does not need to wait three months to be eligible to receive the Distributor Fee Credit (*i.e.*, the Distributor would be eligible to receive the credit immediately).

<sup>43</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

forced to subscribe to Cboe Options Top, Cboe One Options Feed or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's Cboe Options Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed waiver, credits and Enterprise Fees would apply to all similarly situated Distributors of Cboe Options Top on an equal and non-discriminatory basis. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

Additionally, the Cboe One Options Feed will enhance competition because it provides investors with an alternative option for receiving market data. Although the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Cboe One Options Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients and at a similar cost.

The proposed pricing the Exchange would charge for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying individual data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange proposes to charge for the Cboe One Options Feed is not lower than the cost to a vendor of receiving the underlying data feeds. Indeed, the proposed pricing equals the combined costs of the respective fees, and the proposed waivers are also being proposed for the underlying individual

feeds as well, thereby enabling a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. For these reasons, the Exchange believes the proposed pricing, fee waiver and credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

#### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>44</sup> and paragraph (f) of Rule 19b-4<sup>45</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings

to determine whether the proposed rule change should be approved or disapproved.

#### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CBOE-2023-034 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-CBOE-2023-034. 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-CBOE-2023-034 and should be submitted on or before August 22, 2023.

<sup>44</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>45</sup> 17 CFR 240.19b-4(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>46</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-16247 Filed 7-31-23; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97997; File No. SR-CboeBZX-2023-051]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Its Fees Schedule

July 26, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 14, 2023, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule.<sup>3</sup> Particularly, the Exchange proposes to (i) adopt a New External Credit applicable to BZX Options Top, (ii) adopt a credit towards the monthly Distribution fees for BZX Options Top, (iii) modify the BZX Options Top Enterprise Fee; and (iv) establish fees for Cboe One Options Feed.

##### BZX Top Data

By way of background, the Exchange offers the BZX Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange’s System. The BZX Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in BZX Options Top Data. The Exchange’s affiliated options exchanges (*i.e.*, Cboe Exchange, Inc. (“Cboe Options”), Cboe C2 Exchange, Inc. (“C2 Options”), and Cboe EDGX Exchange, Inc. (“EDGX Options”) (collectively, “Affiliates” and together with the Exchange, “Cboe Options Exchanges”) also offer similar top-of-book data feeds.<sup>4</sup> Particularly, each of the Exchange’s Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the BZX Options Top. The Exchange proposes to make the following fee changes relating to BZX Options Top.

##### New External Distributor Credit

The Exchange first proposes to adopt a New External Distributor Credit which will provide that new External Distributors of the BZX Options Top feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize External

Distributors to enlist new users to receive BZX Options Top feed.<sup>5</sup> The Exchange notes that other exchanges, including the Exchange’s affiliated equities exchanges, offer similar credits for similar market data products. For example, Cboe’s equities exchanges currently offer a one (1) month New External Distributor Credit applicable to External Distributors of top-of-book data feeds.<sup>6</sup> They also offer a three (3) month new External Credit applicable to External Distributors of summary depth-of-book feeds.<sup>7</sup>

##### Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly External Distributor Fee for the BZX Options Top equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the BZX Options Top feed.<sup>8</sup> The proposed Enterprise Fees discussed below would also be counted towards the Distributor Fee credit, equal to the amount of an External Distributor’s monthly BZX Options Top External Distribution fee. For example, an External Distributor will be subject to a \$2,000 monthly Distributor Fee where they elect to receive the BZX Options Top. If that External Distributor reports User quantities totaling \$2,000 or more of monthly usage of the BZX Options Top, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$1,500 of monthly

<sup>5</sup> Any applicable User fees or Enterprise fee will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor’s trial usage period for BZX Options Top. External Distributors who receive BZX Options Top on a trial basis are still eligible for the New Distributor Credit and such free trial basis will not count towards the three (3) months. For example, if an External Distributor has a trial usage period from June 1 through June 30, the New External Distributor Credit will apply for July, August and September. Additionally, pursuant to the BZX Options Fees Schedule, a Distributor that distributes BZX Options Top both externally and internally will be subject to the greater of the two Distribution fees set forth in the fees schedule (*i.e.*, \$3,000). The New External Distributor Credit applies only to the External Distribution Fee (*i.e.*, \$2,000) and therefore any External Distributor that also distributes BZX Options Top internally would still be subject to the \$1,000 difference.

<sup>6</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>7</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>8</sup> The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for BZX Options Top. The Exchange also proposes to update the Trial Usage section of the Fees Schedule to make clear that first time Users and Distributors of Exchange Market Data Products will not receive any applicable credits during their trial usage period.

<sup>3</sup> The Exchange initially filed the proposed fee changes on March 1, 2023 (SR-CboeBZX-2023-018). On March 3, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX-2023-019. On March 16, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX-2023-021. On May 15, 2023, the Exchange withdrew that filing and submitted SR-CboeBZX-2023-035. SR-CBOE-2023-027 [sic]. On July 14, 2023, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> See Cboe Options Fees Schedule, C2 Options Fees Schedule, and EDGX Rule 21.15.

<sup>46</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

usage, it will pay a net of \$500 for the Distributor Fee.<sup>9</sup> External Distributors will remain subject to the per User fees applicable to BZX Options Top. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently \$2,000, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least \$2,000 in connection with the distribution of the BZX Options Top (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>10</sup>

#### Enterprise Fee Tiers

The Exchange currently offers Distributors the ability to purchase a monthly (and optional) Enterprise license to receive the BZX Options Top Feed for distribution to an unlimited number of Professional<sup>11</sup> and Non-Professional<sup>12</sup> Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and permits a Distributor to pay a flat fee for an unlimited number of Professional and Non-Professional Users and is in addition to the Distribution fees. The

<sup>9</sup> As noted above, pursuant to the BZX Options Fees Schedule, a Distributor that distributes BZX Options Top both externally and internally will be subject to the greater of the two Distribution fees set forth in the fees schedule (*i.e.*, \$3,000). The Distributor Fee Credit applies only to the External Distribution Fee (*i.e.*, \$2,000) and therefore any External Distributor that also distributes BZX Options Top internally would still be subject to the \$1,000 difference.

<sup>10</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, *Id.*

<sup>11</sup> A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

<sup>12</sup> A "Non-Professional User" of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

Exchange currently assesses a flat monthly Enterprise fee of \$20,000. The Exchange proposes to modify the current Enterprise Fee and adopt a tiered structure based on the number of Users a Distributor has. The Exchange proposes to adopt the following monthly Enterprise Fees: \$20,000 for up to 1,500,000 Users (Tier 1), \$40,000 for 1,500,001 to 2,500,000 Users (Tier 2) and \$60,000 for 2,500,001 or greater Users (Tier 3). The proposed fees are non-progressive (*e.g.*, if a Distributor has 2,000,000 Users, it will be subject to \$40,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive BZX Options Top at \$0.10 per month, then that Distributor will pay \$100,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (tier 1), it would alternatively pay a flat fee of \$20,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.<sup>13</sup> The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.*, if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Tier fee.<sup>14</sup> The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number

<sup>13</sup> See Cboe Global Markets North American Data Policies, which provides that Distributors that have obtained an Enterprise license are required to report quantities monthly unless they reach the highest Enterprise Tier available (*i.e.*, Tier 3), in which case they are required to report user quantities only every six months).

<sup>14</sup> The discount will be taken off the applicable fee assessed for the applicable Enterprise Tier each month. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be \$285,000 (\$20,000 – 5% × 9 months + \$40,000 – 5% × 3 months) as compared to \$300,000 (\$20,000 × 9 months + \$40,000 × 3 months).

of Users to benefit from purchase of a license need not do so.

#### Cboe One Options Feed

By way of background, the Exchange recently adopted a new market data product called Cboe One Options Feed, which launched March 1, 2023.<sup>15</sup> Cboe One Options Feed will provide top-of-book quotation and last sale information based on the quotation and trading activity on the Exchange and each of its Affiliates, which the Exchange believes offers a comprehensive and highly representative view of US options pricing to market participants. More specifically, Cboe One Options Feed will contain the aggregate best bid and offer ("BBO") of all displayed orders for options traded on the Exchange and its Affiliates, as well as individual last sale information and volume, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed.

The Cboe One Options Feed will also consist of Symbol Summary,<sup>16</sup> Market Status,<sup>17</sup> Trading Status,<sup>18</sup> and Trade Break<sup>19</sup> messages for the Exchange and each of its Affiliates.

The Exchange will use the following data feeds to create the Cboe One Options Feed, each of which is available to other vendors and/or distributors: Cboe Options Top Data, C2 Options Top Data, EDGX Options Top and BZX Options Top. A vendor and/or distributor that wishes to create a product like the Cboe One Options Feed could instead subscribe to each of the aforementioned data feeds. Any entity that receives, or elects to receive, the

<sup>15</sup> See SR-CboeBZX-2023-014.

<sup>16</sup> The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

<sup>17</sup> The Market Status message is disseminated to reflect a change in the status of one of the Cboe Options Exchanges. For example, the Market Status message will indicate whether one of the Cboe Options Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the Cboe One Options Feed as part of the aggregated BBO. The Market Status message will also indicate when a Cboe Options Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

<sup>18</sup> The Trade Break message will indicate when an execution on a Cboe Options Exchange is broken in accordance with the individual Cboe Options Exchange's rules (*e.g.*, Cboe Options Rule 6.5, C2 Option Rule 6.5, BZX Options Rule 20.6, EDGX Options Rule 20.6).

<sup>19</sup> The Trading Status message will indicate the current trading status of an option contract on each individual Cboe Options Exchange. A Trading Status message will also be sent whenever a security's trading status changes. For example, a Trading Status message will be sent when a symbol is open for trading or when a symbol is subject to a trading halt or when it resumes trading.

individual data feeds or the feeds that may be used to create a product like the Cboe One Options Feed would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients.

The Exchange proposes to amend its fee schedule to incorporate fees related to the Cboe One Options Feed. The Exchange has taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to assure that vendors<sup>20</sup> would be able to offer a similar product on the same terms as the Exchange from a cost perspective. Although Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that compose the proposed Cboe One Options Feed. Distributors and/or vendors would be able, if they chose, to create a data feed with the same information as the Cboe One Options Feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange's proposed Cboe One Options Feed. The pricing the Exchange proposes to charge for the Cboe One Options Feed, as described more fully below, is not lower than the cost to a distributor or vendor to obtain the underlying data feeds. In fact, the Distribution and User (Professional and Non-Professional) fees, as well as the optional Enterprise Fees, that the Exchange proposes to adopt for the Cboe One Options Feed are equal to the respective combined fees for subscribing to each individual data feed. The Exchange also proposes to adopt a "Data Consolidation Fee," which would reflect the value of the aggregation and

consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, Distributors would be enabled to create a competing product based on the individual data feeds and charge their clients a fee that they believe reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that Distributors, including vendors, could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

The proposed Cboe One Options Feed fees include the following, each of which are described in further detail below: (i) Distributor Fees; (ii) User Fees for both Professional and Non-Professional Users; (iii) Enterprise Fees; and (iv) a Data Consolidation Fee. The Exchange also proposes to adopt a New External Distributor credit and a credit against the monthly External Distribution Fee equal to the amount of monthly User Fees or Enterprise Fees up to a maximum of the External Distributor Fee. To ensure consistency across the Cboe Options Exchanges, Cboe Options, EDGX Options, and C2 Options will be filing companion proposals to reflect this proposal in their respective fee schedules.

#### Distributor Fees

As proposed, each Internal Distributor that receives the Cboe One Options Feed shall pay a fee of \$15,000 per month. The proposed Internal Distribution Fee equals the combined monthly Internal Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.*, the monthly Internal Distribution fees are \$3,000 for BZX Options Top, \$500 for EDGX Options Top, \$2,500 for C2 Options Top and \$9,000 for Cboe Options Top). The Exchange also proposes to assess External Distributors a monthly fee of \$10,000. The proposed External Distribution fee equals the combined monthly External Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (*i.e.*, the monthly External Distribution fees are \$5,000 per month for the Cboe Options Top, \$2,500 per month for C2 Options Top, \$2,000 per month for BZX Options Top, and \$500 for EDGX Options Top). As noted above, the Exchange is proposing to charge Internal Distributors an Internal Distribution Fee, and External Distributors an External Distribution Fee that equals the combined respective Distribution fees of each individual Top feed to ensure the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and

EDGX Options Top feeds are no greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to assess Professional User and Non-Professional User Fees. The proposed monthly Professional User fee for the Cboe Options Exchanges is \$30.50 per Professional User, which equals the combined monthly Professional User fees of the underlying individual Cboe Options Exchanges Top feeds (*i.e.*, \$15.50 per Professional User for the Cboe Options Top, \$5 per Professional User for C2 Options Top, \$5 per Professional User for BZX Options Top, and \$5 per Professional User for EDGX Options Top). The Exchange also proposes to adopt a monthly Non-Professional User fee of \$0.60 per Non-Professional User which similarly represents the combined total Non-Professional User fee for the individual data feeds of the Cboe Options (*i.e.*, \$0.30 per Non-Professional User for Cboe Options Top, \$0.10 per Non-Professional User for C2 Options Top, \$0.10 per Non-Professional User for BZX Options Top, and \$0.10 per Non-Professional User for EDGX Options Top). Similar to the individual underlying feeds, Distributors that receive Cboe One Options Feed will be required to count Professional and Non-Professional Users to which they provide the data feed. The Exchange is proposing to charge Professional and Non-Professional User fees that equal the combined respective Professional and Non-Professional User fees of each individual Top feed to ensure the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds are no greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### Enterprise Fees

The Exchange also proposes to establish Enterprise Fees that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the Cboe One Options Feed for distribution to a specified number of Professional and Non-Professional Users. The Enterprise Fee will be an alternative to Professional and Non-Professional User fees and will

<sup>20</sup>For purposes of this filing, a "vendor", which is a type of distributor, will refer to any entity that receives an exchange market data product directly from the exchange or indirectly from another entity (for example, from an extranet) and then resell that data to a third-party customer (*e.g.*, a data provider that resells exchange market data to a retail brokerage firm). The term "distributor" herein, will refer to any entity that receives an exchange market data product, directly from the exchange or indirectly from another entity (*e.g.*, from a data vendor) and then distributes to individual internal or external end-users (*e.g.*, a retail brokerage firm who distributes exchange data to its individual employees and/or customers). An example of a vendor's "third-party customer" or "customer" is an institutional broker dealer or a retail broker dealer, who then may in turn distribute the data to their customers who are individual internal or external end-users.

permit a Distributor to pay a flat fee to receive the data for a specified number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. Like User fees, the Enterprise Fee would be assessed in addition to the Distribution Fees. The Exchange proposes to adopt the following monthly Enterprise Fees: \$350,000 for up to 1,500,000 Users (Tier 1), \$550,000 for 1,500,001 to 2,500,000 Users (Tier 2) and \$750,000 for 2,500,001 or greater Users (Tier 3). The proposed fee amounts for each Tier equals the combined Enterprise Fees for the respective tiers for the underlying individual Cboe Options Exchanges Top feeds (*i.e.*, \$300,000, \$450,000 and \$600,000 for Tiers 1, 2 and 3 respectively for the Cboe Options Top; \$10,000, \$20,000 and \$30,000 for Tiers 1, 2 and 3 respectively for C2 Options Top; \$20,000, \$40,000 and \$60,000 for Tiers 1, 2 and 3 respectively for BZX Options Top; and \$20,000, \$40,000 and \$60,000 for Tiers 1, 2 and 3 respectively for EDGX Options Top). The proposed fees are non-progressive (*e.g.*, if a Distributor has 2,000,000 Users, it will be subject to \$550,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive Cboe One Options Feed at \$0.60 per month (as proposed), then that Distributor will pay \$600,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (Tier 1), it would alternatively pay a flat fee of \$350,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of Cboe One Options Feed if it wishes for such Users to be covered by an Enterprise Fee rather than by per User fees.<sup>21</sup> A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.<sup>22</sup> The Exchange notes that if the reported number of Users exceed the

<sup>21</sup> For example, if a Distributor that distributes BZX Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

<sup>22</sup> See Cboe Global Markets North American Data Policies, which provides that Distributors that have obtained an Enterprise license are required to report quantities monthly unless they reach the highest Enterprise Tier available (*i.e.*, Tier 3), in which case they are required to report user quantities only every six months).

Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.*, if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Fee tier.<sup>23</sup> The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so. The Exchange is proposing to charge Enterprise Fees that equal the combined respective Enterprise Fees of each individual Top feed and is also proposing to adopt a 5% discount for those that purchase an Annual license for Cboe Options Top (with a corresponding change will also be proposed by the Exchange's Affiliates) to ensure the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds will be the same as those that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### New External Distributor Credit

The Exchange proposes to adopt a New External Distributor Credit which would provide that new External Distributors of the Cboe One Options Feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize them to enlist new Users to receive the Cboe One Options Feed.<sup>24</sup> The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges offer similar credits for

<sup>23</sup> The discount will be taken off the applicable fee assessed for the applicable Enterprise Tier each month. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be \$4,560,000 (\$350,000—5% × 9 months + \$550,000 – 5% × 3 months) as compared to \$4,800,000 (\$350,000 × 9 months + \$550,000 × 3 months). 31500000 [sic]

<sup>24</sup> Any applicable User fees will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for Cboe One Options and such free trial basis will not count towards the three (3) months. For example, if an External Distributor has a trial usage period from June 1 through June 30, the New External Distributor Credit will apply for July, August and September.

similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to the Cboe One Summary Feed and a three (3) month New External Distributor Credit applicable to the distribution of the Cboe One Premium Feed.<sup>25</sup> To alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Options Feed based on the underlying data feeds, the Exchange is proposing, as discussed above, to also adopt a three-month New External Distributor Credit for the underlying top-of-book data feeds for the Cboe Options Exchanges. The respective proposals to adopt a three-month credit ensures the proposed New External Distributor Credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for new External Distributors to be greater than those that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly External Distributor Fee for the Cboe One Options Feed equal to the amount of its monthly User Fees up to a maximum of the External Distributor Fee for the Cboe One Options Feed.<sup>26</sup> The proposed Enterprise Fees discussed above would also be counted towards the Distributor Fee credit, equal to the amount of its monthly Cboe One Options External Distribution fee. For example, an External Distributor will be subject to a \$10,000 monthly Distributor Fee where they elect to receive the Cboe One Options Feed. If that External Distributor reports User quantities totaling \$10,000 or more of monthly User fees of the Cboe Options One Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$9,000 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. External Distributors who choose to purchase an Enterprise

<sup>25</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>26</sup> The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for Cboe One Options.

license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently \$10,000, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least \$10,000 in connection with the distribution of the Cboe One Options Feed (through a combination of the External Distribution Fee and per User Fees or the Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>27</sup> The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### Data Consolidation Fee

The Exchange also proposes to charge Distributors of the Cboe One Options Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed.<sup>28</sup> As stated above, the Exchange creates the Cboe One Options Feed from data derived from the Cboe Options Top, C2 Options Top, BZX Options Top, and EDGX Options Top Feeds. Distributors (including vendors) could similarly create a competing product to the Cboe One Options Feed based on these individual data feeds offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. Accordingly, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the

“Act”) and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.<sup>29</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>30</sup> requirements that the rules of an exchange be 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. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>31</sup> In addition, the Exchange believes that the proposed rule change is consistent with section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.<sup>32</sup> The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>33</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.<sup>34</sup> The Exchange believes top-of-book quotation and transaction

data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other national securities exchanges today, not counting products offered by the Exchange’s affiliates, and each of the Exchange’s affiliated U.S. options exchanges also offers similar top-of-book data.<sup>35</sup> Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the BZX Options Top Data Feed. Further, the quote and last sale data contained in the BZX Data Feed is identical to the data sent to OPRA for redistribution to the public.<sup>36</sup> Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the BZX Options Top Data Feed and Cboe One Options Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Accordingly, Distributors (including vendors) and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information<sup>37</sup> from OPRA for the same

<sup>35</sup> See e.g., NYSE Arca Options Proprietary Market Data Fees Schedule, MIA Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

<sup>36</sup> The Exchange makes available the top-of-book data and last sale data that is included in the BZX Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

<sup>37</sup> “Consolidated Options Information” means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed “equivalent” if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC (“OPRA Plan”), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively.

<sup>27</sup> See e.g., EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>28</sup> If a vendor distributes the Cboe One Options Feed to another firm, who then re-distributes the Cboe One Options Feed, both entities would be subject to the Data Consolidation Fee. A vendor will only be assessed a single Data Consolidated Fee, even if it distributes Cboe One Options Feed to more than one entity.

<sup>29</sup> 15 U.S.C. 78f(b).

<sup>30</sup> 15 U.S.C. 78f(b)(5).

<sup>31</sup> 15 U.S.C. 78f(b)(8).

<sup>32</sup> 15 U.S.C. 78k-1.

<sup>33</sup> 15 U.S.C. 78f(b)(4).

<sup>34</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 24, 2023), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular requirement.<sup>38</sup> As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>39</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange’s data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of BZX Options Top Data and Cboe One Options Feed.

The Exchange has also taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to ensure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the Cboe One Options Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the Cboe One Options Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients with no greater cost than the Exchange.

Additionally, the Exchange’s Data Order Form (used for requesting the Exchange’s market data products) requires confirmation that the requesting market participant receives data from OPRA.

<sup>38</sup> *Id.*

<sup>39</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

In addition, vendors and Distributors that do not wish to purchase the Cboe One Options Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the Cboe One Options Feed. To enable such competition, the Exchange is offering the Cboe One Options Feed on terms that a vendor of those underlying feeds could offer a competing product if it so chooses.

In addition, the fees that are the subject of this rule filing are constrained by competition. Particularly, the Exchange competes with other exchanges (and their affiliates) that may choose to offer similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute a similar product than the Exchange charges to consolidate and distribute the Cboe One Options Feed, prospective Users likely could choose to not subscribe to, or would cease subscribing to, the Cboe One Options Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the Cboe One Options Feed into the vendor’s own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the Cboe One Options Feed.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

*User Fees.* The Exchange believes that the proposed Professional and Non-Professional User fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Professional and Non-Professional User fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors. Combining the Professional and Non-Professional User fees, of each individual Top feed, respectively, further ensures vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors has long been used by other exchanges, including the

Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and make it more broadly available.<sup>40</sup> The Exchange also believes offering Cboe One Options Feed to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

*Enterprise Fee.* The Exchange believes the proposed Enterprise Fees for the Cboe One Options Feed and proposed changes to the Enterprise Fee for the BZX Options Top feed are reasonable as the fees proposed could result in a fee reduction for Distributors of the respective products with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional or Non-Professional Users of the Cboe One Options Feed or BZX Options Top Feed, then it may continue using the per User structure and benefit from the per User Fee reductions for each respective product. By reducing prices for Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the Cboe One Options or BZX Options Top feeds, thereby expanding the distribution of this market data for the benefit of investors. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess incrementally higher fees for higher tiers, because such tier covers a higher number of users (and indeed for those in Tier 3, an unlimited number of users). The Exchange believes it’s reasonable to require monthly reporting only for proposed Tiers 1 and 2 because such tiers cover a defined number of Users that need to be accounted for billing purposes, as compared to Tier 3

<sup>40</sup> See, e.g., Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR-NYSE-2008-131) (establishing the \$15 Non-Professional User Fee (Per User) for NYSE OpenBook); See, e.g., Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA’s definition of the term “Nonprofessional”); and See Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR-CBOE-2013-087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

which covers unlimited Users. Also as described above, the Enterprise Fees are entirely optional. A firm that does not have a sufficient number of Users to benefit from purchase of a license, or purchase of a specific tier level, need not do so. The Exchange believes the proposed discount for an Annual license is also reasonable, equitable and not unfairly discriminatory as it provides Distributors an opportunity to be assessed lower fees and is available to any Distributor who chooses to make a one-year commitment via the Annual license. The Exchange believes the proposed 5% discount will attract Distributors to purchase and make available Cboe [sic] Options Top Data and Cboe One Options Feed for at least one year, thereby fostering and expanding the distribution of these market data products for the benefit of investors, and particularly retail investors. The Exchange lastly notes that the proposed Enterprise Fees for Cboe One Options and the proposed 5% discount for an Annual license equal the combined respective Enterprise Fees and discount, respectively, of each individual Top feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

*Distributor Fees.* The Exchange believes that the proposed Distributor fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Internal and External Distributor fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal and External Distributors. The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the Cboe One Options Feed. Although the proposed distribution fee charged to External Distributors will be lower than the distribution fee charged to Internal Distributors, External Distributors are subject to Non-Professional user fees to which Internal Distributors are not subject, in addition to Professional User fees (or alternatively the proposed Enterprise Fee). The Exchange also notes that Cboe One Options Feed, like the underlying top-of-book feeds, are more likely to be distributed externally as such data is expected to be used more frequently by Non-Professional Users who, by definition, do not receive the data for commercial purposes (e.g.,

retail investors) and are therefore not internal. The Exchange therefore believes that the proposed reduced fee for External Distributors is reasonable because it may encourage more distributors to choose to offer the Cboe One Options, thereby expanding the distribution of this market data for the benefit of investors, and particularly retail investors.

The proposed Distributor Fees for the Cboe One Options Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as they equal the combined fee of subscribing to each individual data feed of the Cboe Options Exchanges, which have been previously published by the Commission.

*New External Distributor Credit.* In addition, the Exchange believes it is reasonable to not charge External Distributors of BZX Options Top and Cboe One Options Feed a Distribution Fee during their first three (3) months because such Distributors will not be subject to any External Distribution fees for those months.<sup>41</sup> Additionally, the Exchange's affiliated equities exchanges offer a similar credit for a similar market data product.<sup>42</sup> The proposed credit is also intended to incentivize new External Distributors to enlist Users to subscribe to the BZX Options Top or Cboe One Options feeds in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive so that External Distributors have sufficient time to test the data within their own systems prior to going live externally. The Exchange also does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the Cboe One Options Feed could do so by subscribing to the underlying individual data feeds, all of which will also include a New External Distributor Credit identical to that proposed for the Cboe One Options Feed. As a result, a

competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

*Distributor Fee Credit.* The Exchange believes the proposal to provide External Distributors a credit against their monthly External Distribution Fee equal to the amount of its monthly Usage Fee or Enterprise Fees, is reasonable as it could result in the External Distributor paying a discounted, or no, External Distribution fee.<sup>43</sup> The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>44</sup> Further, in every case the Exchange will receive at least the amount of the External Distribution fee for BZX Options Top or Cboe One Options, as applicable, in connection with the distribution of each respective feed (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange believes it is also equitable and not unfairly discriminatory to apply the credit to External Distributors only because, like the free three-month credit described above, it is also intended to incentivize new External Distributors to enlist Users, including Non-Professional Users such as retail investors, to subscribe to the BZX Options Top or Cboe One Options Feed in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive to only External Distributors. The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed in particular also ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One

<sup>41</sup> As noted above, Distributors are additionally not assessed any Distribution fee during any trial usage period, under the existing Trial Usage period offered by the Exchange.

<sup>42</sup> See e.g., EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>43</sup> A Distributor that does not qualify to receive the New External Distributor Credit, does not need to wait three months to be eligible to receive the Distributor Fee Credit (i.e., the Distributor would be eligible to receive the credit immediately).

<sup>44</sup> See e.g., EDGX Equities Exchange Fees Schedule, Market Data Fees.

Options Feed (*i.e.*, purchasing the underlying data feeds and aggregating the feeds themselves) to sell to their clients.

The Exchange also believes updating the Trial Usage section avoids potential confusion as to whether new Users or Distributors would be entitled to any credits, including the proposed Distributor Fee Credit (and New External Distributor Credit), during the trial usage period. The Exchange believes it is reasonable not to provide such credits as such new users are not paying assessed any fees during their trial period.

**Data Consolidation Fee.** The Exchange believes that the proposed \$500 per month Data Consolidation Fee charged to Distributors (including vendors) who receive the Cboe One Options Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all Distributors who obtain the Cboe One Options Feed will be charged the same fee. Accordingly, the Exchange believes that Distributors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable and would not permit unfair discrimination.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their respective needs for market information. Often, the choice comes down to price, as market data participants look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act.

In particular, market participants are not forced to subscribe to BZX Options Top, Cboe One Options Feed or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's BZX Options Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed waiver, credits and Enterprise Fees would apply to all similarly situated Distributors of BZX Options Top on an equal and non-discriminatory basis. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

Additionally, the Cboe One Options Feed will enhance competition because it provides investors with an alternative option for receiving market data. Although the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Cboe One Options Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients and at a similar cost.

The proposed pricing the Exchange would charge for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying individual data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange proposes to charge for the Cboe One Options Feed is not lower than the cost to a vendor of receiving the underlying data feeds. Indeed, the proposed pricing equals the combined costs of the respective fees, and the proposed waivers are also being

proposed for the underlying individual feeds as well, thereby enabling a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. For these reasons, the Exchange believes the proposed pricing, fee waiver and credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>45</sup> and paragraph (f) of Rule 19b-4<sup>46</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the

<sup>45</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>46</sup> 17 CFR 240.19b-4(f).

Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-CboeBZX-2023-051 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-CboeBZX-2023-051. 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-CboeBZX-2023-051 and should be submitted on or before August 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>47</sup>

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2023-16242 Filed 7-31-23; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-97995; File No. SR-C2-2023-015]

### Self-Regulatory Organizations; Cboe C2 Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fees Schedule

July 26, 2023.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 14, 2023, Cboe C2 Exchange, Inc. ("Exchange" or "C2") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe C2 Exchange, Inc. (the "Exchange" or "C2") proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website ([http://markets.cboe.com/us/options/regulation/rule\\_filings/ctwo/](http://markets.cboe.com/us/options/regulation/rule_filings/ctwo/)), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

forth in sections A, B, and C below, of the most significant aspects of such statements.

#### A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

##### 1. Purpose

The Exchange proposes to amend the Market Data section of its Fees Schedule.<sup>3</sup> Particularly, the Exchange proposes to (i) adopt a New External Credit applicable to C2 Options Top, (ii) adopt a credit towards the monthly Distribution fees for C2 Options Top, (iii) modify the C2 Options Top Enterprise Fee; and (iv) establish fees for Cboe One Options Feed.

##### C2 Top Data

By way of background, the Exchange offers the C2 Options Top Data feed, which is an uncompressed data feed that offers top-of-book quotations and last sale information based on options orders entered into the Exchange's System. The C2 Options Top Data feed benefits investors by facilitating their prompt access to real-time top-of-book information contained in C2 Options Top Data. The Exchange's affiliated options exchanges (*i.e.*, Cboe Exchange, Inc. ("Cboe Options"), Cboe BZX Exchange, Inc. ("BZX Options"), and Cboe EDGX Exchange, Inc. ("EDGX Options") (collectively, "Affiliates" and together with the Exchange, "Cboe Options Exchanges") also offer similar top-of-book data feeds.<sup>4</sup> Particularly, each of the Exchange's Affiliates offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the C2 Options Top. The Exchange proposes to make the following fee changes relating to C2 Options Top.

##### New External Distributor Credit

The Exchange first proposes to adopt a New External Distributor Credit which will provide that new External Distributors of the C2 Options Top feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize External

<sup>3</sup> The Exchange initially filed the proposed fee changes on March 1, 2023 (SR-C2-2023-008). On March 3, 2023, the Exchange withdrew that filing and submitted SR-C2-2023-009. On March 16, 2023, the Exchange withdrew that filing and submitted SR-C2-2023-010. On May 15, 2023, the Exchange withdrew that filing and submitted SR-C2-2023-013. On July 14, 2023, the Exchange withdrew that filing and submitted this proposal.

<sup>4</sup> See Cboe Options Fees Schedule, EDGX Rule 21.15, and BZX Rule 21.15.

<sup>47</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

Distributors to enlist new users to receive C2 Options Top feed.<sup>5</sup> The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges, offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to External Distributors of their top-of-book data feeds.<sup>6</sup> They also offer a three (3) month new External Credit applicable to External Distributors of summary depth-of-book feeds.<sup>7</sup>

#### Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly Distributor Fee for the C2 Options Top equal to the amount of its monthly User Fees up to a maximum of the Distributor Fee for the C2 Options Top feed.<sup>8</sup> The proposed Enterprise Fees discussed below would also be counted towards the Distributor Fee credit, equal to the amount of an External Distributor's monthly C2 Options Top External Distribution fee. For example, an External Distributor will be subject to a \$2,500 monthly Distributor Fee where they elect to receive the C2 Options Top. If that External Distributor reports User quantities totaling \$2,500 or more of monthly usage of the C2 Options Top, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$1,500 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees applicable to C2 Options Top. External

<sup>5</sup> Any applicable User fees or Enterprise fee will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for C2 Options Top. External Distributors who receive C2 Options Top on a trial basis are still eligible for the New Distributor Credit and such free trial basis will not count towards the three (3) months. For example, if an External Distributor has a trial usage period from June 1 through June 30, the New External Distributor Credit will apply for July, August and September. The New External Distribution Credit also applies to External Distributors who also distribute internally (*i.e.*, no additional distribution fee will apply during the time the New External Distributor Credit is applied).

<sup>6</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>7</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees, Id.

<sup>8</sup> The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for C2 Options Top. The Exchange also proposes to update the Trial Usage section in the Fees Schedule to make clear that first time Users and Distributors of Exchange Market Data Products will not receive any applicable credits during their trial usage period.

Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently \$2,500, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least \$2,500 in connection with the distribution of the C2 Options Top (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>9</sup>

#### Enterprise Fee Tiers

The Exchange currently offers Distributors the ability to purchase a monthly (and optional) Enterprise license to receive the C2 Options Top Feed for distribution to an unlimited number of Professional<sup>10</sup> and Non-Professional<sup>11</sup> Users. The Enterprise Fee is an alternative to Professional and Non-Professional User fees and permits a Distributor to pay a flat fee for an unlimited number of Professional and Non-Professional Users and is in addition to the Distribution fees. The Exchange currently assesses a flat monthly Enterprise fee of \$10,000. The Exchange proposes to modify the current Enterprise Fee and adopt a tiered structure based on the number of Users a Distributor has. The Exchange proposes to adopt the following monthly Enterprise Fees: \$10,000 for up to 1,500,000 Users (Tier 1), \$20,000 for 1,500,001 to 2,500,000 Users (Tier 2) and \$30,000 for 2,500,001 or greater Users (Tier 3). The proposed fees are non-progressive (*e.g.*, if a Distributor has

<sup>9</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Id.

<sup>10</sup> A Professional User of an Exchange Market Data product is any User other than a Non-Professional User.

<sup>11</sup> A "Non-Professional User" of an Exchange Market Data product is a natural person or qualifying trust that uses Data only for personal purposes and not for any commercial purpose and, for a natural person who works in the United States, is not: (i) registered or qualified in any capacity with the Securities and Exchange Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an "investment adviser" as that term is defined in section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); or (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt; or, for a natural person who works outside of the United States, does not perform the same functions as would disqualify such person as a Non-Professional User if he or she worked in the United States.

2,000,000 Users, it will be subject to \$20,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive C2 Options Top at \$0.10 per month, then that Distributor will pay \$100,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (tier 1), it would alternatively pay a flat fee of \$10,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.<sup>12</sup> The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.*, if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise Tier fee.<sup>13</sup> The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so.

#### Cboe One Options Feed

By way of background, the Exchange recently adopted a new market data product called Cboe One Options Feed, which launched March 1, 2023.<sup>14</sup> Cboe One Options Feed will provide top-of-book quotation and last sale information based on the quotation and trading activity on the Exchange and each of its Affiliates, which the Exchange believes offers a comprehensive and highly

<sup>12</sup> See Cboe Global Markets North American Data Policies, which provides that Distributors that have obtained an Enterprise license are required to report quantities monthly unless they reach the highest Enterprise Tier available (*i.e.*, Tier 3), in which case they are required to report user quantities only every six months).

<sup>13</sup> The discount will be taken off the applicable fee assessed for the applicable Enterprise Tier each month. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be \$142,500 (\$10,000 – 5% × 9 months + \$20,000 – 5% × 3 months) as compared to \$150,000 (\$10,000 × 9 months + \$20,000 × 3 months).

<sup>14</sup> See SR-C2-2023-006.

representative view of US options pricing to market participants. More specifically, Cboe One Options Feed will contain the aggregate best bid and offer (“BBO”) of all displayed orders for options traded on the Exchange and its Affiliates, as well as individual last sale information and volume, which includes the price, time of execution and individual Cboe options exchange on which the trade was executed.

The Cboe One Options Feed will also consist of Symbol Summary,<sup>15</sup> Market Status,<sup>16</sup> Trading Status,<sup>17</sup> and Trade Break<sup>18</sup> messages for the Exchange and each of its Affiliates.

The Exchange will use the following data feeds to create the Cboe One Options Feed, each of which is available to other vendors and/or distributors: Cboe Options Top Data, C2 Options Top Data, EDGX Options Top and BZX Options Top. A vendor and/or distributor that wishes to create a product like the Cboe One Options Feed could instead subscribe to each of the aforementioned data feeds. Any entity that receives, or elects to receive, the individual data feeds or the feeds that may be used to create a product like the Cboe One Options Feed would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients.

The Exchange proposes to amend its fee schedule to incorporate fees related to the Cboe One Options Feed. The Exchange has taken into consideration its affiliated relationship with its

<sup>15</sup> The Symbol Summary message will include the total executed volume across all Cboe Options Exchanges.

<sup>16</sup> The Market Status message is disseminated to reflect a change in the status of one of the Cboe Options Exchanges. For example, the Market Status message will indicate whether one of the Cboe Options Exchanges is experiencing a systems issue or disruption and quotation or trade information from that market is not currently being disseminated via the Cboe One Options Feed as part of the aggregated BBO. The Market Status message will also indicate when a Cboe Options Exchange is no longer experiencing a systems issue or disruption to properly reflect the status of the aggregated BBO.

<sup>17</sup> The Trade Break message will indicate when an execution on a Cboe Options Exchange is broken in accordance with the individual Cboe Options Exchange’s rules (e.g., Cboe Options Rule 6.5, C2 Option Rule 6.5, BZX Options Rule 20.6, EDGX Options Rule 20.6).

<sup>18</sup> The Trading Status message will indicate the current trading status of an option contract on each individual Cboe Options Exchange. A Trading Status message will also be sent whenever a security’s trading status changes. For example, a Trading Status message will be sent when a symbol is open for trading or when a symbol is subject to a trading halt or when it resumes trading.

Affiliates in its design of the Cboe One Options Feed to assure that vendors<sup>19</sup> would be able to offer a similar product on the same terms as the Exchange from a cost perspective. Although Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that compose the proposed Cboe One Options Feed. Distributors and/or vendors would be able, if they chose, to create a data feed with the same information as the Cboe One Options Feed and distribute it to their clients on a level-playing field with respect to latency and cost as compared to the Exchange’s proposed Cboe One Options Feed. The pricing the Exchange proposes to charge for the Cboe One Options Feed, as described more fully below, is not lower than the cost to a distributor or vendor to obtain the underlying data feeds. In fact, the Distribution and User (Professional and Non-Professional) fees, as well as the optional Enterprise Fees, that the Exchange proposes to adopt for the Cboe One Options Feed are equal to the respective combined fees for subscribing to each individual data feed. The Exchange also proposes to adopt a “Data Consolidation Fee,” which would reflect the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed. Therefore, Distributors would be enabled to create a competing product based on the individual data feeds and charge their clients a fee that they believe reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing. For these reasons, the Exchange believes that Distributors, including vendors, could readily offer a product similar to the Cboe One Options

<sup>19</sup> For purposes of this filing, a “vendor”, which is a type of distributor, will refer to any entity that receives an exchange market data product directly from the exchange or indirectly from another entity (for example, from an extranet) and then resell that data to a third-party customer (e.g., a data provider that resells exchange market data to a retail brokerage firm). The term “distributor” herein, will refer to any entity that receives an exchange market data product, directly from the exchange or indirectly from another entity (e.g., from a data vendor) and then distributes to individual internal or external end-users (e.g., a retail brokerage firm who distributes exchange data to its individual employees and/or customers). An example of a vendor’s “third-party customer” or “customer” is an institutional broker dealer or a retail broker dealer, who then may in turn distribute the data to their customers who are individual internal or external end-users.

Feed on a competitive basis at a similar cost.

The proposed Cboe One Options Feed fees include the following, each of which are described in further detail below: (i) Distributor Fees; (ii) User Fees for both Professional and Non-Professional Users; (iii) Enterprise Fees; and (iv) a Data Consolidation Fee. The Exchange also proposes to adopt a New External Distributor credit and a credit against the monthly External Distribution Fee equal to the amount of monthly User Fees or Enterprise Fees up to a maximum of the External Distributor Fee. To ensure consistency across the Cboe Options Exchanges, Cboe Options, EDGX Options, and BZX Options will be filing companion proposals to reflect this proposal in their respective fee schedules.

#### Distributor Fees

As proposed, each Internal Distributor that receives the Cboe One Options Feed shall pay a fee of \$15,000 per month. The proposed Internal Distribution Fee equals the combined monthly Internal Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (i.e., the monthly Internal Distribution fees are \$3,000 for BZX Options Top, \$500 for EDGX Options Top, \$2,500 for C2 Options Top and \$9,000 for Cboe Options Top). The Exchange also proposes to assess External Distributors a monthly fee of \$10,000. The proposed External Distribution fee equals the combined monthly External Distribution fees for the underlying individual data feeds of the Cboe Options Exchanges (i.e., the monthly External Distribution fees are \$5,000 per month for the Cboe Options Top, \$2,500 per month for C2 Options Top, \$2,000 per month for BZX Options Top, and \$500 for EDGX Options Top). As noted above, the Exchange is proposing to charge Internal Distributors an Internal Distribution Fee, and External Distributors an External Distribution Fee, that equals the combined respective Distribution fees of each individual Top feed to ensure the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds are no greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### User Fees

In addition to Internal and External Distributor Fees, the Exchange proposes to assess Professional User and Non-Professional User Fees. The proposed

monthly Professional User fee for the Cboe Options Exchanges is \$30.50 per Professional User, which equals the combined monthly Professional User fees of the underlying individual Cboe Options Exchanges Top feeds (*i.e.*, \$15.50 per Professional User for the Cboe Options Top, \$5 per Professional User for C2 Options Top, \$5 per Professional User for BZX Options Top, and \$5 per Professional User for EDGX Options Top). The Exchange also proposes to adopt a monthly Non-Professional User fee of \$0.60 per Non-Professional User, which similarly represents the combined total Non-Professional User fee for the individual data feeds of the Cboe Options (*i.e.*, \$0.30 per Non-Professional User for Cboe Options Top, \$0.10 per Non-Professional User for C2 Options Top, \$0.10 per Non-Professional User for BZX Options Top, and \$0.10 per Non-Professional User for EDGX Options Top). Similar to the individual underlying feeds, Distributors that receive Cboe One Options Feed will be required to count Professional and Non-Professional Users to which they provide the data feed. The Exchange is proposing to charge Professional and Non-Professional User fees that equal the combined respective Professional and Non-Professional User fees of each individual Top feed to ensure the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds are no greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### Enterprise Fees

The Exchange also proposes to establish Enterprise Fees that will permit a Distributor to purchase a monthly (and optional) Enterprise license to receive the Cboe One Options Feed for distribution to a specified number of Professional and Non-Professional Users. The Enterprise Fee will be an alternative to Professional and Non-Professional User fees and will permit a Distributor to pay a flat fee to receive the data for a specified number of Professional and Non-Professional Users, which the Exchange proposes to make clear in the Fee Schedule. Like User fees, the Enterprise Fee would be assessed in addition to the Distribution Fees. The Exchange proposes to adopt the following monthly Enterprise Fees: \$350,000 for up to 1,500,000 Users (Tier 1), \$550,000 for 1,500,001 to 2,500,000 Users (Tier 2) and \$750,000 for 2,500,001 or greater Users (Tier 3). The

proposed fee amounts for each Tier equals the combined Enterprise Fees for the respective tiers for the underlying individual Cboe Options Exchanges Top feeds (*i.e.*, \$300,000, \$450,000 and \$600,000 for Tiers 1, 2 and 3 respectively for the Cboe Options Top; \$10,000, \$20,000 and \$30,000 for Tiers 1, 2 and 3 respectively for C2 Options Top; \$20,000, \$40,000 and \$60,000 for Tiers 1, 2 and 3 respectively for BZX Options Top; and \$20,000, \$40,000 and \$60,000 for Tiers 1, 2 and 3 respectively for EDGX Options Top). The proposed fees are non-progressive (*e.g.*, if a Distributor has 2,000,000 Users, it will be subject to \$550,000 for Tier 2). The Enterprise Fee may provide an opportunity to reduce fees. For example, if a Distributor has 1 million Non-Professional Users who each receive Cboe One Options Feed at \$0.60 per month (as proposed), then that Distributor will pay \$600,000 per month in Non-Professional Users fees. If the Distributor instead were to purchase the proposed Enterprise license (Tier 1), it would alternatively pay a flat fee of \$350,000 for up to 1.5 million Professional and Non-Professional Users. A Distributor must pay a separate Enterprise Fee for each entity that controls the display of Cboe One Options Feed if it wishes for such Users to be covered by an Enterprise Fee rather than by per User fees.<sup>20</sup> A Distributor that pays the Tier 1 or Tier 2 Enterprise Fee will have to report its number of such Users on a monthly basis. A Distributor that pays the Tier 3 Enterprise Fee will only have to report the number of its Users every six months.<sup>21</sup> The Exchange notes that if the reported number of Users exceed the Enterprise Tier a Distributor has purchased, the higher Tier will apply (*e.g.*, if a Distributor purchases Tier 1, but reports 1,600,000 Users for a month, the Distributor will be assessed the Tier 2 fee).

The Exchange also proposes to allow Distributors to purchase the Enterprise Fee on a monthly or annual basis. Annual licenses will receive a 5% discount off the applicable Enterprise

<sup>20</sup> For example, if a Distributor that distributes C2 Options Top to Retail Brokerage Firm A and Retail Brokerage Firm B and wishes to have the Users under each firm covered by an Enterprise license, the Distributor would be subject to two Enterprise Fees.

<sup>21</sup> See Cboe Global Markets North American Data Policies which provides that Distributors that have obtained an Enterprise license are required to report quantities monthly unless they reach the highest Enterprise Tier available (*i.e.*, Tier 3), in which case they are required to report user quantities only every six months).

Fee tier.<sup>22</sup> The Exchange notes that the purchase of an Enterprise license is voluntary, and a firm may elect to instead use the per User structure and benefit from the proposed per User Fees described above. For example, a firm that does not have a sufficient number of Users to benefit from purchase of a license need not do so. The Exchange is proposing to charge Enterprise Fees that equal the combined respective Enterprise Fees of each individual Top feed and is also proposing to adopt a 5% discount for those that purchase an Annual license for Cboe Options Top (with a corresponding change will also be proposed by the Exchange's Affiliates) to ensure the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds will be the same as those that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### New External Distributor Credit

The Exchange proposes to adopt a New External Distributor Credit which would provide that new External Distributors of the Cboe One Options Feed will not be charged an External Distributor Fee for their first three (3) months in order to incentivize them to enlist new Users to receive the Cboe One Options Feed.<sup>23</sup> The Exchange notes that other exchanges, including the Exchange's affiliated equities exchanges offer similar credits for similar market data products. For example, Cboe's equities exchanges currently offer a one (1) month New External Distributor Credit applicable to the Cboe One Summary Feed and a three (3) month New External Distributor Credit applicable to the distribution of the Cboe One Premium

<sup>22</sup> The discount will be taken off the applicable fee assessed for the applicable Enterprise Tier each month. For example, if a Distributor elects to purchase an annual license and is in Tier 1 for any 9 months of the year and Tier 2 for any 3 months of the year, the total amount of fees paid for one year will be \$4,560,000 (\$350,000 – 5% × 9 months + \$550,000 – 5% × 3 months) as compared to \$4,800,000 (\$350,000 × 9 months + \$550,000 × 3 months). 3150000 [sic]

<sup>23</sup> Any applicable User fees will continue to apply during this three-month period. The New External Distributor Credit will not apply during an External Distributor's trial usage period for Cboe One Options and such free trial basis will not count towards the three (3) months. For example, if an External Distributor has a trial usage period from June 1 through June 30, the New External Distributor Credit will apply for July, August and September.

Feed.<sup>24</sup> To alleviate any competitive issues that may arise with a vendor seeking to offer a product similar to the Cboe One Options Feed based on the underlying data feeds, the Exchange is proposing, as discussed above, to also adopt a three-month New External Distributor Credit for the underlying top-of-book data feeds for the Cboe Options Exchanges. The respective proposals to adopt a three-month credit ensures the proposed New External Distributor Credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for new External Distributors to be greater than those that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

#### Distributor Fee Credit

The Exchange also proposes to provide that each External Distributor will receive a credit against its monthly External Distributor Fee for the Cboe One Options Feed equal to the amount of its monthly User Fees up to a maximum of the External Distributor Fee for the Cboe One Options Feed.<sup>25</sup> The proposed Enterprise Fees discussed above would also be counted towards the Distributor Fee credit, equal to the amount of its monthly Cboe One Options External Distribution fee. For example, an External Distributor will be subject to a \$10,000 monthly Distributor Fee where they elect to receive the Cboe One Options Feed. If that External Distributor reports User quantities totaling \$10,000 or more of monthly User fees of the Cboe Options One Feed, it will pay no net Distributor Fee, whereas if that same External Distributor were to report User quantities totaling \$9,000 of monthly usage, it will pay a net of \$1,000 for the Distributor Fee. External Distributors will remain subject to the per User fees discussed above. External Distributors who choose to purchase an Enterprise license as an alternative to paying User Fees will get a credit in the amount of the External Distribution Fee, which is currently \$10,000, since the proposed Enterprise Fees are in excess of the External Distribution fee. In every case the Exchange will receive at least \$10,000 in connection with the

<sup>24</sup> See e.g., EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>25</sup> The Distributor Fee Credit does not apply during any such time that an External Distributor is receiving the New External Distributor Credit or during a trial usage period for Cboe One Options.

distribution of the Cboe One Options Feed (through a combination of the External Distribution Fee and per User Fees or the Enterprise Fees, as applicable). The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>26</sup> The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors could compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients..

#### Data Consolidation Fee

The Exchange also proposes to charge Distributors of the Cboe One Options Feed a separate Data Consolidation Fee, which reflects the value of the aggregation and consolidation function the Exchange performs in creating the Cboe One Options Feed.<sup>27</sup> As stated above, the Exchange creates the Cboe One Options Feed from data derived from the Cboe Options Top, C2 Options Top, BZX Options Top, and EDGX Options Top Feeds. Distributors (including vendors) could similarly create a competing product to the Cboe One Options Feed based on these individual data feeds offered by the Exchanges, and could charge its clients a fee that it believes reflects the value of the aggregation and consolidation function. Accordingly, the Exchange believes that vendors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost.

#### 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.<sup>28</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section

<sup>26</sup> See e.g., EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>27</sup> If a vendor distributes the Cboe One Options Feed to another firm, who then re-distributes the Cboe One Options Feed, both entities would be subject to the Data Consolidation Fee. A vendor will only be assessed a single Data Consolidated Fee, even if it distributes Cboe One Options Feed to more than one entity.

<sup>28</sup> 15 U.S.C. 78f(b).

6(b)(5)<sup>29</sup> requirements that the rules of an exchange be 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. Additionally, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange also believes this proposal is consistent with section 6(b)(8) of the Act, which requires that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.<sup>30</sup> In addition, the Exchange believes that the proposed rule change is consistent with section 11(A) of the Act as it supports (i) fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets, and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.<sup>31</sup> The Exchange also believes the proposed rule change is consistent with section 6(b)(4) of the Act,<sup>32</sup> which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities.

The Exchange first notes that it operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 18% of the market share.<sup>33</sup> The Exchange believes top-of-book quotation and transaction data is highly competitive as national securities exchanges compete vigorously with each other to provide efficient, reliable, and low-cost data to a wide range of investors and market participants. Indeed, there are several competing products offered by other

<sup>29</sup> 15 U.S.C. 78f(b)(5).

<sup>30</sup> 15 U.S.C. 78f(b)(8).

<sup>31</sup> 15 U.S.C. 78k-1.

<sup>32</sup> 15 U.S.C. 78f(b)(4).

<sup>33</sup> See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 24, 2023), available at [https://markets.cboe.com/us/options/market\\_statistics/](https://markets.cboe.com/us/options/market_statistics/).

national securities exchanges today, not counting products offered by the Exchange's affiliates, and each of the Exchange's affiliated U.S. options exchanges also offers similar top-of-book data.<sup>34</sup> Each of those exchanges offer top-of-book quotation and last sale information based on their own quotation and trading activity that is substantially similar to the information provided by the Exchange through the C2 Options Top Data Feed. Further, the quote and last sale data contained in the C2 Data Feed is identical to the data sent to OPRA for redistribution to the public.<sup>35</sup> Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

Moreover, the C2 Options Top Data Feed and Cboe One Options Feeds are distributed and purchased on a voluntary basis, in that neither the Exchange nor market data distributors are required by any rule or regulation to make these data products available. Accordingly, Distributors (including vendors) and Users can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Further, the Exchange is not required to make any proprietary data products available or to offer any specific pricing alternatives to any customers. Moreover, persons (including broker-dealers) who subscribe to any exchange proprietary data feed must also have equivalent access to consolidated Options Information<sup>36</sup> from OPRA for the same classes or series of options that are included in the proprietary data feed, and proprietary data feeds cannot be used to meet that particular

requirement.<sup>37</sup> As such, all proprietary data feeds are optional.

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."<sup>38</sup> Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supracompetitive fees. In the event that a market participant views one exchange's data product as more or less attractive than the competition they can and do switch between similar products. The proposed fees are a result of the competitive environment, as the Exchange seeks to adopt fees to attract purchasers of C2 Options Top Data and Cboe One Options Feed.

The Exchange has also taken into consideration its affiliated relationship with its Affiliates in its design of the Cboe One Options Feed to ensure that vendors would be able to offer a similar product on the same terms as the Exchange from a cost perspective. While the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements may be taken to create the Cboe One Options Feed, they are not the exclusive distributors of the aggregated and consolidated information that comprises the Cboe One Options Feed. Any entity that receives, or elects to receive, the individual data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients with no greater cost than the Exchange.

In addition, vendors and Distributors that do not wish to purchase the Cboe One Options Feed may separately purchase the individual underlying products, and if they so choose, perform a similar aggregation and consolidation function that the Exchange performs in creating the Cboe One Options Feed. To

enable such competition, the Exchange is offering the Cboe One Options Feed on terms that a vendor of those underlying feeds could offer a competing product if it so chooses.

In addition, the fees that are the subject of this rule filing are constrained by competition. Particularly, the Exchange competes with other exchanges (and their affiliates) that may choose to offer similar market data products. If another exchange (or its affiliate) were to charge less to consolidate and distribute a similar product than the Exchange charges to consolidate and distribute the Cboe One Options Feed, prospective Users likely could choose to not subscribe to, or would cease subscribing to, the Cboe One Options Feed. In addition, the Exchange would compete with unaffiliated market data vendors who would be in a position to consolidate and distribute the same data that comprises the Cboe One Options Feed into the vendor's own comparable market data product. If the third-party vendor is able to provide the exact same data for a lower cost, prospective Users would avail themselves of that lower cost and elect not to take the Cboe One Options Feed.

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

*User Fees.* The Exchange believes that the proposed Professional and Non-Professional User fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Professional and Non-Professional User fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Distributors. Combining the Professional and Non-Professional User fees, of each individual Top feed, respectively, further ensures vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients. Moreover, the proposed fee structure of differentiated Professional and Non-Professional fees that are paid by both Internal and External Distributors has long been used by other exchanges, including the Exchange, for their proprietary data products, and by the OPRA plan in order to reduce the price of data to retail investors and make it more broadly

<sup>34</sup> See e.g., NYSE Arca Options Proprietary Market Data Fees Schedule, MEXX Options Exchange, Fee Schedule, Section 6 (Market Data Fees), Nasdaq PHLX Options 7 Pricing Schedule, Section 10 (Proprietary Data Feed Fees) and Cboe Data Services, LLC Fees Schedule.

<sup>35</sup> The Exchange makes available the top-of-book data and last sale data that is included in the C2 Options Top Data Feed no earlier than the time at which the Exchange sends that data to OPRA.

<sup>36</sup> "Consolidated Options Information" means consolidated Last Sale Reports combined with either consolidated Quotation Information or the BBO furnished by OPRA. Access to consolidated Options Information is deemed "equivalent" if both kinds of information are equally accessible on the same terminal or work station. See Limited Liability Company Agreement of Options Price Reporting Authority, LLC ("OPRA Plan"), Section 5.2(c)(iii). The Exchange notes that this requirement under the OPRA Plan is also reiterated under the Cboe Global Markets Global Data Agreement and Cboe Global Markets North American Data Policies, which subscribers to any exchange proprietary product must sign and are subject to, respectively. Additionally, the Exchange's Data Order Form (used for requesting the Exchange's market data products) requires confirmation that the requesting market participant receives data from OPRA.

<sup>37</sup> *Id.*

<sup>38</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) ("Regulation NMS Adopting Release").

available.<sup>39</sup> The Exchange also believes offering Cboe One Options Feed to Non-Professional Users at a lower cost than Professional Users results in greater equity among data recipients, as Professional Users are categorized as such based on their employment and participation in financial markets, and thus, are compensated to participate in the markets. Although Non-Professional Users too can receive significant financial benefits through their participation in the markets, the Exchange believes it is reasonable to charge more to those Users who are more directly engaged in the markets.

**Enterprise Fee.** The Exchange believes the proposed Enterprise Fees for the Cboe One Options Feed and proposed changes to the Enterprise Fee for the C2 Options Top feed are reasonable as the fees proposed could result in a fee reduction for Distributors of the respective products with a large number of Professional and Non-Professional Users. If a Distributor has a smaller number of Professional or Non-Professional Users of the Cboe One Options Feed or C2 Options Top Feed, then it may continue using the per User structure and benefit from the per User Fee reductions for each respective product. By reducing prices for Distributors with a large number of Professional and Non-Professional Users, the Exchange believes that more firms may choose to receive and to distribute the Cboe One Options or C2 Options Top feeds, thereby expanding the distribution of this market data for the benefit of investors. The Exchange believes it is reasonable, equitable and not unfairly discriminatory to assess incrementally higher fees for higher tiers, because such tier covers a higher number of users (and indeed for those in Tier 3, an unlimited number of users). The Exchange believes it's reasonable to require monthly reporting only for proposed Tiers 1 and 2 because such tiers cover a defined number of Users that need to be accounted for billing purposes, as compared to Tier 3 which covers unlimited Users. Also as described above, the Enterprise Fees are entirely optional. A firm that does not have a sufficient number of Users to

benefit from purchase of a license, or purchase of a specific tier level, need not do so. The Exchange believes the proposed discount for an Annual license is also reasonable, equitable and not unfairly discriminatory as it provides Distributors an opportunity to be assessed lower fees and is available to any Distributor who chooses to make a one-year commitment via the Annual license. The Exchange believes the proposed 5% discount will attract Distributors to purchase and make available C2 Options Top Data and Cboe One Options Feed for at least one year, thereby fostering and expanding the distribution of these market data products for the benefit of investors, and particularly retail investors. The Exchange lastly notes that the proposed Enterprise Fees for Cboe One Options and the proposed 5% discount for an Annual license equal the combined respective Enterprise Fees and discount, respectively, of each individual Top feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed to sell to their clients.

**Distributor Fees.** The Exchange believes that the proposed Distributor fees for the Cboe One Options Feed are reasonable because they represent the combined monthly fees for Internal and External Distributor fees, respectively for the underlying individual data feeds, which have previously been filed with the Commission. The Exchange believes that the proposed fees are equitable and not unfairly discriminatory because they will be charged uniformly to Internal and External Distributors. The Exchange believes that it is also fair and equitable, and not unfairly discriminatory to charge different fees for internal and external distribution of the Cboe One Options Feed. Although the proposed distribution fee charged to External Distributors will be lower than the distribution fee charged to Internal Distributors, External Distributors are subject to Non-Professional user fees to which Internal Distributors are not subject, in addition to Professional User fees (or alternatively the proposed Enterprise Fee). The Exchange also notes that Cboe One Options Feed, like the underlying top-of-book feeds, are more likely to be distributed externally as such data is expected to be used more frequently by Non-Professional Users who, by definition, do not receive the data for commercial purposes (e.g., retail investors) and are therefore not internal. The Exchange therefore believes that the proposed reduced fee for External Distributors is reasonable because it may encourage more

distributors to choose to offer the Cboe One Options, thereby expanding the distribution of this market data for the benefit of investors, and particularly retail investors.

The proposed Distributor Fees for the Cboe One Options Feed are also designed to ensure that vendors could compete with the Exchange by creating a similar product as the Cboe One Options Feed. The Exchange believes that the proposed Distributor Fees are equitable and reasonable as they equal the combined fee of subscribing to each individual data feed of the Cboe Options Exchanges, which have been previously published by the Commission.

#### New External Distributor Credit

In addition, the Exchange believes it is reasonable to not charge External Distributors of C2 Options Top and Cboe One Options Feed a Distribution Fee during their first three (3) months because such Distributors will not be subject to any External Distribution fee for those months.<sup>40</sup> The Exchange believes it's also reasonable for the New External Distribution Credit for C2 Options Top to apply to External Distributors of C2 Options Top who also distribute such product internally because the current Distribution Fee is already meant to cover both internal and distribution of C2 Options Top. Therefore, the Exchange believes it's reasonable to apply the New External Distributor Credit to both External Distributors who distribute exclusively externally and those that distribute externally and internally. The Exchange's that its affiliated equities exchanges offer a similar New External Distributor Credit for a similar market data product.<sup>41</sup> The proposed credit is also intended to incentivize new External Distributors to enlist Users to subscribe to the C2 Options Top or Cboe One Options feeds in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors (i.e., Distributors who exclusively distributed internally) of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive so that External Distributors have sufficient time to test the data

<sup>40</sup> As noted above, Distributors are additionally not assessed any Distribution fee during any trial usage period, under the existing Trial Usage period offered by the Exchange.

<sup>41</sup> See e.g., EDGX Equities Exchange Fees Schedule, Market Data Fees.

<sup>39</sup> See, e.g., Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR-NYSE-2008-131) (establishing the \$15 Non-Professional User Fee (Per User) for NYSE OpenBook); See, e.g., Securities Exchange Act Release No. 67589 (August 2, 2012), 77 FR 47459 (August 8, 2012) (revising OPRA's definition of the term "Nonprofessional"); and See Securities Exchange Act Release No. 70683 (October 15, 2013), 78 FR 62798 (October 22, 2013) (SR-CBOE-2013-087) (establishing Professional and Non-Professional User fees for Cboe Options COB Data Feed).

within their own systems prior to going live externally. The Exchange also does not believe this would inhibit a vendor from creating a competing product and offer a similar free period as the Exchange. Specifically, a vendor seeking to create the Cboe One Options Feed could do so by subscribing to the underlying individual data feeds, all of which will also include a New External Distributor Credit identical to that proposed for the Cboe One Options Feed. As a result, a competing vendor would incur similar costs as the Exchange in offering such free period for a competing product and may do so on the same terms as the Exchange.

#### Distributor Fee Credit

The Exchange believes the proposal to provide External Distributors a credit against their monthly Distribution Fee equal to the amount of its monthly Usage Fee or Enterprise Fees, is reasonable as it could result in the External Distributor paying a discounted, or no, Distribution fee.<sup>42</sup> The Exchange believes it's also reasonable for the Distributor Fee Credit for C2 Options Top to apply to External Distributors of C2 Options Top who also distribute such product internally because the current Distribution Fee is already meant to cover both internal and [sic] distribution of C2 Options Top. Therefore, the Exchange believes it's reasonable to apply the Distributor Fee Credit to both External Distributors who distribute exclusively externally and to those that distribute externally and internally. The Exchange notes that its affiliated equities exchanges offer a similar credit for a similar market data product.<sup>43</sup> Further, in every case the Exchange will receive at least the amount of the External Distribution fee for C2 Options Top or Cboe One Options, as applicable, in connection with the distribution of each respective feed (through a combination of the External Distribution Fee and per User Fees or Enterprise Fees, as applicable). The Exchange believes it is also equitable and not unfairly discriminatory to apply the credit to External Distributors only because, like the free three-month credit described above, it is also intended to incentivize new External Distributors to enlist Users, including Non-Profession Users such as retail investors, to subscribe to the C2 Options Top or Cboe One

Options Feed in an effort to broaden the products' distribution. While this incentive is not available to Internal Distributors (*i.e.*, Distributors who exclusively distributed internally) of these products, the Exchange believes it is appropriate as Internal Distributors have no Users outside of their own firm. Furthermore, External Distributors are subject to higher risks of launch as the data is provided outside their own firm. For these reasons, the Exchange believes it is appropriate to provide this incentive to only External Distributors. The proposal to adopt a Distributor Fee Credit for Cboe One Options Feed in particular also ensures the proposed credit for Cboe One Options will not cause the combined cost of subscribing to Cboe Options, C2 Options, BZX Options and EDGX Options Top feeds for External Distributors to be greater than the amount that would be charged to subscribe to the Cboe One Options feed, thereby ensuring that vendors can compete with the Exchange by creating the same product as the Cboe One Options Feed (*i.e.*, purchasing the underlying data feeds and aggregating the feeds themselves) to sell to their clients.

The Exchange also believes updating the Trial Usage section of the Fees Schedule avoids potential confusion as to whether new Users or Distributors would be entitled to any credits, including the proposed Distributor Fee Credit (and New External Distributor Credit), during the trial usage period. The Exchange believes its reasonable not to provide such credits as such new users are not paying assessed any fees during their trial period.

**Data Consolidation Fee.** The Exchange believes that the proposed \$500 per month Data Consolidation Fee charged to Distributors (including vendors) who receive the Cboe One Options Feed is reasonable because it represents the value of the data aggregation and consolidation function that the Exchange performs. The Exchange further believes the proposed Data Consolidation Fee is not designed to permit unfair discrimination because all Distributors who obtain the Cboe One Options Feed will be charged the same fee. Accordingly, the Exchange believes that Distributors could readily offer a product similar to the Cboe One Options Feed on a competitive basis at a similar cost. Therefore, the Exchange believes the proposed application of the Data Consolidation Fee is reasonable and would not permit unfair discrimination.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange operates in a highly competitive environment, and its ability to price top-of-book data is constrained by competition among exchanges that offer similar data products to their customers. Top-of-book data is broadly disseminated by competing U.S. options exchanges. In this competitive environment potential Distributors are free to choose which competing product to purchase to satisfy their respective needs for market information. Often, the choice comes down to price, as market data participants look to purchase cheaper data products, and quality, as market participants seek to purchase data that represents significant market liquidity.

The Exchange believes that the proposed fees do not impose a burden on competition or on other SROs that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, market participants are not forced to subscribe to C2 Options Top, Cboe One Options Feed or any of the Exchange's data feeds, as described above. As noted, the quote and last sale data contained in the Exchange's C2 Options Top feed is identical to the data sent to OPRA for redistribution to the public. Accordingly, Exchange top-of-book data is widely available today from a number of different sources.

The Exchange believes that the proposed fees do not put any market participants at a relative disadvantage compared to other market participants. As discussed, the proposed waiver, credits and Enterprise Fees would apply to all similarly situated Distributors of C2 Options Top on an equal and non-discriminatory basis. Because market data customers can find suitable substitute feeds, an exchange that overprices its market data products stands a high risk that users may substitute another product. These competitive pressures ensure that no one exchange's market data fees can impose an undue burden on competition, and the Exchange's proposed fees do not do so here.

Additionally, the Cboe One Options Feed will enhance competition because it provides investors with an alternative option for receiving market data. Although the Cboe Options Exchanges are the exclusive distributors of the individual data feeds from which certain data elements would be taken to

<sup>42</sup> A Distributor that does not qualify to receive the New External Distributor Credit, does not need to wait three months to be eligible to receive the Distributor Fee Credit (*i.e.*, the Distributor would be eligible to receive the credit immediately).

<sup>43</sup> See *e.g.*, EDGX Equities Exchange Fees Schedule, Market Data Fees.

create the Cboe One Options Feed, the Exchange would not be the exclusive distributor of the aggregated and consolidated information that would compose the proposed Cboe One Options Feed. Any entity that receives, or elects to receive, the underlying data feeds would be able to, if it so chooses, to create a data feed with the same information included in the Cboe One Options Feed and sell and distribute it to its clients so that it could be received by those clients as quickly as the Cboe One Options Feed would be received by those same clients and at a similar cost.

The proposed pricing the Exchange would charge for the Cboe One Options Feed compared to the cost of the individual data feeds from the Cboe Options Exchanges would enable a vendor to receive the underlying individual data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. The pricing the Exchange proposes to charge for the Cboe One Options Feed is not lower than the cost to a vendor of receiving the underlying data feeds. Indeed, the proposed pricing equals the combined costs of the respective fees, and the proposed waivers are also being proposed for the underlying individual feeds as well, thereby enabling a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange.

The Exchange further believes that its proposed monthly Data Consolidation Fee would be pro-competitive because a vendor could create a competing product, perform a similar aggregating and consolidating function, and similarly charge for such service. The Exchange notes that a competing vendor might engage in a different analysis of assessing the cost of a competing product. For these reasons, the Exchange believes the proposed pricing, fee waiver and credit, would enable a vendor to create a competing product based on the individual data feeds and charge its clients a fee that it believes reflects the value of the aggregation and consolidation function that is competitive with Cboe One Options Feed pricing.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>44</sup> and paragraph (f) of Rule 19b-4<sup>45</sup> thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include file number SR-C2-2023-015 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-C2-2023-015. 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

<sup>44</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>45</sup> 17 CFR 240.19b-4(f).

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-C2-2023-015 and should be submitted on or before August 22, 2023.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>46</sup>

**Sherry R. Haywood,**  
*Assistant Secretary.*

[FR Doc. 2023-16245 Filed 7-31-23; 8:45 am]

**BILLING CODE 8011-01-P**

**DEPARTMENT OF STATE**

[Public Notice: 12135]

**Board of Visitors of the Foreign Service Institute**

**ACTION:** Notice of intent to establish an advisory committee.

The Secretary of State announces an intent to establish the Board of Visitors of the Foreign Service Institute ("the Board"), pursuant to section 9205(e) of the National Defense Authorization Act for FY 2023 (NDAA), and consistent with the Federal Advisory Committee Act (5 U.S.C. 1001 *et seq.*).

*Nature and Purpose:* The Board's duties include providing the Secretary with independent advice and recommendations regarding organizational management, strategic planning, resource management, curriculum development, and other matters of interest to the Foreign Service Institute, including regular observations about how well the Department is integrating training and professional development into the work of the

<sup>46</sup> 17 CFR 200.30-3(a)(12).

Bureau for Global Talent Management, Department of State.

*Other information:* The Board will meet no fewer than two times per year and at such other times and places as are required to fulfill the objectives of the Board. The Department of State affirms that the advisory committee is necessary and in the public interest.

**FOR FURTHER INFORMATION CONTACT:** Laura Miller, Chief of Staff, Office of the Director, Foreign Service Institute, 771-205-2033, *MillerLE@state.gov*.

(Authority: 5 U.S.C. 1009, Pub. L. 117-263, and 22 U.S.C. 2651a.)

**Laura Miller,**

*Chief of Staff, Foreign Service Institute,  
Department of State.*

[FR Doc. 2023-16308 Filed 7-31-23; 8:45 am]

**BILLING CODE 4710-34-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration (FAA)

#### Notice of Opportunity for Public Comment on Release of Federally Obligated Land at the Brunswick Golden Isles Airport (BQK), Brunswick, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FAA proposes to rule and invites public comment on the release of land at the Brunswick Golden Isles Airport (BQK), Brunswick, Georgia.

**DATES:** Comments must be received on or before *August 31, 2023*.

**ADDRESSES:** Documents are available for review by prior appointment at the following location: Atlanta Airports District Office, Attn: Joseph Robinson, Planner, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337-2747, Telephone: (404) 305-6749.

Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Joseph Robinson, Planner, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337-2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert Burr, Executive Director, Glynn County Airport Commission at the following address: 295 Aviation Parkway, Suite 205, Brunswick, GA 31525.

**FOR FURTHER INFORMATION CONTACT:** Joseph Robinson, Airport Planner, Atlanta Airports District Office, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337-2747, (404) 305-6749.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA invites public comment on the Glynn County Airport Commission request to release and sell five tracts of land consisting of approximately 51.492 acres of airport property at the Brunswick Golden Isles Airport (BQK) under the provisions of 49 U.S.C. 47107(h)(2). On June 27, 2023, the FAA determined the request to release property at the Brunswick Golden Isles Airport (BQK) submitted by the Sponsor meets the procedural requirements of the Federal Aviation Administration and the release of the property does not and will not impact future aviation needs at the airport. The FAA may approve the request, in whole or in part, no sooner than thirty days after the publication of this notice.

The following is a brief overview of the request:

The Brunswick Golden Isles Airport (BQK) is proposing the release of airport property containing 51.492 acres, more or less. The property was acquired via surplus property transfer on April 18, 1977. The purpose of this request is to permanently release the federal obligations on the property given there is no potential for future aviation use, as demonstrated by the Airport Layout Plan. In accordance with 49 U.S.C. 47107(c)(2)(B)(i) and (iii), the airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project for aviation use.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. Issued in College Park, Georgia on July 27, 2023.

**Joseph Parks Preston,**

*Manager, Atlanta Airports District Office,  
Southern Region.*

[FR Doc. 2023-16254 Filed 7-31-23; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Public Notice for a Change in Use of Aeronautical Property at the Henry E. Rohlsen Airport in St. Croix, United States Virgin Islands

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FAA is requesting public comment on the Virgin Island Port Authority's proposal to change 10 acres of airport property at the Henry E.

Rohlsen Airport in St. Croix, USVI from aeronautical to non-aeronautical use. This acreage was acquired via surplus property transfer on November 22, 1948.

**DATES:** Comments must be received on or before *August 31, 2023*.

**ADDRESSES:** Documents are available for review by prior appointment at the following location: Atlanta Airports District Office, Attn: Joseph Robinson, Planner, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337-2747, Telephone: (404) 305-6749.

Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Joseph Robinson, Planner, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337-2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Catherine Hendry, VIPA General Counsel, Virgin Islands Port Authority at the following address: P.O. Box 301707, St. Thomas, VI 00803.

**FOR FURTHER INFORMATION CONTACT:** Joseph Robinson, Airport Planner, Atlanta Airports District Office, 1701 Columbia Ave., Suite 220, College Park, Georgia 30337-2747, (404) 305-6749. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The Virgin Islands Port Authority (VIPA) requests parcel 2-A (as shown on the Exhibit A) totaling 10 acres, be released for construction and operation of a hotel. Parcels 2-A was acquired via surplus property transfer on November 22, 1948. The purpose of this request is to permanently change the designation of the property given there is no potential for future aviation use, as demonstrated by the Airport Layout Plan. Subsequent to the implementation of the proposed redesignation, rents received by the airport from this property must be used in accordance with FAA's Policy and Procedures Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

Issued in College Park, Georgia on July 26, 2023.

**Joseph Parks Preston,**

*Manager, Atlanta Airports District Office,  
Southern Region.*

[FR Doc. 2023-16253 Filed 7-31-23; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration**

[Docket No. NHTSA–2022–0114; Notice 1]

**Winnebago Industries, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance**

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

**ACTION:** Receipt of petition.

**SUMMARY:** Winnebago Industries, Inc., (Winnebago), has determined that certain model year (MY) 2013–2023 Winnebago motorhomes do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*. Winnebago filed an original noncompliance report dated November 11, 2022, and amended the report on December 2, 2022, and May 17, 2023. Winnebago petitioned NHTSA on December 2, 2022, and amended the petition on May 17, 2023, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces receipt of Winnebago's petition.

**DATES:** Send comments on or before August 31, 2023.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and may be submitted by any of the following methods:

- **Mail:** Send comments by mail addressed to the 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 comments by hand to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal Holidays.

- **Electronically:** Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at <https://www.regulations.gov/>. Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than

15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at <https://www.regulations.gov> by following the online instructions for accessing the dockets. The docket ID number for this petition is shown in the heading of this notice.

DOT's complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477–78).

**FOR FURTHER INFORMATION CONTACT:** Leroy Angeles, Office of Vehicle Safety Compliance, NHTSA, (202) 366–5304.

**SUPPLEMENTARY INFORMATION:**

*I. Overview:* Winnebago determined that certain MY 2013–2023 Winnebago motorhomes do not fully comply with paragraph S6.4.1 and Table IV-a of FMVSS No. 108, *Lamps, Reflective Devices, and Associated Equipment* (49 CFR 571.108).

Winnebago filed an original noncompliance report dated November 11, 2022, and amended the report on December 2, 2022, and May 17, 2023, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Winnebago petitioned NHTSA on December 2, 2022, and amended its petition on May 17, 2023, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant

to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Winnebago's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or another exercise of judgment concerning the merits of the petition.

*II. Vehicles Involved:* Winnebago reported that 13,126 of the following motorhomes, manufactured between April 5, 2012, and November 4, 2022, are potentially involved:

- 2015–2021 Winnebago Vista, Sunstar
- 2013–2019 Winnebago Horizon
- 2014–2023 Winnebago Forza
- 2018–2021 Winnebago Intent
- 2015–2016 Winnebago Brave
- 2015–2016 Itasca Tribute

*III. Noncompliance:* Winnebago explains that the subject motorhomes are equipped with turn signal lamps that do not meet the luminous lens area requirements specified by S6.4.1 and Table IV-a of FMVSS No. 108. Specifically, the luminous lens area of the turn signals equipped in the subject vehicles is 6,361 square millimeters, thus, 1,139 square millimeters smaller than required by the standard.

*IV. Rule Requirements:* Paragraph S6.4.1 and Table IV-a of FMVSS No. 108 includes the requirements relevant to this petition. Each turn signal lamp, stop lamp, high-mounted stop lamp, and school bus signal lamp must meet the applicable effective projected luminous lens area requirement specified in Tables IV-a, IV-b, and IV-c of FMVSS No. 108.

*V. Summary of Winnebago's Petition:* The following views and arguments presented in this section, "V. Summary of Winnebago's Petition," are the views and arguments provided by Winnebago. They have not been evaluated by the Agency and do not reflect the views of the Agency. Winnebago describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Winnebago says that NHTSA has previously explained that the purpose of FMVSS No. 108 is to reduce traffic accidents by, *inter alia*, "enhancing the conspicuity of motor vehicles on the public roads so that their presence is perceived and their signals understood, both in daylight and in darkness or other conditions of reduced visibility." Winnebago further adds that in a 1990 final rule notice that increased the minimum lens area for wide vehicles from 8 square inches (*i.e.*, 5,161.28 sq mm) to 12 square inches (*i.e.*, 7,741 sq

mm), NHTSA explained that the increase in lens area is necessary because wide vehicles “are susceptible to build up of grime” and “an increase in lens area would enhance vehicle conspicuity and contribute to safety.”

Winnebago says that around July 2022, it was informed by a lamp supplier that there were concerns about the compliance of turn signals installed in certain Winnebago vehicles. Specifically, with the “minimum effective projected luminous area requirements of FMVSS No. 108,” Winnebago says they investigated the turn signals in the subject vehicles and confirmed that the “effective projected luminous lens area” is 6,361 square millimeters and thus, approximately 1,139 square millimeters smaller than the required minimum lens area.

Winnebago says that other than the size of the effective projected luminous lens area for the turn signals in the subject vehicles, the turn signals are otherwise fully compliant with all applicable performance requirements. Winnebago states that the turn signals at issue “have been in use for more than 15 years” and “is not aware of any crashes, injuries, customer complaints or field reports in connection with this noncompliance.” Winnebago states its belief that although the turn signal lens area is slightly smaller than the required minimum, they are still “likely to be imperceptible to both vehicle occupants and approaching drivers, and do not have an effect on the conspicuity of the motorhomes on which they are installed.”

Winnebago states its belief that NHTSA increased the required minimum lens area for turn signals in wide vehicles due to the concern of buildup of grime and dirt. Winnebago claims that the turn signals on motorhomes “are generally well maintained by their owners compared to other classes of wide vehicles. Thus, a slightly smaller turn signals would not reasonably result in a buildup of dirt and grime on turn signals . . .”

Winnebago concludes by stating its belief that the subject noncompliance is inconsequential to motor vehicle safety and its petition for relief from providing notice and remedy for the noncompliance be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the

defect or noncompliance. Therefore, any decision on this petition only applies to the subject motorhomes that Winnebago no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant motorhomes under their control after Winnebago notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke III,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2023–16312 Filed 7–31–23; 8:45 am]

**BILLING CODE 4910–59–P**

**DEPARTMENT OF THE TREASURY**

**Office of Foreign Assets Control**

**Notice of OFAC Sanctions Actions**

**AGENCY:** Office of Foreign Assets Control, Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) is publishing the names of persons that have been placed on OFAC’s Specially Designated Nationals and Blocked Persons List based on OFAC’s determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

**FOR FURTHER INFORMATION CONTACT:** OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

**Electronic Availability**

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC’s website (<https://ofac.treasury.gov>).

**Notice of OFAC Actions**

On December 16, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons are blocked under the relevant sanctions authority listed below.

**Individuals:**

1. LOMURO, Martin Elia (a.k.a. LOMORO, Martin Elia; a.k.a. LOMORO, Martin Elias), Juba, South Sudan; DOB 28 Dec 1957; citizen South Sudan; alt. citizen Sudan; Gender Male; Passport D00002571 (South Sudan); alt. Passport D00009058 (Sudan) (individual) [SOUTH SUDAN].

Designated pursuant to Section 1(a)(i)(C) of Executive Order 13664 of April 3, 2014, “Blocking Property of Certain Persons With Respect to South Sudan” 79 FR 19283 (April 7, 2014) (E.O. 13664) for being responsible for or complicit in, or having engaged in, directly or indirectly, in or in relation to South Sudan, actions or policies that have the purpose or effect of expanding or extending the conflict in South Sudan or obstructing reconciliation or peace talks or processes.

2. JUUK, Kuol Manyang (a.k.a. JUUK CHAW, Kuol Manyang), Juba, South Sudan; DOB 01 Jan 1945; POB Mathiang Village, South Sudan; nationality South Sudan; Gender Male; Passport D00002510 (South Sudan) (individual) [SOUTH SUDAN].

Designated pursuant to Section 1(a)(i)(C) of E.O. 13664 for being responsible for or complicit in, or having engaged in, directly or indirectly, in or in relation to South Sudan, actions or policies that have the purpose or effect of expanding or extending the conflict in South Sudan or obstructing reconciliation or peace talks or processes.

Dated: July 27, 2023.

**Andrea M. Gacki,**

*Director, Office of Foreign Assets Control, U.S. Department of the Treasury.*

[FR Doc. 2023–16279 Filed 7–31–23; 8:45 am]

**BILLING CODE 4810–AL–P**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**Senior Executive Service Performance Review Board**

**AGENCY:** Internal Revenue Service (IRS), Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** To announce a list of senior executives who comprise a standing roster that will serve on IRS’s Fiscal Year 2023 Senior Executive Service (SES) Performance Review Boards.

**DATES:** This list is effective September 1, 2023.

**FOR FURTHER INFORMATION CONTACT:** Sharnetta A. Walton, Director, Office of Executive Services at (202) 317–3817 or Rachel Winningham, Deputy Director,

Office of Executive Services at (801) 620-4488, IRS, 1111 Constitution Avenue NW, Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:** Pursuant to 5 U.S.C. 4314(c)(4), this board shall review and evaluate the initial appraisals of career senior executives' performance and provide recommendations to the appointing authority on performance ratings, pay adjustments and performance awards. The senior executives are as follows:

Todd A. Anthony  
Elizabeth P. Askey  
Scott A. Ballint  
Robert J. Bedoya  
Jennifer L. Best  
Orrin D. Byrd  
Julia W. Caldwell  
Tracey C. Carter  
Andrea L. Chapman  
Anthony S. Chavez  
Robert Choi  
James P. Clifford  
Amalia C. Colbert  
Erin M. Collins  
Lucinda J. Comegys  
Kenneth C. Corbin  
Robert S. Cox  
Brenda A. Dial  
Joseph Dianto  
Donald C. Drake  
Sheila Eason  
Randolph Edwards  
Maryann R. Enciso  
Guy A. Ficco  
James L. Fish  
Sharyn M. Fisk  
Julie A. Foerster  
Barbara B. Gourley  
Dietra D. Grant  
Susan B. Greer  
Phyllis T. Grimes  
Darren J. Guillot  
Todd L. Harber  
Keith A. Henley  
Robert E. Hill  
John W. Hinman  
Carrie Y. Holland  
Karen S. Howard  
Teresa R. Hunter  
Scott E. Irick  
Darren K. James  
Barry W. Johnson  
Nikki C. Johnson  
William H. Kea Jr  
Lou Ann Y. Kelleher  
Andrew J. Keyso Jr  
Edward T. Killen  
Jeffrey King  
Melanie R. Krause  
Kathleen M. Kruchten  
James C. Lee  
Tracy L. Lee  
Ronald J. Leidner Jr  
Terry L. Lemons  
Sofia Lofvenholm-Enggren  
Robert W. Malone  
Heather C. Maloy  
Paul J. Mamo  
Kevin Q. McIver  
Kevin M. Morehead  
Carolyn M. Morton  
Robin L. Moses

Bryan L. Musselman  
Douglas W. O'Donnell  
Victor G. Onorato  
Deborah T. Palacheck  
Kaschit D. Pandya  
Holly O. Paz  
Christopher J. Pleffner  
Mark E. Pursley  
Scott D. Reisher  
Julie A. Robbins  
Bridget T. Roberts  
Richard L. Rodriguez  
Kimberly D. Rogers  
Clifford R. Scherwinski  
Frederick W. Schindler  
Paul E. Selby  
Theodore D. Setzer  
Tracey L. Showman  
Susan A. Simon  
Eric D. Slack  
Harrison Smith  
Tommy A. Smith  
Kim S. Stewart  
Richard L. Tierney  
Guy A. Torres  
Jeffrey J. Tribiano  
Karen D. Truss  
Alfredo Valdespino  
Kathleen E. Walters  
Darrell S. White  
Lavena B. Williams  
Maha H. Williams  
Lisa S. Wilson  
Nancy R. Wiltshire  
Max R. Wyche

This document does not meet the Treasury's criteria for significant regulations.

**Douglas W. O'Donnell,**

*Deputy Commissioner for Services & Enforcement, Internal Revenue Service.*

[FR Doc. 2023-16224 Filed 7-31-23; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

### Solicitation of Nominations for Appointment to the Veterans' Advisory Committee on Education

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA), Veterans Benefits Administration (VBA), is seeking nominations from qualified candidates to be considered for appointment to the Veterans' Advisory Committee on Education. (hereafter referred to as "VACOE" or "the Committee").

**DATES:** Nominations for membership on the Committee must be received no later than 5:00 p.m. EST on August 31, 2023.

**ADDRESSES:** All nominations should be emailed directly to [EDUSTAENG.VBAVACO@va.gov](mailto:EDUSTAENG.VBAVACO@va.gov). Please write "Nomination for VACOE Membership" as the subject line.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Maltby, VBA, Education Service,

VA via email at [Joseph.Maltby@va.gov](mailto:Joseph.Maltby@va.gov) or (202) 227-0879. Copies of the Committee charter, most recent report to the Secretary, and minutes from recent meetings can be obtained at [https://www.va.gov/ADVISORY/Veterans\\_Advisory\\_Committee\\_on\\_Education.asp](https://www.va.gov/ADVISORY/Veterans_Advisory_Committee_on_Education.asp).

**SUPPLEMENTARY INFORMATION:** The Committee was established to provide advice to the Secretary of Veterans Affairs ("the Secretary") on the administration of education and training programs for Veterans and Service members, Reservists and Guard Personnel, and for dependents of Veterans, including programs under chapters 30, 32, 33, 35, and 36 of title 38 U.S.C. and chapter 1606 of title 10, U.S.C.

**Authority:** The Committee is authorized by 38 U.S.C. 3692 and operates under the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. ch. 10). Public Law 117-180 section 404 extended the Committee's statutory authority to December 31, 2026. The Committee advises the Secretary on existing VA education benefits program and services and recommends new and improved education benefit programs and services. In addition, the Committee will submit its recommendations and reports to the Secretary; may also submits its reports to Congress.

**Membership Criteria:** VBA is requesting nominations for upcoming vacancies on the Committee. The Committee is composed of 12 members, in addition to ex-officio members. As required by statute, the members of the Committee are appointed by the Secretary from the general public, including representatives of organizations furnishing education or training to GI Bill students, Veteran Service Organizations, and current or former GI Bill students, particularly Veterans. The Committee conducts the following:

- Attending two public meetings a year, running approximately six to eight hours over two to three days. If the Committee decides to form subcommittees, participating in subcommittee meetings, which are typically no more than two hours once a month.
- Reviewing additional information and documentation outside of meetings on an ad hoc basis.
- Contributing to the drafting and review of recommendations and, as applicable, subcommittee findings.
- Taking Federal Advisory Committee Act training and ethics training when appointed and once a year after that.

- Notifying the Designated Federal Officer of any potential conflicts of interest.

In accordance with the Committee's charter, the Secretary shall determine the number, terms of service and pay and allowances of Committee members. The Committee is seeking one member to begin a term in in November or December 2023 and six members to begin terms in April 2024.

#### **Requirements for Nomination Submission**

Nominations should be typewritten. The nomination package should include: (1) a letter of nomination that clearly states the name and affiliation of the nominee, a summary of the nominee's experience and qualification relative to the membership criteria listed above, and a statement from the nominee indicating a willingness to serve as a member of the Committee; (2) the nominee's contact information, including name, mailing address, telephone numbers and email address;

and (3) the nominee's curriculum vitae or resume, not to exceed five pages. Nominations must state that the nominee is willing to serve as a member of the Committee and appears to have no conflict of interest that would preclude membership. An ethics review is conducted for each selected nominee.

Self-nominations are acceptable. Any letters of nomination from organizations or other individuals *must* accompany the package when it is submitted. Letters of nomination submitted without a complete nomination package *will not* be considered. If you are submitting a package on behalf of an individual, it *must* include all of the required components and complete contact information. Do not submit a package without the nominee's consent or awareness.

To the extent possible, the Secretary seeks members who have diverse professional and person qualifications including but not limited to subject matter experts in the areas described above. The Department makes every

effort to ensure that the membership of its advisory committees is fairly balanced in terms of points of view represented and the Committee's function. Every effort is made to ensure that a broad representation of geographic areas, gender, racial and ethnic minority groups, and the disabled are given consideration for membership. Appointment to this Committee shall be made without discrimination because of a person's race, color, religion, sex (including gender identity, transgender status, sexual orientation, and pregnancy), national origin, age, disability or genetic information. We ask that nomination include any relevant experience and information so that VA can ensure diverse Committee membership.

Dated: July 27, 2023.

**Jelessa M. Burney,**

*Federal Advisory Committee Management Officer.*

[FR Doc. 2023-16269 Filed 7-31-23; 8:45 am]

**BILLING CODE 8320-01-P**



# FEDERAL REGISTER

---

Vol. 88

Tuesday,

No. 146

August 1, 2023

---

Part II

## Environmental Protection Agency

---

40 CFR Part 98

Greenhouse Gas Reporting Rule: Revisions and Confidentiality

Determinations for Petroleum and Natural Gas Systems; Proposed Rule

**ENVIRONMENTAL PROTECTION  
AGENCY**

**40 CFR Part 98**

[EPA-HQ-OAR-2023-0234; FRL-10246-01-OAR]

RIN 2060-AV83

**Greenhouse Gas Reporting Rule:  
Revisions and Confidentiality  
Determinations for Petroleum and  
Natural Gas Systems**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to amend requirements that apply to the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Rule to ensure that reporting is based on empirical data, accurately reflects total methane emissions and waste emissions from applicable facilities, and allows owners and operators of applicable facilities to submit empirical emissions data that appropriately demonstrate the extent to which a charge is owed. The EPA is also proposing changes to requirements that apply to the general provisions, general stationary fuel combustion, and petroleum and natural gas systems source categories of the Greenhouse Gas Reporting Rule to improve calculation, monitoring, and reporting of greenhouse gas data for petroleum and natural gas systems facilities. This action also proposes to establish and amend confidentiality determinations for the reporting of certain data elements to be added or substantially revised in these proposed amendments.

**DATES:** *Comments.* Comments must be received on or before October 2, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 31, 2023.

*Public hearing.* The EPA does not plan to conduct a public hearing unless requested. If anyone contacts us requesting a public hearing on or before August 7, 2023, we will hold a virtual public hearing. See **SUPPLEMENTARY INFORMATION** for information on requesting and registering for a public hearing.

**ADDRESSES:** *Comments.* You may submit comments, identified by Docket Id. No. EPA-HQ-OAR-2023-0234, by any of the following methods:

*Federal eRulemaking Portal.* [www.regulations.gov](http://www.regulations.gov) (our preferred method). Follow the online instructions for submitting comments.

*Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air and Radiation Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

*Hand Delivery or Courier (by scheduled appointment only):* 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 proposed rulemaking. Comments received may be posted without change to [www.regulations.gov](http://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.

The virtual hearing, if requested, will be held using an online meeting platform, and the EPA will provide information on its website ([www.epa.gov/ghgreporting](http://www.epa.gov/ghgreporting)) regarding how to register and access the hearing. Refer to the **SUPPLEMENTARY INFORMATION** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Bohman, Climate Change Division, Office of Atmospheric Programs (MC-6207A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 343-9548; email address: [GHGReporting@epa.gov](mailto:GHGReporting@epa.gov). For technical information, please go to the Greenhouse Gas Reporting Program (GHGRP) website, [www.epa.gov/ghgreporting](http://www.epa.gov/ghgreporting). To submit a question, select Help Center, followed by “Contact Us.”

*World Wide Web (WWW).* In addition to being available in the docket, an electronic copy of this proposal will also be available through the WWW. Following the Administrator's signature, a copy of this proposed rule will be posted on the EPA's GHGRP website at [www.epa.gov/ghgreporting](http://www.epa.gov/ghgreporting).

**SUPPLEMENTARY INFORMATION:**

*Written comments.* Submit your comments, identified by Docket Id. No. EPA-HQ-OAR-2023-0234, at [www.regulations.gov](http://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 [www.regulations.gov](http://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). Commenters who would like the EPA to further consider in this rulemaking any relevant comments that they provided on the 2022 Proposed Rule regarding proposed revisions at issue in this proposal must resubmit those comments to the EPA during this proposal's comment period. Please visit [www.epa.gov/dockets/commenting-epa-dockets](http://www.epa.gov/dockets/commenting-epa-dockets) for additional submission methods; the full EPA public comment policy; information about CBI, PBI, or multimedia submissions, and general guidance on making effective comments.

*Participation in virtual public hearing.* To request a virtual public hearing, please contact the person listed in the following **FOR FURTHER INFORMATION CONTACT** section by August 7, 2023. If requested, the virtual hearing will be held on August 21, 2023. The EPA will provide further information about the hearing on its website ([www.epa.gov/ghgreporting](http://www.epa.gov/ghgreporting)) if a hearing is requested.

If a public hearing is requested, the EPA will begin pre-registering speakers for the hearing no later than one business day after a request has been received. To register to speak at the virtual hearing, please use the online registration form available at [www.epa.gov/ghgreporting](http://www.epa.gov/ghgreporting) or contact us by email at [GHGReporting@epa.gov](mailto:GHGReporting@epa.gov). The last day to pre-register to speak at the hearing will be August 16, 2023. On August 18, 2023, the EPA will post a general agenda that will list pre-registered speakers in approximate order at: [www.epa.gov/ghgreporting](http://www.epa.gov/ghgreporting).

The EPA will make every effort to follow the schedule as closely as possible on the day of the hearing; however, please plan for the hearings to run either ahead of schedule or behind schedule.

Each commenter will have 4 minutes to provide oral testimony. The EPA encourages commenters to provide the EPA with a copy of their oral testimony

electronically (via email) by emailing it to [GHGReporting@epa.gov](mailto:GHGReporting@epa.gov). The EPA also recommends submitting the text of your oral testimony as written comments to the rulemaking docket.

The EPA may ask clarifying questions during the oral presentations but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral testimony and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted

online at [www.epa.gov/ghgreporting](http://www.epa.gov/ghgreporting). While the EPA expects the hearing to go forward as set forth above, please monitor our website or contact us by email at [GHGReporting@epa.gov](mailto:GHGReporting@epa.gov) to determine if there are any updates. The EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of an interpreter or special accommodation such as audio description, please pre-register for the hearing with the public hearing team and describe your needs by August 8, 2023. The EPA may not be

able to arrange accommodations without advanced notice.

**Regulated entities.** This is a proposed regulation. If finalized, these proposed revisions would affect certain entities that must submit annual greenhouse gas (GHG) reports under the GHGRP (40 CFR part 98). These are proposed amendments to existing regulations. If finalized, these amended regulations would also affect owners or operators of petroleum and natural gas systems that directly emit GHGs. Regulated categories and entities include, but are not limited to, those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	North American Industry Classification System (NAICS)	Examples of affected facilities
Petroleum and Natural Gas Systems .....	486210 221210 211120 211130	Pipeline transportation of natural gas. Natural gas distribution facilities. Crude petroleum extraction. Natural gas extraction.

Table 1 of this preamble is not intended to be exhaustive, but rather provides a guide for readers regarding facilities likely to be affected by this proposed action. This table lists the types of facilities that the EPA is now aware could potentially be affected by this action. Other types of facilities than those listed in the table could also be subject to reporting requirements. To determine whether you would be affected by this proposed action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A (General Provisions) and 40 CFR part 98, subpart W (Petroleum and Natural Gas Systems). If you have questions regarding the applicability of this action to a particular facility, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

**Acronyms and Abbreviations.** The following acronyms and abbreviations are used in this document.

- AGR acid gas removal unit
- AMLD Advanced Mobile Leak Detection
- API American Petroleum Institute
- ASTM American Society for Testing and Materials
- BOEM Bureau of Ocean Energy Management
- BRE Bryan Research & Engineering
- Btu/scf British thermal units per standard cubic foot
- CAA Clean Air Act
- CBI confidential business information
- CEMS continuous emissions monitoring system

- CenSARA Central States Air Resources Agency
- CFR Code of Federal Regulations
- CH4 methane
- CO2 carbon dioxide
- CO2e carbon dioxide equivalent
- CRR cost-to-revenue ratio
- e-GGRT electronic Greenhouse Gas Reporting Tool
- EG emission guidelines
- EIA U.S. Energy Information Administration
- EPA U.S. Environmental Protection Agency
- ET Eastern time
- FAQ frequently asked question
- FLIGHT Facility Level Information on Greenhouse gases Tool
- FR Federal Register
- GHG greenhouse gas
- GHGRP Greenhouse Gas Reporting Program
- GOR gas to oil ratio
- gpm gallons per minute
- GRI Gas Research Institute
- GT gas turbines
- HHV higher heating value
- ICR Information Collection Request
- ID identification
- IRA Inflation Reduction Act of 2022
- ISBN International Standard Book Number
- IVT Inputs Verification Tool
- kg/hr kilograms per hour
- LDC local distribution company
- LNG liquefied natural gas
- m meters
- MDEA methyl diethanolamine
- MEA monoethanolamine
- MMBtu/hr million British thermal units per hour
- MMscf million standard cubic feet
- mt metric tons
- mtCO2e metric tons carbon dioxide equivalent
- N2O nitrous oxide

- NAICS North American Industry Classification System
- NGLs natural gas liquids
- NMAC New Mexico Administrative Code
- NSPS new source performance standards
- O&M operation and maintenance
- OCS AQS Outer Continental Shelf Air Quality System
- OEM original equipment manufacturer
- OGI optical gas imaging
- OMB Office of Management and Budget
- PBI proprietary business information
- ppm parts per million
- ppmv parts per million by volume
- PRA Paperwork Reduction Act
- psig pounds per square inch gauge
- REC reduced emission completion
- RFA Regulatory Flexibility Act
- RFI Request for Information
- RICE reciprocating internal combustion engines
- RY reporting year
- scf standard cubic feet
- scf/hr/device standard cubic feet per hour per device
- THC total hydrocarbon
- TSD technical support document
- U.S. United States
- UMRA Unfunded Mandates Reform Act of 1995
- VOC volatile organic compound(s)
- WWW World Wide Web

**Contents**

- I. Background
  - A. How is this preamble organized?
  - B. Executive Summary
  - C. Background on This Proposed Rule
  - D. Legal Authority
  - E. Relationship to Other Clean Air Act Section 136 Actions

- II. Overview and Rationale for Proposed Amendments to 40 CFR Part 98, subpart W
  - A. Revisions To Address Potential Gaps in Reporting of Emissions Data for Specific Sectors
  - B. Revisions To Add New Emissions Calculation Methodologies or Improve Existing Emissions Calculation Methodologies
  - C. Revisions To Reporting Requirements to Improve Verification and Transparency of the Data Collected
  - D. Technical Amendments, Clarifications, and Corrections
- III. Proposed Amendments to Part 98
  - A. General and Applicability Amendments
  - B. Other Large Release Events
  - C. New and Additional Emission Sources
  - D. Reporting for the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting Industry Segments
  - E. Natural Gas Pneumatic Device Venting and Natural Gas Driven Pneumatic Pump Venting
  - F. Acid Gas Removal Unit Vents
  - G. Dehydrator Vents
  - H. Liquids Unloading
  - I. Gas Well Completions and Workovers With Hydraulic Fracturing
  - J. Blowdown Vent Stacks
  - K. Atmospheric Storage Tanks
  - L. Flared Transmission Storage Tank Vent Emissions
  - M. Associated Gas Venting and Flaring
  - N. Flare Stack Emissions
  - O. Compressors
  - P. Equipment Leak Surveys
  - Q. Equipment Leaks by Population Count
  - R. Offshore Production
  - S. Combustion Equipment
  - T. Leak Detection and Measurement Methods
  - U. Industry Segment-Specific Throughput Quantity Reporting
  - V. Other Proposed Minor Revisions or Clarifications
- IV. Schedule for the Proposed Amendments
- V. Proposed Confidentiality Determinations for Certain Data Reporting Elements
  - A. Overview and Background
  - B. Proposed Confidentiality Determinations
  - C. Proposed Reporting Determinations for Inputs to Emissions Equations
  - D. Request for Comments on Proposed Category Assignments, Confidentiality Determinations, or Reporting Determinations
- VI. Impacts of the Proposed Amendments
- VII. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
  - B. Paperwork Reduction Act (PRA)
  - C. Regulatory Flexibility Act (RFA)
  - D. Unfunded Mandates Reform Act (UMRA)
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
- K. Determination Under CAA Section 307(d)

## I. Background

### A. How is this preamble organized?

The first section of this preamble contains background information regarding the proposed amendments. This section also discusses the EPA's legal authority under the Clean Air Act (CAA) to promulgate (including subsequent amendments to) the Greenhouse Gas Reporting Rule, codified at 40 CFR part 98 (hereafter referred to as "part 98"), generally and 40 CFR part 98, subpart W (hereafter referred to as "subpart W") in particular. This section also discusses the EPA's legal authority to make confidentiality determinations for new or revised data elements required by these amendments or for existing data elements for which a confidentiality determination has not previously been proposed. Section II of this preamble describes the types of amendments included in this proposed rulemaking and includes the rationale for each type of proposed change. Section III of this preamble contains detailed information on the proposed revisions to 40 CFR part 98, subpart A (General Provisions), subpart C (General Stationary Fuel Combustion Sources) and subpart W. Section IV of this preamble discusses when the proposed revisions to part 98 would apply to reporters. Section V of this preamble discusses the proposed confidentiality determinations for new or substantially revised data reporting elements (i.e., requiring additional or different data to be reported), as well as for certain existing data elements for which a determination has not been previously established. Section VI of this preamble discusses the impacts of the proposed amendments. Section VII of this preamble describes the statutory and Executive order requirements applicable to this action.

### B. Executive Summary

In August 2022, Congress passed, and President Biden signed, the Inflation Reduction Act of 2022 (IRA) into law. Section 60113 of the IRA amended the CAA by adding section 136, "Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems." CAA section

136(c), "Waste Emissions Charge," directs the Administrator to impose and collect a charge on methane (CH<sub>4</sub>) emissions that exceed statutorily specified waste emissions thresholds from an owner or operator of an applicable facility that reports more than 25,000 metric tons carbon dioxide equivalent (mtCO<sub>2</sub>e) pursuant to the Greenhouse Gas Reporting Rule's requirements for the petroleum and natural gas systems source category (codified as subpart W in EPA's Greenhouse Gas Reporting Rule regulations). Further, CAA section 136(h) requires that the EPA shall, within two years after the date of enactment of section 60113 of the IRA, revise the requirements of subpart W to ensure the reporting under subpart W (and corresponding waste emissions charges under CAA section 136) is based on empirical data, accurately reflects the total CH<sub>4</sub> emissions (and waste emissions) from the applicable facilities, and allow owners and operators of applicable facilities to submit empirical emissions data, in a manner to be prescribed by the Administrator, to demonstrate the extent to which a charge is owed under CAA section 136.

In this action, the EPA is proposing revisions to subpart W consistent with the authority and directives set forth in CAA section 136(h) as well as the EPA's authority under CAA section 114. The EPA is proposing revisions to include reporting of additional emissions or emissions sources to address potential gaps in the total CH<sub>4</sub> emissions reported by facilities to subpart W. These revisions include proposing to add a new emissions source, referred to as "other large release events," to capture large emission events that are not accurately accounted for using existing methods in subpart W. Other new sources proposed to be added or included in revised existing sources include nitrogen removal units, produced water tanks, mud degassing, crankcase venting and combustion slip. The EPA is also proposing several revisions to add new or revise existing calculation methodologies to improve the accuracy of reported emissions, incorporate additional empirical data and to allow owners and operators of applicable facilities to submit empirical emissions data that could appropriately demonstrate the extent to which a charge is owed in future implementation of CAA section 136, as directed by CAA section 136(h). For example, the EPA is proposing new calculation methodologies for equipment leaks and natural gas

pneumatic devices to allow for the use of direct measurement. The EPA is also proposing several revisions to existing reporting requirements to collect data that would improve verification of reported data, ensure accurate reporting of emissions, and improve the transparency of reported data. For example, the EPA is proposing to disaggregate reporting requirements within the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments, with most emissions and activity data for Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting being disaggregated to at least the well-pad and site-level, respectively. The EPA is also proposing other technical amendments, corrections, and clarifications that would improve understanding of the rule. These revisions primarily include revisions of requirements to better reflect the EPA's intent or editorial changes. The proposed revisions under this rulemaking are described in further detail in sections II and III of this preamble. The EPA will be undertaking one or more separate actions in the future to implement the remainder of CAA section 136.

### C. Background on This Proposed Rule

This proposed action builds on previous Greenhouse Gas reporting rulemakings. The Greenhouse Gas Reporting Rule was published in the **Federal Register** (FR) on October 30, 2009 (74 FR 56260) (hereafter referred to as the 2009 Final Rule). The 2009 Final Rule became effective on December 29, 2009, and requires reporting of GHGs from various facilities and suppliers, consistent with the 2008 Consolidated Appropriations Act.<sup>1</sup> Although reporting requirements for petroleum and natural gas systems were originally proposed to be part of part 98 (75 FR 16448, April 10, 2009), the final October 2009 rulemaking did not include the petroleum and natural gas systems source category as one of the 29 source categories for which reporting requirements were finalized. The EPA re-proposed subpart W in 2010 (75 FR 18608; April 12, 2010), and a subsequent final rulemaking was published on November 30, 2010, with the requirements for the petroleum and natural gas systems source category at 40 CFR part 98, subpart W (75 FR 74458) (hereafter referred to as the "2010 Final Rule"). Following

promulgation, the EPA finalized several technical and clarifying amendments to subpart W (76 FR 22825, April 25, 2011; 76 FR 53057, August 25, 2011; 76 FR 59533, September 27, 2011; 76 FR 73866, November 29, 2011; 76 FR 80554, December 23, 2011; 77 FR 48072, August 13, 2012; 77 FR 51477, August 24, 2012; 78 FR 25392, May 1, 2013; 78 FR 71904, November 29, 2013; 79 FR 63750, October 24, 2014; 79 FR 70352, November 25, 2014; 80 FR 64262, October 22, 2015; and 81 FR 86490, November 30, 2016). These amendments generally added or revised requirements in subpart W, including revisions that were intended to improve quality, clarity, and consistency across the calculation, monitoring, and data reporting requirements, and to finalize confidentiality and reporting determinations for data elements reported under the subpart.

More recently, the EPA proposed amendments to subpart W on June 21, 2022 (87 FR 36920) (hereafter referred to as the "2022 Proposed Rule"), including technical amendments to improve the quality and consistency of the data collected under the rule and resolve data gaps, amendments to streamline and improve implementation, and revisions to provide additional flexibility in the calculation methods and monitoring requirements for some emission sources. The 2022 Proposed Rule was developed prior to the enactment of the IRA and its direction in CAA section 136(h) to revise subpart W. Consequently, in developing this current proposed action, the EPA considered the proposed amendments to subpart W from the 2022 Proposed Rule as well as the concerns and information submitted by commenters in response to that proposal. In this proposal, the EPA is again proposing to revise the subpart W provisions, and our proposed revisions include both (1) updates to the proposed revisions to subpart W that were in the 2022 Proposed Rule as well as (2) additional proposed revisions to comply with CAA section 136(h). The EPA accordingly does not intend to finalize the revisions to subpart W that were proposed in the 2022 Proposed Rule in the final version of that rule. Commenters who would like the EPA to further consider in this rulemaking any relevant comments that they provided on the 2022 Proposed Rule regarding its proposed revisions to subpart W must resubmit those comments to the EPA during this proposal's comment period.

Additionally, the EPA opened a non-regulatory docket on November 4, 2022, and issued a Request for Information (RFI) seeking public input to inform program design related to CAA section

136.<sup>2</sup> As part of this request, the EPA sought input on revisions that should be considered related to subpart W. The comment period closed on January 18, 2023.

The EPA also recently issued a supplemental proposal to the 2022 Proposed Rule (88 FR 32852, May 22, 2023), which included proposed updates to the General Provisions of the Greenhouse Gas Reporting Rule to reflect revised global warming potentials, proposed reporting of GHG data from additional sectors (*i.e.*, non-subpart W sectors), and proposed revisions to source categories other than subpart W that would improve implementation of the Greenhouse Gas Reporting Rule. These proposed revisions are being undertaken in a separate action. Accordingly, the EPA considers comments related to that action to be outside the scope of this proposed rule.

### D. Legal Authority

The EPA is proposing these rule amendments under its existing CAA authority provided in CAA section 114 and under its newly established authority provided in CAA section 136, as applicable. As stated in the preamble to the 2009 Final Rule, CAA section 114(a)(1) provides the EPA broad authority to require the information proposed to be gathered by this rule because such data would inform and are relevant to the EPA's carrying out of a variety of CAA provisions. See the preambles to the proposed Greenhouse Gas Reporting Rule (74 FR 16448, April 10, 2009) and the 2009 Final Rule for further information. As noted in section I.B of this preamble, the IRA added CAA section 136, "Methane Emissions and Waste Reduction Incentive Program for Petroleum and Natural Gas Systems," which requires revisions to the requirements of subpart W to ensure that reporting of CH<sub>4</sub> emissions under subpart W (and corresponding waste emissions charges under CAA section 136) is based on empirical data, accurately reflects the total CH<sub>4</sub> emissions (and waste emissions) from applicable facilities, and allows owners and operators to submit empirical emissions data, in a manner prescribed by the Administrator, to demonstrate the extent to which a charge is owed under CAA section 136. Under CAA section 136, an "applicable facility" is a facility within nine of the ten industry segments subject to subpart W, as currently defined in 40 CFR 98.230 (excluding natural gas distribution).

<sup>1</sup> Consolidated Appropriations Act, 2008, Public Law 110-161, 121 Stat. 1844, 2128.

<sup>2</sup> Docket ID No. EPA-HQ-OAR-2022-0875.

The Administrator has determined that this action is subject to the provisions of section 307(d) of the CAA. Section 307(d) contains a set of procedures relating to the issuance and review of certain CAA rules.

In addition, pursuant to sections 114, 301, and 307 of the CAA, the EPA is publishing proposed confidentiality determinations for the new or substantially revised data elements required by these proposed amendments. Section 114(c) requires that the EPA make information obtained under section 114 available to the public, except for information (excluding emission data) that qualifies for confidential treatment.

#### *E. Relationship to Other Clean Air Act Section 136 Actions*

The IRA adds authorities under CAA section 136 to reduce CH<sub>4</sub> emissions from the oil and gas sector. It accomplishes this in multiple ways. First, it provides incentives for CH<sub>4</sub> mitigation and monitoring. Second, it establishes a waste emissions charge for applicable facilities that exceed statutorily-specified thresholds that vary by industry segment and are determined by the amount of natural gas or oil sent to sale. Third, CAA section 136(h) requires the EPA to revise subpart W. The first and second listed aspects of CAA section 136 are outside the scope of this rulemaking.

CAA section 136 provides \$1.55 billion in incentives for CH<sub>4</sub> mitigation and monitoring, including through grants, rebates, contracts, loans, and other activities. Of these funds, at least \$700 million is allocated to activities at marginal conventional wells. There are several potential uses of funds. Use of funds can include financial and technical assistance to owners and operators of applicable facilities to prepare and submit GHG reports under subpart W. Financial assistance can also be provided for CH<sub>4</sub> emissions monitoring authorized under CAA section 103 subsections (a) through (c). Additionally, financial and technical assistance can be provided to: reduce CH<sub>4</sub> and other GHG emissions from petroleum and natural gas systems, including to mitigate legacy air pollution from petroleum and natural gas systems; improve climate resilience of communities and petroleum and natural gas systems; improve and deploy industrial equipment and processes that reduce CH<sub>4</sub> and other GHG emissions and waste; support innovation in reducing CH<sub>4</sub> and other GHG emissions and waste from petroleum and natural gas systems; permanently shut in and plug wells on

non-Federal land; and mitigate health effects of CH<sub>4</sub> and other GHG emissions and legacy air pollution from petroleum and natural gas systems in low-income and disadvantaged communities, and support environmental restoration.

The EPA has provided initial public engagement and input opportunities related to the design and implementation of these incentives. This has included issuing an RFI<sup>3</sup> to inform program design and listening sessions to enable input directly to the EPA. Through these engagement opportunities, the EPA has heard a number of common themes. First, the EPA has received input that the EPA should use funding mechanisms for rapid distribution of incentives. Second, the EPA has heard about the need for addressing critical gaps and key opportunities to achieve maximum impact. Third, the EPA has received input about the need to address cumulative pollution for overburdened communities.

The EPA is moving expeditiously to implement the incentives for CH<sub>4</sub> mitigation and monitoring and anticipates making announcements regarding next steps; however, as noted, those steps are outside the scope of this rulemaking.

CAA section 136(c) provides that the Administrator shall impose and collect a charge on CH<sub>4</sub> emissions that exceed an applicable waste emissions threshold under CAA section 136(f) from an owner or operator of an applicable facility that reports more than 25,000 mtCO<sub>2</sub>e per year pursuant to subpart W. CAA section 136 provides various flexibilities and exemptions relating to the waste emissions charge. The EPA intends to undertake one or more separate actions in the future to implement the waste emissions charge and intends to provide an opportunity for public comment in those actions; therefore, as noted, implementation of the waste emissions charge is outside the scope of this rulemaking.

As noted earlier, CAA section 136(h) requires revisions to subpart W. The purpose of this proposed action is to meet directives set forth in CAA section 136(h).

## **II. Overview and Rationale for Proposed Amendments to 40 CFR Part 98, Subpart W**

As discussed in section I of this preamble, in August 2022, Congress passed, and President Biden signed, the IRA into law. Section 60113 of the IRA amended the CAA by adding section 136, “Methane Emissions and Waste

Reduction Incentive Program for Petroleum and Natural Gas Systems.” CAA section 136(h) requires that the EPA shall, within two years of the enactment of that section of the IRA, revise the requirements of subpart W to ensure the reporting under that subpart and calculation of charges under CAA section 136(e) and (f) are based on empirical data, accurately reflect the total CH<sub>4</sub> emissions and waste emissions from the applicable facilities, and allow owners and operators of applicable facilities to submit empirical emissions data, in a manner prescribed by the Administrator, to demonstrate the extent to which a charge is owed. CAA section 136(d) defines the term “applicable facility” as a facility within the following industry segments as defined in subpart W: offshore petroleum and natural gas production, onshore petroleum and natural gas production, onshore natural gas processing, onshore gas transmission compression, underground natural gas storage, liquefied natural gas storage, liquefied natural gas import and export equipment, onshore petroleum and natural gas gathering and boosting, and onshore natural gas transmission pipeline.

Empirical data can be defined as data that are collected by observation and experiment. There are many forms of empirical data that can be used to quantify GHG emissions. For purposes of this action, the EPA interprets empirical data to mean data that are collected by conducting observations and experiments that could be used to accurately calculate emissions at a facility, including direct emissions measurements, monitoring of CH<sub>4</sub> emissions (e.g., leak surveys) or measurement of associated parameters (e.g., flow rate, pressure, etc.), and published data. The EPA reviewed available empirical data methods for accuracy and appropriateness for calculating annual unit or facility-level GHG emissions. The review included both the evaluation of technologies and methodologies already incorporated in subpart W for measuring and reporting annual source- and facility-level GHG emissions and the evaluation of the accuracy of potential alternative technologies and methodologies, with a focus on CH<sub>4</sub> emissions due to the directive in CAA section 136(h).

Currently, subpart W specifies emission source types to be reported for each industry segment and provides methodologies to calculate emissions from each source type, which are then summed to generate the total subpart W emissions for the facility. Current calculation methods can be grouped

<sup>3</sup> Docket ID No. EPA-HQ-OAR-2022-0875.

into five categories: (1) direct emissions measurement; (2) combination of measurement and engineering calculations; (3) engineering calculations; (4) leak detection and use of a leaker emission factor; and (5) population count and population emission factors. Subpart W emission factors (both population and leaker emission factors) include both those developed from published empirical data and those developed from site-specific data collected by the reporting facility. The EPA developed the current subpart W monitoring and reporting requirements to use the most appropriate monitoring and calculation methods, considering both the accuracy of the emissions calculated by the proposed method and the size of the emission source based on the methods and data available at the time of the applicable rule promulgation. Considering the directives set forth in CAA section 136, the EPA re-evaluated the existing methodologies to determine if they are likely to accurately reflect CH<sub>4</sub> and waste emissions at an individual facility, whether the existing methodologies used empirical data, and whether the existing methodologies should be modified or replaced to meet CAA section 136 directives. In cases where source-level emissions were determined to be highly variable, not well characterized by an available method in subpart W, and a more accurate method, such as direct emissions measurement, is available, the EPA is proposing to update reporting requirements to reflect only methodologies that have been determined to likely accurately characterize unit or facility-level emissions. For example, intermittent bleed pneumatic devices are designed to vent during actuation only, but these devices are known to often malfunction and operate incorrectly which causes them to release gas to the atmosphere when idle, leading to high degree of variance in emissions from pneumatic devices between facilities (see *Greenhouse Gas Reporting Rule: Technical Support for Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule; Proposed Rule—Petroleum and Natural Gas Systems*, hereafter referred to as the “subpart W TSD,” available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234, for more information). The EPA welcomes comments on all aspects of this technical support document. Even in cases where the EPA considers an existing method that is not based on direct measurement or

emission monitoring provides a reasonably accurate calculation of emissions for a facility, we also reviewed whether a direct emission measurement or emission monitoring method could be added to subpart W, if one was not already available, to give owners and operators the opportunity to submit empirical data. The EPA also evaluated whether there were gaps in the emission source types reporting CH<sub>4</sub> emissions under subpart W and whether there were methodologies available to calculate those emissions.

The proposed amendments include:

- Revisions to expand reporting to include new emission sources, in order to accurately reflect total CH<sub>4</sub> emissions reported to the GHGRP.
- Revisions to add emissions calculation methodologies to incorporate additional empirical data and improve the accuracy of reported emission data.
- Revisions to refine existing emissions calculation methodologies to reflect an improved understanding of emissions or to incorporate more recent research on GHG emissions to improve the accuracy of reported emission data.
- Revisions to remove calculation methodologies in cases where it was determined that more accurate calculation methodologies were available.

The EPA has also identified additional areas where revisions to part 98 would improve the EPA’s ability to verify the accuracy of reported emissions and improve data transparency and alignment with other EPA programs and regulations. The EPA also identified areas where additional data or revised data elements may be necessary for future implementation of the waste emissions charge under CAA section 136. The proposed revisions include:

- Revisions to report emissions from facilities in the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments at the site level instead of at the basin level, sub-basin level, or county level.
- Addition of data elements related to emissions from plugged wells.
- Addition or clarification of throughput-related data elements for subpart W industry segments.
- Revisions to data elements or recordkeeping where the current requirements are redundant or alternative data would be more appropriate for verification of emission data.
- Revisions that provide additional information for reporters to better or more fully understand their compliance

obligations, revisions that emphasize the EPA’s intent for requirements that reporters appear to have previously misinterpreted to ensure that accurate data are being collected, and editorial corrections or harmonizing changes that would improve the public’s understanding of the rule.

Sections II.A through II.D of this preamble describe the above changes in more detail and provide the EPA’s rationale for the changes included in each category. Additional details for the specific amendments proposed for each subpart are included in section III of this preamble. We are seeking public comment only on the proposed revisions and issues specifically identified in this document for the identified subparts. We expect to deem any comments received addressing other aspects of 40 CFR part 98 or other rulemakings to be outside of the scope of this proposed rulemaking.

In addition, on November 15, 2021 (86 FR 63110), the EPA proposed under CAA section 111(b) standards of performance for certain new, reconstructed, and modified oil and natural gas sources (40 CFR part 60, subpart OOOOb) (hereafter referred to as “NSPS OOOOb”), as well as emissions guidelines under CAA section 111(d) for certain existing oil and natural gas sources (40 CFR part 60, subpart OOOOc) (hereafter referred to as “EG OOOOc”) (the sources affected by these two proposed subparts are collectively referred to in this preamble as “affected sources”). On December 6, 2022, the EPA issued a supplemental proposal to update, strengthen and expand the standards proposed on November 15, 2021 (87 FR 74702). While the standards in proposed NSPS OOOOb would directly apply to new, reconstructed, and modified sources when finalized, the final EG OOOOc would not impose binding requirements directly on sources; rather it would contain guidelines, including presumptive standards, for states to follow in developing, submitting, and implementing plans to establish standards of performance to limit GHGs (in the form of CH<sub>4</sub> limitations) from existing oil and gas sources within their own states. If a state does not submit a plan to the EPA for approval in response to the final emission guidelines, or if the EPA disapproves a state’s plan, then the EPA must establish a Federal plan. In addition, a Federal plan could apply to sources located on Tribal lands where the tribe does not request approval to develop a tribal implementation plan similar to a state plan. Once the Administrator approves a state plan under CAA section 111(d), the plan is

codified in 40 CFR part 62 (Approval and Promulgation of State Plans for Designated Facilities and Pollutants) within the relevant subpart for that state.<sup>4</sup> 40 CFR part 62 also includes all Federal plans promulgated pursuant to CAA section 111(d). Therefore, rather than referencing the presumptive standards in EG OOOOc, which would not directly apply to sources, the proposed amendments to subpart W reference 40 CFR part 62.

Similar to the 2016 amendments to align subpart W requirements with certain requirements in 40 CFR part 60, subpart OOOOa (hereafter referred to as “NSPS OOOOa”) (81 FR 86500, November 30, 2016), we are proposing revisions to certain requirements in subpart W relative to the requirements proposed for NSPS OOOOb and the presumptive standards proposed in EG OOOOc (which would inform the standards to be developed and codified at 40 CFR part 62). As in the 2016 rule, the proposed amendments would also allow facilities to use a consistent method to demonstrate compliance with multiple EPA programs. This proposal would limit burden for subpart W facilities with affected sources that would also be required to comply with the proposed NSPS OOOOb or a State or Federal plan in part 62 implementing EG OOOOc by allowing them to use data derived from the implementation of the NSPS OOOOb to calculate emissions for the GHGRP rather than requiring the use of different monitoring methods. Consistent with that goal, the EPA expects that the final amendments to subpart W would reference the final version of the method(s) in the NSPS OOOOb and EG OOOOc. These amendments would also improve the emission calculations reported under the GHGRP. Specifically, we are proposing amendments to the subpart W calculation methodologies for flares, centrifugal and reciprocating compressors, and equipment leak surveys related to the proposed NSPS OOOOb and presumptive standards in EG OOOOc, and we are proposing new reporting requirements for “other large release events” as defined in subpart W that would reference the NSPS OOOOb and approved state plans or applicable Federal plan in 40 CFR part 62. These proposed amendments are described in sections III.B, N, O, and P. If finalized, the provisions of these proposed amendments that reference the NSPS OOOOb and approved state plans or

applicable Federal plan in 40 CFR part 62 would not apply to individual reporters unless and until their emission sources are required to comply with either the final NSPS OOOOb or an approved state plan or applicable Federal plan in 40 CFR part 62. In the meantime, reporters would have the option to comply with the calculation methodologies that would be required for sources subject to NSPS OOOOb or 40 CFR part 62, or they would comply instead with the applicable provisions of subpart W that apply to sources not subject to NSPS OOOOb or 40 CFR part 62. For example, for flare sources subject to NSPS OOOOb, facilities would have the option to comply with the flare monitoring requirements in NSPS OOOOb even if the source is not yet subject to or will not be subject to those provisions. For the “other large release events” source category, emissions from other large release events would be required to be calculated and reported starting in Reporting Year (RY) 2025; the requirements to calculate and report these emissions is not dependent on whether a source is subject to NSPS OOOOb or 40 CFR part 62.

The specific changes that we are proposing, as described in this section, are described in detail in section III of this preamble.

#### *A. Revisions To Address Potential Gaps in Reporting of Emissions Data for Specific Sectors*

We are proposing several amendments to include reporting of additional emissions or emissions sources to address potential gaps in the total CH<sub>4</sub> emissions reported per facility to subpart W. In particular, based on recent analyses such as those conducted for the annual Inventory of U.S. Greenhouse Gas Emissions and Sinks (U.S. GHG Inventory), and data newly available from atmospheric observations, we have become aware of potentially significant sources of emissions for which there are no current emission estimation methods or reporting requirements within part 98. For subpart W, we are proposing to add calculation methodologies and requirements to report GHG emissions for several additional sources. We are proposing to add a new emissions source, referred to as “other large release events,” to capture abnormal emission events that are not accurately accounted for using existing methods in subpart W. This additional source would cover events such as storage

wellhead leaks, well blowouts,<sup>5</sup> and other large, atypical release events and would apply to all types of facilities subject to subpart W. Reporters would calculate GHG emissions using measurement data or engineering estimates of the amount of gas released and measurement data, if available, or process knowledge (best available data) to estimate the composition of the released gas. We are also proposing to add calculation methodologies and requirements to report GHG emissions for several other new emission sources, including nitrogen removal units, produced water tanks, mud degassing and crankcase venting. None of these sources are currently accounted for in subpart W, and the EPA is proposing to include them because they are likely to have a meaningful impact on reported CH<sub>4</sub> emissions. We are also proposing to revise the existing methodologies and add new measurement-based methodologies, consistent with section II.B., for determining combustion emissions from reciprocating internal combustion engines (RICE) and gas turbines (GT), including those that drive compressors, to account for combustion slip, which is not currently accounted for under the existing calculation methodologies for combustion emissions. We are also proposing to require reporting of existing emission sources by additional industry segments. For example, we are proposing to require liquefied natural gas (LNG) import/export facilities to begin calculating and reporting emissions from acid gas removal unit (AGR) vents. Additional details of these types of proposed changes may be found in section III of this preamble.

The proposed changes would ensure that the reporting under subpart W accurately reflects the total CH<sub>4</sub> emissions and waste emissions as required by CAA section 136(h).

#### *B. Revisions To Add New Emissions Calculation Methodologies or Improve Existing Emissions Calculation Methodologies*

We are proposing several revisions to add new or revise existing calculation methodologies to improve the accuracy of emissions data reported to the GHGRP, incorporate additional empirical data and to allow owners and operators of applicable facilities to submit empirical emissions data that appropriately could demonstrate the extent to which a charge is owed in

<sup>4</sup> 40 CFR part 62 contains a subpart for each of the 50 states, District of Columbia, American Samoa, Puerto Rico, Virgin Islands, and Northern Mariana Islands.

<sup>5</sup> We are proposing to define a well blowout in 40 CFR 98.238 as a complete loss of well control for a long duration of time resulting in an emissions release.

future implementation of CAA section 136, as directed by CAA section 136(h). Currently, subpart W specifies emission source types to be reported for each industry segment and provides methodologies to calculate emissions from each source type, which are then summed to generate the total subpart W emissions for the facility. Considering the directives set forth in CAA section 136, the EPA re-evaluated the existing methodologies for each source to determine if they are likely to accurately reflect CH<sub>4</sub> and waste emissions at an individual facility, whether the existing methodologies used empirical data, *e.g.*, direct emissions measurements or monitoring of CH<sub>4</sub> emissions or measurement of associated parameters, and whether the existing methodologies should be modified or replaced to meet CAA section 136 directives. A summary list of the emissions sources proposed to be reported with the corresponding proposed monitoring and emissions calculation methods is available in the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234. Many sources in subpart W already have or require calculation methodologies that use direct emission measurement including AGR vents, large reciprocating compressor rod packing vents, large compressor blowdown vent valve leaks, and large compressor blowdown vent (unit isolation valve leaks), the latter two when leakage is detected via screening. Currently, subpart W has required direct measurement when the magnitude of emissions are potentially large and no credible engineering calculation methods or emission factors existed to accurately characterize emissions. In this proposal, the EPA is proposing new calculation methodologies to allow for the use of direct measurement, including for equipment leaks and natural gas pneumatic devices. The EPA is also proposing new calculation methodologies to allow for the development of site-specific emission factors for equipment leaks and pneumatic devices based on data collected from direct measurement at the facility.

We are proposing several revisions to modify calculation equations to incorporate refinements to methodologies based on an improved understanding of emission sources. In some cases, we have become aware of discrepancies between assumptions in the current emission estimation methods and the processes or activities conducted at specific facilities, where the proposed revisions would reduce

reporter errors. In other cases, we are proposing to revise the emissions estimation methodologies to incorporate recent studies on GHG emissions or information that reflect updates to scientific understanding of GHG emissions sources. The proposed changes would improve the quality and accuracy of the data collected under the GHGRP.

We are also proposing to revise several existing calculation methodologies to incorporate empirical data obtained at the facility. Emissions can be reliably calculated for sources such as tanks and glycol dehydrators using standard engineering first principle methods such as those available in API 4697 E&P Tanks<sup>6</sup> and GRI-GLYCalc<sup>TM</sup>.<sup>7</sup> Using such software also addresses safety concerns that are associated with direct emissions measurement from these sources. For example, sometimes the temperature of the emissions stream for glycol dehydrator vent stacks is too high for operators to safely measure emissions. However, currently in subpart W, these methods allow for use of best available data for inputs to the model. The EPA has noted that in some cases, such as with reporting of emissions from some dehydrators, the data used to calculate emissions are not based on actual operating conditions but instead based on “worst-case scenarios” or other estimates. In these cases, the accuracy of the reported emissions would be improved by using actual operating conditions as measured at the unit. In this proposal, for large glycol dehydrators and AGRs, we are proposing to require that certain input parameters are based on actual measurements at the unit level in order to improve the accuracy of the reported emissions for these sources.

In order to improve the accuracy of the data collected under the GHGRP, we are proposing to revise emission factors where improved measurement data has become available or we have received additional information from stakeholders. Some of the calculation methodologies provided in the GHGRP rely on the use of emission factors that are based on published empirical data. The use of default emission factors decreases the need for additional monitoring or measurements from individual facilities, while in many cases still providing a reasonably accurate estimate of facility-level

emissions. The proposed rule includes revisions to emission factors for a number of emission source types, where we have received or identified updated measurement data. In cases where there is significant variability in source-level emissions and the default emission factors are thus not appropriately representative of facility-level emissions, and other calculation methodologies are available that are representative of facility-level emissions, we are proposing to remove default emission factors. For example, for intermittent bleed pneumatics, we are proposing three new methodologies for measuring emissions and are therefore proposing to remove use of default population emission factors for calculating emissions.

We are proposing to update the emission factors for continuous low and high bleed natural gas pneumatic devices and for equipment leaks from natural gas distribution sources (including pipeline mains and services, below grade transmission-distribution transfer stations, and below grade metering-regulating stations) and equipment at onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities in subpart W. The proposed emission factors are more representative of GHG emissions sources and would improve the overall accuracy of the emission data collected under the GHGRP. Additional details of these types of proposed changes may be found in section III of this preamble.

In addition to the methods discussed above, we reviewed measurement approaches that utilize information from satellite, aerial, and continuous monitoring (“top-down approaches”) to detect and/or quantify emissions from petroleum and natural gas systems for the purposes of subpart W reporting. Top-down technologies have been a focus for research and emission monitoring strategies, and the technologies have progressed in recent years to provide reliable CH<sub>4</sub> emission monitoring and quantification in many cases. Top-down technologies include instruments located on satellites, aircraft, and mobile platforms. These technologies can also include Advanced Mobile Leak Detection (AML) and other continuous monitoring sensors. Top-down approaches have certain benefits related to geographic coverage, repeatability, and periodic measurements. Depending on the technology (satellite, aircraft, drone), the scale of observation can provide data useful for quantifying emissions in a range of cases, from quantifying emissions for a single point source, such

<sup>6</sup> E&P Tanks v3.0 software and the user guide (Publication 4697) formerly available from the American Petroleum Institute (API) website.

<sup>7</sup> GRI-GLYCalc<sup>TM</sup> software available from Gas Technology Institute website (<https://sales.gastechnology.org/>).

as a wellhead, to a basin-wide measurement. This data can be used to develop emissions estimates for the duration of the observation or can be used in combination with additional observations or other data inputs to estimate emissions from a longer time frame. Satellite remote sensing technologies currently take measurements of concentrations at altitudes of 400 to 800 kilometers with CH<sub>4</sub> detection limits of approximately 50 to 25,000 kilograms per hour (kg/hr),<sup>8</sup> with one system citing 2 parts per billion (ppb);<sup>9</sup> high altitude remote sensing (by airplane) measure at altitudes of 168 to 12,000 meters (m) with CH<sub>4</sub> detection limits of approximately 1 to 50 kg/hr;<sup>10</sup> and low altitude aerial remote sensing (by drone) take measurements at altitudes of 30 to 150 m with CH<sub>4</sub> detection ranging from approximately 5 to 250 parts per million (ppm) (depending on distance).<sup>11 12</sup> For

<sup>8</sup> See GHGSat. *GHGSat Media Kit*. (2021). Available at [https://www.ghgsat.com/upload/misc/GHGSAT\\_MEDIKIT\\_2021.pdf](https://www.ghgsat.com/upload/misc/GHGSAT_MEDIKIT_2021.pdf); Pandey, S., et al. "Satellite observations reveal extreme methane leakage from a natural gas well blowout." *Proceedings of the National Academy of Sciences*, Vol. 116, no. 52. Pp. 26376–26381, December 16, 2019, available at <https://doi.org/10.1073/pnas.1908712116>; Jacob, D. J., et al. "Quantifying methane emissions from the global scale down to point sources using satellite observations of atmospheric methane." *Atmospheric Chemistry and Physics*, Vol. 22, Issue 14, pp. 9617–9646, July 29, 2022, available at <https://doi.org/10.5194/acp-22-9617-2022>; Anderson, V., et al. "Technological opportunities for sensing of the health effects of weather and climate change: a state-of-the-art-review." *International Journal of Biometeorology*, Vol. 65, Issue 6, pp. 779–803, January 11, 2021, available at <https://doi.org/10.1007/s00484-020-02063-z>. The documents are also available in the docket for this rulemaking. Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>9</sup> Anderson et al. (2021).  
<sup>10</sup> See Conrad, B. M., Tyner, D. R. & Johnson, M. R. "Robust probabilities of detection and quantification uncertainty for aerial methane detection: Examples for three airborne technologies." *Remote Sensing of Environment*, Vol. 288, p. 113499, available at <https://doi.org/10.1016/j.rse.2023.113499>. 2023; Duren, R. M., et al. "California's methane super-emitters." *Nature*, Vol. 575, Issue 7781, pp. 180–184, available at <https://doi.org/10.1038/s41586-019-1720-3>. 2019; Thorpe, A.K., et al. "Airborne DOAS retrievals of methane, carbon dioxide, and water vapor concentrations at high spatial resolution: application to AVIRIS-NG." *Atmos. Meas. Tech.*, 10, 3833–3850, available at <https://doi.org/10.5194/amt-10-3833-2017>. 2017; Staebell, C., et al. "Spectral calibration of the MethaneAIR instrument." *Atmospheric Measurement Techniques*, Vol. 14, Issue 5, pp. 3737–3753, available at <https://doi.org/10.5194/amt-14-3737-2021>. 2021. The documents are also available in the docket for this rulemaking. Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>11</sup> Morales, R., et al. "Controlled-release experiment to investigate uncertainties in UAV-based emission quantification for methane point sources." *Atmos. Meas. Tech.*, 15, 2177–2198, <https://doi.org/10.5194/amt-15-2177-2022>. 2022. Available in the docket for this rulemaking. Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>12</sup> Ravikumar, A. P., et al. "Single-blind inter-comparison of methane detection technologies—

remote sensing technologies, the size of the area monitored is typically inversely related to the detection levels. Further discussion of our review of top-down technologies is available in the subpart W TSD, available in the docket for this rulemaking.

There have been several studies asserting that bottom-up CH<sub>4</sub> emission estimates reported by subpart W facilities underestimate annual CH<sub>4</sub> emissions.<sup>13</sup> This underestimate is often attributed to large, often episodic emissions (i.e., super-emitters).<sup>14</sup> Emissions estimates developed with remote sensing data may be more likely to include super-emitters, and therefore, to the extent that they capture emissions that would not have otherwise been included under prior GHGRP regulations, they can demonstrate where existing reporting data may underestimate total emissions. Some top-down approaches have a demonstrated ability to provide data useful for quantifying emissions from very large, distinct emission events, such as production well blowouts. In the U.S. GHG Inventory, the EPA has

results from the Stanford/EDF Mobile Monitoring Challenge." *Elementa: Science of the Anthropocene* 1 January 2019; 7 37. doi: <https://doi.org/10.1525/elementa.373>. Available in the docket for this rulemaking. Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>13</sup> See, e.g., Caulton, et al. "Toward a better understanding and quantification of methane emissions from shale gas development." *Proceedings of the National Academy of Sciences*, Vol. 111, Issue 17, pp. 6237–6242, available at <https://doi.org/10.1073/pnas.1316546111>. 2014; Alvarez, et al. "Quantifying Regional Methane Emissions in the New Mexico Permian Basin with a Comprehensive Aerial Survey." *Environmental Science & Technology*, Vol. 56, Issue 7, pp. 4317–4323, available at <https://doi.org/10.1126/science.aar7204>. 2018; Zhang, et al. "Quantifying methane emissions from the largest oil-producing basin in the United States from space." *Science Advances*, Vol. 6, Issue 17, available at <https://doi.org/10.1126/sciadv.aaz5120>. 2020. The documents are also available in the docket for this rulemaking. Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>14</sup> See, e.g., Zavala-Ariaza, et al. "Reconciling divergent estimates of oil and gas methane emissions." *Proceedings of the National Academy of Sciences*, Vol. 112, Issue 51, pp. 15597–15602, available at <https://doi.org/10.1073/pnas.1522126112>. 2017; Cusworth, et al. "Intermittency of Large Methane Emitters in the Permian Basin." *Environmental Science & Technology Letters*, Vol. 8, Issue 7, pp. 567–573, available at <https://doi.org/10.1021/acs.estlett.1c00173>. 2021; Chen, et al. "Quantifying Regional Methane Emissions in the New Mexico Permian Basin with a Comprehensive Aerial Survey." *Environmental Science & Technology*, Vol. 56, Issue 7, pp. 4317–4323, available at <https://doi.org/10.1021/acs.est.1c06458>. 2022; Wang, et al. "Multiscale Methane Measurements at Oil and Gas Facilities Reveal Necessary Frameworks for Improved Emissions Accounting." *Environmental Science & Technology*, Vol. 56, Issue 20, pp. 14743–14752, available at <https://doi.org/10.1021/acs.est.2c06211>. 2022. The documents are also available in the docket for this rulemaking. Docket Id. No. EPA-HQ-OAR-2023-0234.

already incorporated emissions estimates developed from such approaches to calculate emissions from well blowouts.<sup>15</sup> In this proposal, data from such approaches could be used to identify and/or calculate emission rates of other large release events (see section III.B of this preamble).

In this proposal, the EPA is proposing to include emissions from large emissions events and super-emitters in the subpart W reporting program. This proposed addition would directly address the concerns identified by a multitude of studies about the contribution of super-emitters to total emissions and help to ensure the completeness and accuracy of emissions reporting data. The top-down monitoring approaches that have demonstrated their accuracy and ability to identify such events are a central feature of the proposed changes. This top-down data may also help to flag areas where there is a large gap between the bottom-up CH<sub>4</sub> emissions estimates and the top-down measurement data, requiring facilities to revise emission estimates. In this proposal, we are proposing to require facilities to consider notifications of potential super-emitter emissions event under the super-emitter provisions of NSPS OOOOb at 40 CFR 60.5371b and calculate associated events when they exceed our proposed thresholds if they are not already accounted for under another source category in subpart W. We expect that under the proposed methodology for other large release events in this proposal, data from some top-down approaches, including data derived from equipment leak and fugitive emissions monitoring using advanced screening methods which is conducted under NSPS OOOOb or the applicable approved state plan or applicable Federal plan in 40 CFR part 62, in combination with other empirical data, could be used by reporters to calculate the total emissions from these events and/or estimate duration of such an event.

While this top-down data is very useful in identifying possible large emissions events that are not captured by other reporting obligations, it is not presently able to provide annual emissions data to the degree of accuracy and certainty required by other provisions of this rulemaking. It is not

<sup>15</sup> U.S. EPA. *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2020: Updates for Anomalous Events including Well Blowout and Well Release Emissions*. April 2022. Available at [https://www.epa.gov/system/files/documents/2022-04/2022\\_ghgi\\_update\\_-\\_blowouts.pdf](https://www.epa.gov/system/files/documents/2022-04/2022_ghgi_update_-_blowouts.pdf) and in the docket for this rulemaking. Docket Id. No. EPA-HQ-OAR-2023-0234.

currently possible to use remote sensing data as the only basis to extrapolate annual emissions data. Most top-down, facility measurements are taken over limited durations (a few minutes to a few hours) typically during the daylight hours and limited to times when specific meteorological conditions exist (e.g., no cloud cover for satellites; specific atmospheric stability and wind speed ranges for aerial measurements). These direct measurement data taken at a single moment in time may not be representative of the annual CH<sub>4</sub> emissions from the facility, given that many emissions are episodic. If emissions are found during a limited duration sampling, that does not necessarily mean they are present for the entire year. And if emissions are not found during a limited duration sampling, that does not mean significant emissions are not occurring at other times. Extrapolating from limited measurements to an entire year therefore creates risk of either over or under counting actual emissions.

While top-down measurement methods, including satellite and aerial methods, have proven their ability to identify and measure large emissions events, their detection limits may be too high to detect emissions from sources with relatively low emission rates.<sup>16</sup> The data provided by some of these technologies are at large spatial scales, with limited ability to disaggregate to the facility- or emission source-level and have high minimum detection limits. So while these technologies can provide very useful information about emissions during snapshots in time, and thus help to greatly improve the completeness and accuracy of emission reporting, they generally cannot by themselves estimate annual emissions. This rule proposes to use these top-down methods to supplement the other requirements for periodic measurement and calculation of annual emissions.

In addition to the proposed use of top-down data to help identify and quantify super-emitter and other large emissions events, we invite comment on whether there are other appropriate uses of top-down data for the purposes of reporting under subpart W of the GHGRP, including what types of emission sources and emission events, what specific top-down methods may be appropriate, especially in terms of spatial scale and minimum detection limits. As described above, the different

types of top-down data have a wide range of detection limits and spatial resolution, which makes it difficult to reliably convert point estimates to an annual emissions estimate as required by the GHGRP. Therefore, this proposal does not propose using top-down approaches for sources other than besides other large release events due to the limitations described earlier in this section. However, we invite comment on whether there are top-down approaches that could be used to estimate annual emissions for any source categories under subpart W or for facility-level emissions, what level of accuracy should be required for such use, and whether the development of standards (either by the EPA or third-party organizations) could help inform this determination. We also invite comment on how frequently measurements would need to be conducted to be considered reliable or representative of annual emissions for reporting purposes.

We invite comment on how best to combine top-down data with bottom-up methods in a way that avoids double counting of emissions. For example, top-down data may be used to refine emission estimates for particular sources or for the facility. We also seek comment on the best methods to estimate duration of events measured using top-down measurements and extrapolation to annual emissions. We also invite comment on the associated modeling necessary to incorporate top-down data and the associated uncertainties for calculating facility-level emissions. We also request comment on how to account for the types of limitations described in this section.

### *C. Revisions to Reporting Requirements To Improve Verification and Transparency of the Data Collected*

The EPA is proposing several revisions to existing reporting requirements to collect data that would improve verification of reported data and ensure accurate reporting of emissions or improve the transparency of the data collected. Such revisions would better enable the EPA to obtain data that is of sufficient quality and granularity that it can be used to support a range of future climate change policies and regulations under the CAA, including but not limited to information relevant to carrying out CAA section 136, provisions involving research, evaluating and setting standards, endangerment determinations, or informing EPA non-regulatory programs under the CAA.

We are proposing to add or revise reporting requirements to better characterize the emissions for several emission sources. For example, we are proposing to collect additional information from facilities with liquids unloadings to differentiate between manual and automated unloadings.

Other proposed revisions to the rule include changes that would better align reporting with the calculation methods in the rule. For example, we are proposing to revise reporting requirements related to atmospheric pressure fixed roof storage tanks receiving hydrocarbon liquids that follow the methodology specified in 40 CFR 98.233(j)(3) and equation W-15. The current calculation methodology uses population emission factors and the count of applicable separators, wells, or non-separator equipment to determine the annual total volumetric GHG emissions at standard conditions. The associated reporting requirements in existing 40 CFR 98.236(j)(2)(i)(E) and (F) require reporters to delineate the counts used in equation W-15. Based on feedback from reporters, the EPA's assessment in this proposal is that the reporting requirements are inconsistent with the language used in the calculation methodology and are not inclusive of all equipment to be included. Therefore, we are proposing to revise the reporting requirements to better align the requirement with the calculation methodology and streamline the requirements for all facilities reporting atmospheric storage tanks emissions using the methodology in 40 CFR 98.233(j)(3).

In some cases, we are proposing to remove duplicative reporting elements within or across GHGRP subparts to reduce data inconsistencies and reporting errors. For example, we are proposing to eliminate duplicative reporting between subpart NN (Suppliers of Natural Gas and Natural Gas Liquids) and subpart W where both subparts require similar data elements to be reported to the electronic Greenhouse Gas Reporting Tool (e-GGRT). For instance, for fractionators of natural gas liquids (NGLs), both subpart W (under the Onshore Natural Gas Processing segment) and subpart NN require reporting of the volume of natural gas received and the volume of NGLs received. The proposed amendments would limit the reporting of these data elements to facilities that do not report under subpart NN, thus removing the duplicative requirements from subpart W for facilities that report to both subparts. This would improve the EPA's ability to verify the reported data across subparts.

<sup>16</sup> Duren, *et al.* "California's methane super-emitters." *Nature*, Vol. 575, Issue 7781, pp. 180-184, available at <https://doi.org/10.1038/s41586-019-1720-3>. 2019. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

#### D. Technical Amendments, Clarifications, and Corrections

We are proposing other technical amendments, corrections, and clarifications that would improve understanding of the rule. These revisions primarily include revisions of requirements to better reflect the EPA's intent or editorial changes. Some of these proposed changes result from consideration of questions raised by reporters through the GHGRP Help Desk or e-GGRT. In particular, we are proposing amendments for several source types that would emphasize the original intent of certain rule requirements, such as reported data elements that have been misinterpreted by reporters. In several cases, the misinterpretation of these provisions may have resulted in reporting that is inconsistent with the rule requirements. The proposed clarifications would increase the likelihood that reporters will submit accurate reports the first time. For example, the EPA is proposing to revise the definition of variable "T<sub>i</sub>" in existing equation W-1 (proposed equation W-1B) in 40 CFR 98.233 and the corresponding reporting requirements in proposed 40 CFR 98.236(b)(4)(ii)(C)(4), (b)(4)(iii)(C)(3), and (b)(5)(i)(C)(2) to use the term "in service (*i.e.*, supplied with natural gas)" rather than "operational" or "operating." This proposed revision would emphasize the EPA's intent that the average number of hours used in equation W-1 should be the number of hours that the devices of a particular type are in service (*i.e.*, the devices are receiving a measurement signal and connected to a natural gas supply that is capable of actuating a valve or other device as needed). These proposed clarifications and corrections would also reduce the burden associated with reporting, data verification, and EPA review. Additional details of these types of proposed changes are discussed in section III of this preamble.

We are also proposing to revise applicability provisions for certain industry segments and applicable calculation methods. For example, we are proposing to revise the definition of the Onshore Natural Gas Processing industry segment to remove the gas throughput threshold so that the applicable industry segment and calculation methods are defined from the beginning of the year. The current definition of the Onshore Natural Gas Processing industry segment includes processing plants that fractionate gas liquids and processing plants that do not fractionate gas liquids but have an annual average throughput of 25 million

standard cubic feet (MMscf) per day or greater. Processing plants that do not fractionate gas liquids and have an annual average throughput of less than 25 MMscf per day may be part of a facility in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment. Processing plants that do not fractionate gas liquids and generally operate close to the 25 MMscf per day threshold do not know until the end of the year whether they will be above or below the threshold, so they must be prepared to report under whichever industry segment is ultimately applicable. Therefore, as discussed in greater detail in section III.A.3 of this preamble, we are proposing to revise the Onshore Natural Gas Processing industry segment definition in 40 CFR 98.230(a)(3) to remove the 25 MMscf per day threshold and more closely align subpart W with the definitions of natural gas processing in other rules (*e.g.*, NSPS OOOOa). This proposed revision to the Onshore Natural Gas Processing industry segment definition would better define whether a processing plant would be classified as an Onshore Natural Gas Processing facility or as part of an Onshore Petroleum and Natural Gas Gathering and Boosting facility, and the applicable segment would not have the potential to change from one year to the next simply based on the facility throughput.

Additional details of these types of proposed changes may be found in section III of this preamble.

Other minor changes being proposed include correction edits to fix typos, minor clarifications such as adding a missing word, harmonizing changes to match other proposed revisions, reordering of paragraphs so that a larger number of paragraphs need not be renumbered, and others as reflected in the draft proposed redline regulatory text in the docket for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234).

### III. Proposed Amendments to 40 CFR Part 98

This section summarizes the specific substantive amendments proposed for subpart W (as well as subparts A and C), as generally described in section II of this preamble. Section III.A describes amendments that affect reporting responsibility or applicability. Sections III.B through III.U of this preamble describe proposed technical amendments that would affect specific source types or industry segments. We are also proposing the miscellaneous subpart W technical corrections and clarifications listed in section III.V of

this preamble. We are also proposing related confidentiality determinations for new or revised data elements that result from these proposed amendments, as discussed in section V of this preamble. The impacts of the proposed revisions are summarized in section VI of this preamble. A full discussion of the cost impacts for the proposed revisions may be found in the memorandum, *Assessment of Burden Impacts for Proposed Revisions for the Greenhouse Gas Reporting Rule* available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

#### A. General and Applicability Amendments

##### 1. Ownership Transfer

When there is a change in ownership for facilities reported under the GHGRP, the provisions of existing 40 CFR 98.4(h) describe the responsibilities of the owners and operators. However, asset transactions between owners and operators sometimes involve only some emission sources at the facility rather than the entire facility, particularly in the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments in subpart W (which are two of the industry segments that have unique definitions of "facility"). In those cases, reporters have submitted numerous questions to the GHGRP Help Desk requesting guidance regarding which owner or operator should report for the year in which the transaction occurred as well as which owner or operator is responsible for submitting revisions and responding to questions from the EPA regarding previous annual GHG reports. To assist manufacturers regarding some of these questions, the EPA previously developed Frequently Asked Questions (FAQ) Q749.<sup>17</sup> However, neither the FAQ nor the existing requirements in subpart A explicitly explain the responsibilities for the situations for which reporters have requested guidance.

Therefore, the EPA is proposing to add specific provisions to subpart A in

<sup>17</sup> U.S. EPA. Q749: "What are the notification requirements when an Onshore Petroleum and Natural Gas Production facility, reporting under subpart W, sells wells and associated equipment in a basin?" September 26, 2019. <https://cdsupport.com/confluence/pages/viewpage.action?pageId=198705183>. Note that although FAQ Q749 specifically describes facilities in the Onshore Petroleum and Natural Gas Production segment, the EPA does consider the scenarios described to be relevant to the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment as well, because facilities in both segments are defined at the basin level rather than at the level of the subpart A definition of facility.

a proposed new paragraph 40 CFR 98.4(n) that would apply in lieu of existing 40 CFR 98.4(h) for changes in the owner or operator of a facility in the four industry segments in subpart W (Petroleum and Natural Gas Systems) that have unique definitions of facility. The proposed provisions would define which owner or operator is responsible for current and future reporting years' reports and clarify how to determine responsibility for revisions to annual reports for reporting years prior to owner or operator changes for specific industry segments in subpart W, beginning with RY2025 reports. The proposed provisions would also specify when an owner or operator would submit an annual report using an e-GGRT identifier assigned to an existing facility and when an owner or operator would register a new facility in e-GGRT. As described in more detail in this section, the provisions would vary based upon whether the selling owner or operator would retain any emission sources, the number of purchasing owners or operators, and whether the purchasing owners or operators already report to the GHGRP in the same industry segment and basin or state (as applicable). These proposed revisions are expected to improve data quality as described in section II.C of this preamble by ensuring that the EPA receives a more complete data set, and they are also expected to improve understanding of the rule, as described in section II.D of this preamble.

We expect all the transactions fall into one of four general categories, and we are proposing provisions that would define the responsibilities for reporting for each of those general categories. First, if the entire facility is sold to a single purchaser and the purchasing owner or operator does not already report to the GHGRP in that industry segment (and basin or state, as applicable), then we are proposing that the facility's certificate of representation must be updated within 90 days of the transaction to reflect the new owner or operator. In other words, the e-GGRT identifier and associated facility within e-GGRT would be transferred from the seller to the purchaser. The purchasing owner or operator would be responsible for submitting the facility's annual report for the entire reporting year in which the acquisition occurred (*i.e.*, the owner or operator as of December 31 would be responsible for the report for that entire reporting year) and each reporting year thereafter. In addition, because the definitions of facility for each of these segments encompass all of the emission sources in a particular

geographic area (*i.e.*, basin, state, or nation), the purchasing owner or operator would include any other applicable emission sources already owned by that purchasing owner or operator in the same geographic area as part of the purchased facility beginning with the reporting year in which the acquisition occurred. The purchasing owner or operator would also become responsible for responding to EPA questions and making any necessary revisions to annual GHG reports for reporting years prior to the reporting year in which the acquisition occurred. This scenario is the most similar to ownership transfer for facilities in other subparts, and this proposed amendment would specify that the responsibility for reporting should be similar to the existing requirements for all subparts.

Second, if the entire facility is sold to a single purchaser and the purchasing owner or operator already reports to the GHGRP in that industry segment (and basin or state, as applicable), then we are proposing that the purchasing owner or operator would merge the acquired facility with their existing facility for purposes of reporting under the GHGRP. In other words, the acquired facility would become part of the purchaser's existing facility under the GHGRP and emissions for the combined facility would be reported under the e-GGRT identifier for the purchaser's existing facility. The purchaser would update the acquired facility's certificate of representation within 90 days of the transaction to reflect the new owner or operator. The purchaser would then follow the provisions of 40 CFR 98.2(i)(6) to notify the EPA that the purchased facility has merged with their existing facility and would provide the e-GGRT identifier for the merged, or reconstituted, facility. Finally, the purchaser would be responsible for submitting the merged facility's annual report for the entire reporting year in which the acquisition occurred (*i.e.*, the owner or operator as of December 31 would be responsible for the report for that entire reporting year) and each reporting year thereafter. The purchasing owner or operator would also become responsible for responding to EPA questions and making any necessary revisions to annual GHG reports for the purchased facility for reporting years prior to the reporting year in which the acquisition occurred. In this scenario, an entire facility is changing ownership, and this proposed amendment would specify that the responsibility for reporting should be similar to the existing requirements for all subparts.

Third, if the selling owner or operator retains some of the emission sources and sells the other emission sources of the seller's facility to one or more purchasing owners or operators, we are proposing that the selling owner or operator would continue to report under subpart W for the retained emission sources unless and until that facility meets one of the criteria in 40 CFR 98.2(i) and complies with those provisions. Each purchasing owner or operator that does not already report to the GHGRP in that industry segment (and basin or state, as applicable) would begin reporting as a new facility for the entire reporting year beginning with the reporting year in which the acquisition occurred. The new facility would include the acquired applicable emission sources as well as any previously owned applicable emission sources. We note that, under the proposed provisions, because the new facility would contain acquired emission sources that were part of a facility that was subject to the requirements of part 98 and already reporting to the GHGRP, the purchasing owner or operator would follow the provisions of 40 CFR 98.2(i) and continue to report unless and until one of the criteria in 40 CFR 98.2(i)(1) through (6) are met, instead of comparing the facility's emissions to the reporting threshold in 40 CFR 98.231(a) to determine if they should begin reporting. Each purchasing owner or operator that already reports to the GHGRP in that industry segment (and basin or state, as applicable) would add the acquired applicable emission sources to their existing facility for purposes of reporting under subpart W and would be responsible for submitting the annual report for their entire facility, including the acquired emission sources, for the entire reporting year beginning with the reporting year in which the acquisition occurred.

Fourth, if the selling owner or operator does not retain any of the emission sources and sells all of the facility's emission sources to more than one purchasing owner or operator, we are proposing that the selling owner or operator for the existing facility would notify the EPA within 90 days of the transaction that all of the facility's emission sources were acquired by multiple purchasers. The purchasing owners or operators would begin submitting annual reports for the acquired emission sources for the reporting year in which the acquisition occurred following the same provisions as in the third scenario. In other words, each owner or operator would either

begin reporting their acquired applicable emission sources as a new facility or add the acquired applicable emission sources to their existing facility.

Finally, for the third and fourth types of transactions, we are proposing one set of provisions to clarify responsibility for annual GHG reports for reporting years prior to the reporting year in which the acquisition occurred. This set of proposed provisions would apply to annual GHG reports for facilities where these types of transactions occur after the effective date of the final amendments, if adopted. In other words, if the effective date of the final amendments is January 1, 2025, as described in section V of this preamble, then for ownership transactions that occur on or after January 1, 2025, we are proposing that the proposed requirements for the current and future reporting years described in the previous paragraphs would apply. In addition, the proposed provisions for annual GHG reports for reporting years prior to the transaction would also apply. For example, if an ownership transaction occurs on June 30, 2027, then the selling owner or operator and purchasing owner or operator would follow the proposed applicable provisions previously described in this section for the RY2027 report and for future reporting years. In this example scenario, the proposed provisions described in the next paragraph would apply for RY2026 and prior years' reports.

Specifically, we are proposing that as part of the third and fourth types of ownership change described previously in this section, the selling owner or operator and each purchasing owner or operator would be required to select by an agreement binding on the owners and operators (following the procedures specified in 40 CFR 98.4(b)) a "historic reporting representative" that would be responsible for revisions to annual GHG reports for previous reporting years within 90 days of the transaction. The EPA expects that the agreement regarding the historic reporting representative would be entered into at the time of the acquisition and that if the representative responsible for revisions to annual GHG reports is not employed by the selling owner or operator, copies of the records required to be retained per 40 CFR 98.3(g) and (h) would be transferred to the historic reporting representative at that time. The historic reporting representative for each facility that would respond to any EPA questions regarding GHG reports for previous reporting years and would submit corrected versions of GHG

reports for previous reporting years as needed. In many situations, the EPA expects that the purchaser would agree to select a historic reporting representative to address revisions to previous years' annual GHG reports. In particular, there may be cases in which the selling owner or operator's company will no longer be operating after the transaction, so it may be appropriate for one of the purchasing owners or operators to select that historic reporting representative. In other situations, the parties may determine that it is appropriate for the seller to select the historic reporting representative to address revisions to annual GHG reports for reporting years prior to the reporting year in which the acquisition occurred. In the 2022 Proposed Rule, the EPA proposed that if this historic reporting representative is not the current designated representative for the facility, the historic reporting representative would need to be appointed as the alternate designated representative or an agent for the facility. However, in some cases this could provide that individual with access to the facility's data for reporting years other than the previous reporting years for which that individual is responsible, including potentially confidential or sensitive information and correspondence. Therefore, the EPA is not proposing to specify that the historic reporting representative would be required to be appointed as the alternate designated representative or an agent for the facility.

Finally, we are proposing to amend 40 CFR 98.2(i)(3), the current provision that allows an owner or operator to discontinue reporting to the GHGRP when all applicable processes and operations cease to operate. Through correspondence with reporters via e-GGRT, we are aware that there have been times that an owner or operator divested a facility and was therefore no longer required to report the emissions from that facility, but even though the facility changed owners and did not cease operating, the selling owner or operator chose the provisions of existing 40 CFR 98.2(i)(3) as the reason they were ceasing to report because none of the other options fit the situation. The EPA's intent is that this reason for no longer reporting to the GHGRP should only be used in cases in which all the applicable sources permanently ceased operation. Therefore, we are proposing to clarify that 40 CFR 98.2(i)(3) would not apply when there is a change in the owner or operator for facilities in these four industry segments, unless the

changes result in permanent cessation of all applicable processes and operations.

## 2. Definition of "Owner" and "Operator"

We are also proposing to amend 40 CFR 98.1(c) to clarify that the terms "owner" and "operator" used in subpart A have the same meaning as the terms "gathering and boosting system owner or operator" and "onshore natural gas transmission pipeline owner or operator" for the Onshore Petroleum and Natural Gas Gathering and Boosting and Onshore Natural Gas Transmission Pipeline industry segments of subpart W, respectively. This paragraph was inadvertently not amended when those two industry segments and the industry segment-specific definitions of owner or operator were added to subpart W (80 FR 64275, October 22, 2015), and this proposed amendment would correct that oversight, consistent with section II.D of this preamble.

## 3. Onshore Natural Gas Processing Industry Segment Definition

According to existing 40 CFR 98.230(a)(3), the Onshore Natural Gas Processing industry segment currently includes all facilities that fractionate NGLs. The industry segment also includes all facilities that separate NGLs from natural gas or remove sulfur and carbon dioxide (CO<sub>2</sub>) from natural gas, provided the annual average throughput at the facility is 25 MMscf per day or greater. The industry segment also includes all residue gas compression equipment owned or operated by natural gas processing facilities that is not located within the facility boundaries.

One stakeholder expressed concern that the current definition of the Onshore Natural Gas Processing industry segment applies to some compressor stations simply because they have an amine unit that is used to remove sulfur and CO<sub>2</sub> from natural gas.<sup>18</sup> According to this stakeholder, it would be more appropriate for such facilities to be in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment. This stakeholder also explained that the 25 MMscf per day threshold creates additional burden and uncertainty for these compressor station facilities because they do not know until the end of the year whether they will be above or below the threshold. Thus,

<sup>18</sup> Letter from Matt Hite, GPA Midstream Association, to Mark de Figueiredo, U.S. EPA, Re: Additional Information on Suggested Part 98, Subpart W Rule Revisions to Reduce Burden, September 13, 2019. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

they need to collect the applicable data for both the Onshore Natural Gas Processing industry segment and the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment so that they will have the required data for whichever industry segment ultimately applies to them. To resolve this issue and to promote consistency among regulatory programs, this stakeholder recommended replacing the onshore natural gas processing definition in subpart W with the natural gas processing plant definition in NSPS OOOOa.

After consideration of this issue, we are proposing to replace the definition of “Onshore natural gas processing” in 40 CFR 98.230(a)(3) with language similar to the definition of “natural gas processing plant” in NSPS OOOOa. This proposed amendment would improve the verification and transparency of the data, particularly across reporting years, consistent with section II.C of this preamble, and it would provide reporters with certainty about the applicable industry segment for the reporting year, consistent with section II.D of this preamble, allowing them to focus their efforts on collecting accurate monitoring data and emissions information needed for one applicable industry segment. As explained later in this section, while we expect that the proposed revisions would result in some facilities reporting under a different industry segment, we do not expect that the overall coverage of the GHGRP would decrease. Further, as the stakeholder noted, the two potentially applicable segments currently report emissions from different sources and with different calculation methods. For example, facilities in the Onshore Natural Gas Processing industry segment are currently not required to report emissions from natural gas pneumatic devices or atmospheric storage tanks and are currently required to measure leaks from individual compressors, while facilities in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment are currently required to report emissions from natural gas pneumatic devices or atmospheric storage tanks but currently use population emission factors to calculate emissions from all compressors rather than conducting measurements. However, the proposed addition of emission sources to the Onshore Natural Gas Processing industry segment (as described in section III.C.1 of this preamble) would remove the differences in the emission sources reported by facilities in one industry segment and not the other. The

addition of calculation methodologies for specific emission sources that would be calculated and reported by facilities in both industry segments would result in fewer differences between the emissions reported under the two industry segments.<sup>19</sup>

NSPS OOOOa defines “natural gas processing plant (gas plant)” as any processing site engaged in the extraction of NGLs from field gas, fractionation of mixed NGLs to natural gas products, or both. The definition specifies that a Joule-Thompson valve, a dew point depression valve, or an isolated or standalone Joule-Thompson skid is not a natural gas processing plant. There are two minor editorial differences between the proposed definition in 40 CFR 98.230(a) and the definition in NSPS OOOOa. First, instead of defining a natural gas processing “plant,” as in the definition in NSPS OOOOa, we are proposing to describe what is meant by “natural gas processing” so that the structure of 40 CFR 98.230(a)(3) is consistent with the structure of all of the other industry segment definitions in 40 CFR 98.230(a). Second, the definition in NSPS OOOOa refers to “extraction” of NGLs from natural gas, but this term is not defined. Thus, we are proposing to retain the term “forced extraction” in the current provisions of 40 CFR 98.230(a)(3) and proposing to revise the definition of this term slightly in 40 CFR 98.238. The current definition of “forced extraction” specifies that forced extraction does not include “portable dewpoint suppression skids.” We are proposing to revise the definition to indicate instead that forced extraction does not include “a Joule-Thomson valve, a dewpoint depression valve, or an isolated or standalone Joule-Thomson skid.” These changes would make the definition of “forced extraction” in subpart W consistent with the language in the definition of a natural gas processing plant in NSPS OOOOa.

<sup>19</sup> Proposed amendments described throughout the remainder of this preamble would reduce the differences in calculation methodologies (e.g., see sections III.O and III.P of this preamble), but there are still expected to be differences even if all the proposed amendments are finalized. The differences in calculation methodologies that would remain are due to differences in the types of operations and other factors such as the size of the “facility” between the two industry segments. In particular, facilities in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment can be geographically dispersed, and as such, some measurement methodologies may be optional rather than required. In addition, the combustion emissions for facilities in the Onshore Natural Gas Processing industry segment are reported under subpart C, while the combustion emissions for facilities in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment are reported under subpart W.

The proposed amendments to the processes that are considered “onshore natural gas processing” are not expected to decrease overall coverage of the GHGRP for the petroleum and natural gas systems industry, although we anticipate that some operations currently being reported as standalone facilities under the Onshore Natural Gas Processing industry segment would transition to reporting as part of either existing or new facilities under the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment, while some operations currently being reported as part of Onshore Petroleum and Natural Gas Gathering and Boosting facilities would transition to reporting as standalone facilities under the Onshore Natural Gas Processing industry segment. For example, based on reported data for RY2020, about 19 percent of facilities reporting in the Onshore Natural Gas Processing industry segment do not fractionate NGLs and report zero NGLs received and leaving the facility. These facilities meet the current definition of natural gas processing because they are separating CO<sub>2</sub> and/or hydrogen sulfide and/or they are capturing CO<sub>2</sub> separated from natural gas. These facilities would not meet the proposed revised definition for natural gas processing and instead, their emissions would be reported as part of either existing or new onshore petroleum and natural gas gathering and boosting facilities. In most cases, we anticipate that operations at a facility that was previously classified by a reporter as a gas processing facility would be incorporated into an existing gathering and boosting facility that has been subject to reporting, and the total emissions from the expanded gathering and boosting facility would be similar to the emissions that would have been reported by the separate facilities under the existing industry segment definitions. In cases where a former gas processing facility is located in a basin where the owner or operator does not have an existing reporting gathering and boosting facility, we expect that a new gathering and boosting facility including the former gas processing facility would be created because the emissions from the former gas processing facility alone would exceed the reporting threshold of 25,000 mtCO<sub>2</sub>e. If the same owner or operator has other gathering and boosting operations in the same basin that have emissions less than 25,000 mtCO<sub>2</sub>e, then the new gathering and boosting facility could result in increased coverage of the industry segment and greater total reported emissions than would be reported under

the current industry segment definitions.

The proposed revised definition for natural gas processing also does not include the 25 MMscf per day threshold for facilities that separate NGLs from natural gas using forced extraction but do not fractionate NGLs. Under the current definition of onshore natural gas processing, processing plants that do not fractionate gas liquids and generally operate close to the 25 MMscf per day threshold may be natural gas processing facilities one year and then part of an onshore petroleum and natural gas gathering and boosting facility the next year. As noted earlier in this section, the two potentially applicable segments currently report emissions from different sources and with different calculation methods. As a result of the current definition, it can be difficult to track the reporting status of a facility from one year to the next, and it can be difficult to assess and verify reporting trends for an individual facility across reporting years. Under the revised proposed definition, these sites that separate NGLs from natural gas using forced extraction but do not fractionate NGLs and generally operate close to 25 MMscf per day would be considered natural gas processing regardless of their throughput level, so they would have the certainty of knowing they would be subject to reporting as natural gas processing facilities every year. As a result, removing the 25 MMscf per day threshold is expected to increase the number of sites that consistently report as facilities under the Onshore Natural Gas Processing industry segment instead of sometimes reporting as part of a facility that reports under the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment. We request comment on the impact the proposed changes would have on the number of reporting facilities and emissions from both the Onshore Natural Gas Processing and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments. We also request comment on any other advantages or disadvantages to finalizing the proposed changes.

#### 4. Applicability of Proposed Subpart B to Subpart W Facilities

In the supplemental proposal to the 2022 Proposed Rule (88 FR 32852, May 22, 2023), the EPA is proposing to add subpart B to part 98 (Metered, Non-fuel, Purchased Energy Consumption by Stationary Sources) for reporting the quantity of metered electricity and thermal energy purchased. The EPA's intent is for this new subpart to apply to facilities that are required to report

direct emissions under another subpart of the GHGRP, including those facilities in subpart W industry segments that have a unique definition of facility in 40 CFR 98.238 and a reporting threshold specified in 40 CFR 98.231. Therefore, the EPA is proposing to add 40 CFR 98.232(n) (and a reference to this new paragraph from the introductory text of 40 CFR 98.232) to clarify the intent for subpart W reporters to also report under subpart B, consistent with section II.D of this preamble.

#### B. Other Large Release Events

We are proposing to add an additional emissions source, referred to as "other large release events," to capture maintenance or abnormal emission events that are not fully accounted for using existing methods in subpart W, consistent with section II.A of this preamble. Numerous studies have indicated that other large release events, commonly referred to as "super-emitters," significantly contribute to the emissions from oil and gas facilities and that the current subpart W understates oil and gas emissions because there is a lack of calculation and reporting requirements for many of these large events.<sup>20</sup> We proposed to include calculation and reporting requirements for other large release events in the 2022 Proposed Rule, and this proposal regarding other large release events is very similar to the 2022 Proposed Rule. The primary difference in this proposal is that we are including an instantaneous CH<sub>4</sub> emission rate threshold of 100 kg/hr, in addition to the 250 mtCO<sub>2e</sub> per event threshold we previously proposed, so there are two proposed emissions thresholds for determining whether emissions from other large release events must be reported. We are also proposing to expand the definition of other large release events to include planned releases, such as those associated with maintenance activities for which there are not emission calculation procedures in subpart W. Emptying, degassing, and cleaning a tank is an example of a maintenance activity for which emissions would need to be reported

<sup>20</sup> See, e.g., Zavala-Araiza, D., et al., 2017, Super-emitters in natural gas infrastructure are caused by abnormal process conditions, *Nat. Commun.* 8, 14012, <https://doi.org/10.1038/ncomms14012>; Alvarez, R.A., et al., 2018, Assessment of methane emissions from the U.S. oil and gas supply chain, *Science* 361(6398) 186–188, <https://www.science.org/doi/10.1126/science.aar7204>; Chen, Y., et al., 2022, Quantifying regional methane emissions in the New Mexico Permian Basin with a comprehensive aerial survey, *Environmental Science & Technology* 56(7) 4317–4323, <https://doi.org/10.1021/acs.est.1c06458>. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

under this proposal (if the emissions exceed the thresholds for an other large release event) that would not have been required to report under the 2022 Proposed Rule's definition of other large release event.

Most of the emission sources and methodologies included in subpart W characterize emissions that routinely occur at oil and gas facilities as part of their normal operations, including routinely occurring large emission events, such as blowdowns. While some sources covered by subpart W methodologies, such as equipment leaks, may represent "malfunctioning" equipment, these sources are ubiquitous across the oil and gas sector and have been studied and characterized and these types of events have been incorporated into existing subpart W source methodologies. On the other hand, there have been several large, atypical release events at oil and gas facilities over the last few years where it was difficult to sufficiently include these emissions in annual GHGRP reports. For example, a storage wellhead leak at Aliso Canyon released approximately 100,000 metric tons (mt) of CH<sub>4</sub> between October 2015 and February 2016<sup>21</sup> and a well blowout in Ohio released an estimated 40,000 to 60,000 tons of CH<sub>4</sub> in a 20-day period in 2018.<sup>22</sup> The emissions from these types of releases were not well represented using the existing calculation methodologies in subpart W because these were not common or predictable events.<sup>23</sup> For example, subpart W includes a default emission factor for underground gas storage wellheads to estimate emissions from leaking storage wellheads; however, the data upon which that emission factor is based do not include a release of the magnitude estimated for Aliso Canyon

<sup>21</sup> California Air Resources Board. 2016. *Determination of Total Methane Emissions from the Aliso Canyon Natural Gas Leak Incident*. Available at [https://ww2.arb.ca.gov/sites/default/files/2020-07/aliso\\_canyon\\_methane\\_emissions-arb\\_final.pdf](https://ww2.arb.ca.gov/sites/default/files/2020-07/aliso_canyon_methane_emissions-arb_final.pdf). Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>22</sup> Pandey, S., et al., 2019. Satellite observations reveal extreme methane leakage from a natural gas well blowout. *Proceedings of the National Academy of Sciences* 116(52), 26376–26381. <https://doi.org/10.1073/pnas.1908712116>. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>23</sup> The EPA notes that the full emissions from these events were included in the U.S. GHG Inventory based on the results of multiple measurement studies. See U.S. EPA. *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2020: Updates for Anomalous Events including Well Blowout and Well Release Emissions*. April 2022. Available at [https://www.epa.gov/system/files/documents/2022-04/2022\\_ghgi\\_update\\_-\\_blowouts.pdf](https://www.epa.gov/system/files/documents/2022-04/2022_ghgi_update_-_blowouts.pdf) and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

because this type of malfunction did not occur during the measurement study. Recent data summarizing release events from underground storage facilities indicate that while the Aliso Canyon release was large, it was not the largest release event from an underground storage facility and that, over the past 75 years, there have been 129 release events from underground storage facilities.<sup>24</sup> The data showed emissions from these release events are heavy-tailed with event emissions spanning 6 orders of magnitude, indicating that they would not likely be accurately described by an emission factor. Rather than escalating the population emission factor for all storage wellheads to account for these releases, our assessment is that it would be more accurate for the population emission factor to be based on typical frequency and size of leaks that commonly occur and to track these uncommon, large releases separately. Because these events can significantly contribute to the total GHG emissions from this sector, we are proposing to add, at 40 CFR 98.232, other large release events as an emission source for which emissions must be calculated for every industry segment. We are also proposing new calculation methods for estimating the GHG emissions from other large release events in 40 CFR 98.233(y) and requirements for reporting other large release events in 40 CFR 98.236(y). These proposed additional calculation and reporting requirements would apply to all subpart W industry segments and would improve the accuracy of emissions reported under subpart W and enhance the overall quality of the data collected under the GHGRP.

The new calculation requirements being proposed rely on measurement data, if available, or a combination of engineering estimates, process knowledge, and best available data, when measurement data are not available. The proposed calculation procedure consists of estimating the amount of gas released and the composition of the released gas. The amount of gas released would generally be calculated based on a measured or estimated emission rate(s) and an event duration. We are proposing that the start time of the duration must be determined based on monitored process parameters, such as pressure or temperature, for which sudden changes in the monitored parameter signals the start of the event.

<sup>24</sup> Li, H.Z., *et al.*, 2022. A national estimate of U.S. underground natural gas storage incident emissions. *Environ. Res. Lett.* 17(8) 084013. <https://doi.org/10.1088/1748-9326/ac8069>. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

If the monitored process parameters cannot identify the start of the event, we are proposing that reporters must assume the release started on the date of the most recent monitoring or measurement survey that confirms the source was not emitting at the rates above the other large release event reporting thresholds or assume the duration of the event was 182 days (six months), whichever duration is shorter. We are proposing the end time of the release must be the date of the confirmed repair or confirmed cessation of emissions. There may be events that span across two separate reporting years. In this case, we are proposing that the volume of gas released specific to each reporting year would be calculated and reported for that reporting year starting with RY2025.

We request comment on the proposed default duration of 182 days (in the absence of information on the start time). Studies on large releases from oil and gas facilities commonly report that these emissions are intermittent, with typical durations of several hours to several days,<sup>25</sup> but in many cases they may be significantly longer, occurring for weeks or months.<sup>26</sup> For many releases, such as maintenance events, fires, explosions, and well blowouts, the reporter would be able to identify the start and end time of an event. Other releases may be identified via monitoring surveys or site inspections. For these the start date can often be identified from process operating records or previous monitoring results. For identifying the start date, we are specifically proposing to allow

<sup>25</sup> See, *e.g.*, Chen, *et al.*, Quantifying Regional Methane Emissions in the New Mexico Permian Basin with a Comprehensive Aerial Survey. *Environmental Science & Technology* (Vol. 56, Issue 7, pp. 4317–4323), available at <https://doi.org/10.1021/acs.est.1c06458>. 2022; Wang, *et al.*, Multiscale Methane Measurements at Oil and Gas Facilities Reveal Necessary Frameworks for Improved Emissions Accounting. *Environmental Science & Technology* (Vol. 56, Issue 20, pp. 14743–14752), available at <https://doi.org/10.1021/acs.est.2c06211>. 2022. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>26</sup> See, *e.g.*, Frequently Asked Questions: Aliso Canyon Gas Storage Facility. Public Utilities Commission, State of California, January 26, 2021. <https://www.cpuc.ca.gov/regulatory-services/safety/gas-safety-and-reliability-branch/aliso-canyon-well-failure>; Cusworth, *et al.*, 2021, Multisatellite imaging of a gas well blowout enables quantification of total methane emissions. *Geophysical Research Letters*, 48, e2020GL090864. <https://doi.org/10.1029/2020GL090864>; and Maasakkers, J.D., *et al.*, 2019. Reconstructing and quantifying methane emissions from the full duration of a 38-day natural gas well blowout using space-based observations. *Remote Sensing of Environment*. 112755. <https://doi.org/10.1016/j.rse.2021.112755>. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

monitoring or measurement surveys to include methods specified in 40 CFR 98.234(a) through (d) as well as advanced screening methods such as monitoring systems mounted on vehicles, drones, helicopters, airplanes, or satellites capable of identifying emissions at the thresholds specified for an other large release event. However, there will be some releases for which the start date cannot be determined. We selected a 182-day default duration as this duration would include the majority of these types of events. We expect that facilities will typically estimate durations based on the monitoring of operating conditions, with more frequent monitoring or measurement surveys, as described above, resulting in infrequent use of the default. We recognize that the 182-day default duration may cause revisions to reports submitted for previous reporting years in some cases; however, we expect that these revisions would be made prior to the final verification of the reports for a given reporting year and should not have significant implications on being able to calculate the event emissions and submit revised reports, if needed, prior to the time waste emission filings, if applicable, are due. We request comment on the 182-day default duration and ability to revise, if necessary, subpart W reports prior to the final verification of reports for a given reporting year.

We also request comment on using other default durations. Specifically, we request comment on using a 91-day (3-month) default duration rather than 182-day duration, as well as on other potential default durations. We seek information to support default duration assumptions. We request comment on whether a 91-day default duration would be reasonable. We also request comment on using the beginning of the calendar year as the default duration. Using the beginning of the year as the default duration would eliminate issues regarding potential revisions to previously submitted reports, but it would lead to inconsistent reporting of emissions from similar types of events based on when the event occurred (or was identified) in the calendar year. For other large release events with an identifiable start date in reporting year 1 and identifiable end date in reporting year 2, some reporters may know of the release on the day it started and other reporters may not identify the release until late in the overall duration. If the reporter knows of the event in reporting year 1, then the reporter would be obligated to report the emissions that occurred from this event in each

reporting year. However, if the reporter does not become aware of the release until the second reporting year, using the start of the year as the beginning of the default duration would result in the reporter only being required to report the emissions from the other large release event that occurred in reporting year 2, resulting in underreported emissions.

We also considered hybrid alternatives where the reporter would have to evaluate company records to identify the start date and use the actual start date if known but use the start of the calendar year if not known. While there is an incentive for the reporter to review records in reporting year 2 to identify if the release event began prior to the first day of the calendar year, there would not be a similar incentive for the reporter to review records in the previous reporting year (reporting year 1). Instead, if waste emission charges may apply, there would be an incentive to simply use the default of the beginning of the year and not review records past this date. Under this hybrid alternative, we would need to specify how many months of records reporters would be required to review to determine the start date of the event. We considered both 182 and 365 days of records required to be reviewed under this alternative hybrid approach. After considering these various scenarios, we selected the 182-day maximum duration and event reporting across reporting years to be the most accurate and reasonable option, but we request comment on the other options considered as described in this section. We also seek comment on other options that may be used to obtain accurate reporting of other large release event emissions that span reporting years.

We recognize that some natural gas releases, such as explosions or fires, will combust or partially combust the natural gas released. We are proposing that reporters must estimate the portion of the total volume of natural gas released that was combusted in the explosion or fire in order to determine the average composition of GHG released to the atmosphere during the event. For the portion of natural gas released via combustion in an explosion or fire, we are proposing a maximum combustion efficiency of 92 percent be assumed. This maximum combustion efficiency is consistent with the combustion efficiency we are proposing for flares that are not continuously monitored as described in section III.N.1 of this preamble. We recognize that because these releases are not through engineered nozzles that can be designed to promote mixing and combustion

efficiency, the combustion efficiency of these releases can be highly variable. Reporters may use a lower combustion efficiency but may not use higher combustion efficiency than 92 percent for natural gas released directly in an explosion or fire. We request comment on these proposed provisions. We request comment and supporting data on the proposed maximum combustion efficiency of 92 percent for the portion of the total volume of natural gas released via explosion or fire.

The proposed requirement to calculate and report GHG emissions from other large release events would be limited to events that release at least 250 mtCO<sub>2</sub>e per event or have a CH<sub>4</sub> emission rate of 100 kg/hr or greater at any point in time. The 250 mtCO<sub>2</sub>e per event threshold is equivalent to approximately 500,000 standard cubic feet (scf) of pipeline quality natural gas. For events that span two reporting years, we are proposing that these thresholds apply to the event, not a portion of the event within a given reporting year. We selected these proposed thresholds to capture reporting for large emission events, such as well blowouts, well releases, and large pressure relief venting.

In order to establish the mass CO<sub>2</sub>e per event reporting threshold, we assessed other emission sources that could qualify as large. Specifically, we considered completions of hydraulically fractured wells that are not controlled (*i.e.*, not performed using reduced emission completions (RECs)) to be large emissions events. RECs are completions where gas flowback emissions from the gas outlet of the separator that are otherwise vented are captured, cleaned, and routed to the flow line or collection system, re-injected into the well or another well, used as an on-site fuel source, or used for other useful purpose that a purchased fuel or raw material would serve, with de minimis direct venting to the atmosphere. Based on analysis of GHGRP data for wells that are not RECs and that vent, the U.S. GHG Inventory developed an average emission factor of about 360 mtCO<sub>2</sub>e per event for these completions.<sup>27</sup> Because this is an average emission factor, some uncontrolled hydraulically fractured completions will be below this average and some above. From this assessment, we considered 250 mtCO<sub>2</sub>e to be a

reasonable emissions threshold for a “large” event.

While 250 mtCO<sub>2</sub>e is much lower than the emissions from the Aliso Canyon or Ohio well blowout releases, we determined that a 250 mtCO<sub>2</sub>e threshold would be needed to capture most well blowouts. There are limited data to quantify an “average” well blowout, but the 2021 U.S. GHG Inventory uses an oil well blowout emission factor of 2.5 MMscf per event. As this is an average, many well blowouts may be less than this average value. The 250 mtCO<sub>2</sub>e threshold is approximately equivalent to 500,000 scf of natural gas, which aligns with the lower range of well blowouts expected based on the average emission factor of 2.5 MMscf per event. This value also aligns with the definitions of “major release” in New Mexico Administrative Code (NMAC) section 19.15.29.7, which requires reporting under NMAC section 19.15.29.10.

We also tentatively find that the proposed 250 mtCO<sub>2</sub>e threshold (approximately equivalent to 500,000 scf natural gas release) is a reasonable threshold for requiring individual assessments of releases. In subpart Y (Petroleum Refineries), we established event-specific emission calculation requirements for startup, shutdown, or malfunction releases to a flare exceeding 500,000 scf per day (40 CFR 98.253(b)(1)(iii)). While the subpart Y threshold is per day rather than per event, it is also specific to flared emissions. For flared emissions to exceed a 250 mtCO<sub>2</sub>e threshold, approximately 4 MMscf of natural gas would have to be released to the flare, which is well above the subpart Y “per day” threshold for flares. Thus, we propose that the 250 mtCO<sub>2</sub>e per event threshold is an appropriate size threshold for requiring event-specific emission calculations to be performed. More information regarding our review and characterization of types of other large release events is included in the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234. Emissions from smaller or routine release events would still be reported, as applicable, under the source-specific calculation and reporting requirements in subpart W.

We are also proposing a 100 kg/hr CH<sub>4</sub> emission threshold to align with the super-emitter response program proposed in the NSPS OOOOb. These emissions are generally intermittent, with widely varying durations. Releases from maintenance activities, for example, may occur for only a few hours, but these large, short events can

<sup>27</sup> U.S. EPA. *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2014*. EPA 430-R-16-002. April 2016. Available at <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014> and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

significantly contribute to a facility's emissions. The proposed emission rate threshold for a super-emitter emissions event under NSPS OOOOb provides a means to get information for these large, shorter duration releases. Therefore, we are proposing that the 100 kg/hr CH<sub>4</sub> emission threshold be applied as an instantaneous emissions rate threshold, such that any emissions from any other large release event that emits CH<sub>4</sub> at a rate of 100 kg/hr or more at any point in time must be reported.

With a combination of both a cumulative mass emissions per event threshold and the instantaneous 100 kg/hr CH<sub>4</sub> emission rate threshold, the EPA is requesting comment whether a larger cumulative mass emissions per event threshold is reasonable. Specifically, we understand that the Pipeline and Hazardous Materials Safety Administration (PHMSA) includes, in the definition of "incident" at 49 CFR 191.3, an "unintentional estimated loss of three million cubic feet or more." As many subpart W facilities are required to keep records of these incidents, we request comment on the use of a 1,500 mtCO<sub>2e</sub> per event threshold, which would be approximately equivalent to a 3 million cubic feet release of natural gas. We request comment on whether the CO<sub>2e</sub> mass threshold is appropriate for considering emissions from events such as fires, or if the threshold should be expressed as a loss of 3 million cubic feet or more of natural gas, whether directly emitted or partially burned via a fire. We also request comment on whether these thresholds should be assessed per event within the calendar year, rather than just per event. We propose that the thresholds for other large release events would be evaluated on a per event basis because then all events are considered consistently regardless of when they occur. For example, consider a 400 mtCO<sub>2e</sub> event that spans two calendar years, with 200 mtCO<sub>2e</sub> released in each calendar year. As proposed, the reporter would be required to report the other large release event in each of the corresponding reporting years. If, however, the thresholds were instead evaluated on a per event within a calendar year basis, this emissions event would not qualify as an other large release event in either reporting year. There may be cases where limiting the thresholds to events to within a calendar year could reduce the number of events reported without significantly missing emissions and potentially limiting the number of report resubmissions. For example, if the 400 mtCO<sub>2e</sub> event that spanned 2 calendar years resulted in 40 mtCO<sub>2e</sub> of

emission in reporting year 1 and 360 mtCO<sub>2e</sub> of emissions in reporting year 2, then if the thresholds were evaluated on a per event per calendar year basis, only the emissions in reporting year 2 would be required to be reported. Under the thresholds as proposed, the 40 mtCO<sub>2e</sub> of emission in reporting year 1 would be required to be reported. Depending on when the other large release event was identified and start date determined, this may require resubmission of a previously submitted subpart W report. We request comment on whether the other large release event thresholds should be limited to releases within a single calendar year.

We are proposing a definition of "other large release events" in 40 CFR 98.238 to clarify the types of releases that must be characterized for this new emissions source and specify that other large release events include, but are not limited to, maintenance events, well blowouts, well releases, releases from equipment rupture, fire, or explosions. Currently, there are no calculation methodologies or reporting requirements for these types of large releases in subpart W. The proposed definition would also include large pressure relief valve releases from process equipment other than onshore production and onshore petroleum and natural gas gathering and boosting storage tanks that are not included in the blowdown definition. The proposed definition of other large release events excludes pressure relief valve releases from hydrocarbon liquids storage tanks because the calculation methodology for storage tanks is expected to account for these releases via either the proposed requirements to account for collection efficiency when emissions are observed from the thief hatch or the additional term in the emissions equation for when there is a stuck dump valve. While subpart W currently includes emission factors for pressure relief devices, these equipment leak emission factors only account for leaks past a pressure relief valve that is in the closed position, not releases from the complete opening of these valves. The proposed definition specifies that pressure relief valve releases from onshore production and onshore petroleum and natural gas gathering and boosting storage tanks would not be considered other large release events because the calculation methodology for these storage tanks currently assumes all flash gas will be emitted. As noted in section III.K of this preamble, pressure relief emission releases from onshore production and onshore petroleum and natural gas gathering and boosting storage tanks

generally occur from the thief hatch and these releases must be accounted for when calculating the fraction of flash gas that is recovered or sent to a flare, if applicable. A more detailed discussion of certain other emissions events we have identified and expect to be subject to the "other large release events" proposed amendments is included in the subpart W TSD available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

As part of the proposed definition of "other large release events" in 40 CFR 98.238, we are also proposing that other large release events include releases from equipment for which the existing calculation methodologies in subpart W would significantly underestimate the episodic nature of these emissions. For example, subpart W contains population emission factors and leaker emission factors for estimating equipment leak emissions for storage wellheads. Thus, it is possible to argue that subpart W includes calculation methodologies for the equipment responsible for the Aliso Canyon release. However, the calculation methodologies in subpart W do not accurately estimate emissions from such an uncharacteristically large release event because such events are infrequent such that they may not exist when measurement studies are conducted. Additionally, if we proposed to instead revise the emission factors under the existing methodologies to account for such an event, the resulting calculation would likely yield erroneously high emissions from normal operations for most reporting facilities. Thus, we determined that it is more accurate for facility-specific reporting to account for these large releases on a per event basis. Therefore, if a single leak or event has emissions that exceed the emissions estimated by an applicable methodology included in subpart W by 250 mtCO<sub>2e</sub> or more on a per event basis, or 100 kg/hr of CH<sub>4</sub> or more as an instantaneous rate at any time during an event, we are proposing that such releases would be included in the definition of "other large release events" and that reporters would be required to calculate and report the GHG emissions from these events using the proposed requirements for other large release events. We are proposing in 40 CFR 98.233(y)(1)(ii) that this provision does not require the direct measurement of every release, such as measurement of every leak identified during an equipment leak monitoring survey. However, we are proposing to require that if the owner or operator has credible information that demonstrates

that the release meets or exceeds or may reasonably be anticipated to meet or exceed (or to have met or have exceeded) the emissions calculated by the source-specific methodology by 250 mtCO<sub>2</sub>e or more, or 100 kg/hr of CH<sub>4</sub> or more, then the release must be quantified and, if the thresholds are confirmed to be exceeded, reported as an other large release event. We consider credible information would include, but is not limited to, data from monitoring or measurement data completed by the facility, information from notifications as a potential super-emitter emissions event under the super-emitter provisions of NSPS OOOOb at proposed 40 CFR 60.5371b or data of similar quality as that provided through the provisions of NSPS OOOOb at proposed 40 CFR 60.5371b that is received by the facility. We anticipate that we would take into consideration what is included in the final NSPS OOOOb regarding such notifications in the types of information that would be considered credible for these provisions in subpart W, if finalized. The owner or operator would be required to consider all credible information they have regarding the release in complying with this requirement.

Further, we are proposing to define the terms “well release” and “well blowout” in 40 CFR 98.238 to assist reporting facilities with differentiating between these types of release events that could potentially occur at wells. We find that a well blowout is generally distinguished by a complete loss of well control for a long duration of time and a well release is characterized as a short period of uncontrolled release (not the controlled pre-separation stage of well flowback in a hydraulically fractured completion) followed by a period of controlled release in which control techniques were successfully implemented.

Finally, we are proposing a series of reporting requirements in 40 CFR 98.236(y) related to the type, location, duration, calculations, and emissions of each “other large release event.” Specifically, we are proposing that reporters provide the location, a description of the release (from a specified list that includes an “other (specify)” option for releases that are not described well with the list provided), a description of the technology or method used to identify the release, volume of gas released, volume fractions of CO<sub>2</sub> and CH<sub>4</sub> in the gas released, and CO<sub>2</sub> and CH<sub>4</sub> emissions for each “other large release event.” We are also proposing that reporters would provide the start date and time of the release, duration of the

release, and the method used to determine the start date and time (options would include a pressure monitor, a temperature monitor, other monitored process parameter, most recent monitoring or measurement survey showing no large release, or the default assumption that the release started 182 days prior to the documented end of the release (this would be the required assumption if they do not have monitored data associated with the release). We are also proposing that reporters provide a general description of the event and indicate whether the “other large release event” was also identified as a potential super-emitter emissions event under the super-emitter provisions of NSPS OOOOb at 40 CFR 60.5371b or an applicable approved state plan or applicable Federal plan in 40 CFR part 62.

We are proposing that reporters that received super-emitter emissions event notifications would be required to report information on each release notification received, including latitude and longitude of the release, whether the release was received under the super-emitter provisions of NSPS OOOOb at 40 CFR 60.5371b or an applicable approved state plan or applicable Federal plan in 40 CFR part 62 or another notifier. If the notification is from another notifier, the reporter would provide the name of the notifier, the remote sensing method used, the date and time of the measurement, the measured emission rate, and uncertainty bounds on the emission rate, if provided by the notifier. We are also proposing that, for each notification received, facilities would report the type of event resulting in the emissions (*e.g.*, normal operations, a planned maintenance event, leaking equipment, malfunctioning equipment or device, or undetermined cause) and an indication of whether the emissions identified from the event are included as an other large release event or as another source required to be reported under subpart W. If the emissions identified via the notification are not included in emissions reported under subpart W, we are proposing that the reporter provide a reason (*e.g.*, the location of the emissions as provided in the notification do not belong to the facility; the emissions could not be verified or corroborated during site inspection or facility data records; information was determined to not be credible and basis for the determination). This information would support EPA verification and ensure accuracy of the emissions

reported under other large release events.

As part of the GHGRP verification process, the EPA reviews data provided in submitted reports to identify potential errors in the reported data based on the different values reported and the calculation methodology. The EPA requests comment on the need to establish additional requirements for third-party notifiers and the verification of third-party notifications. Generally, verification of GHGRP reports is conducted while a facility is entering data into the e-GGRT system and after the report is officially submitted. The EPA requests comment on the need for EPA verification support or an advance verification process during the reporting year for assessments of third-party notifications. Currently, facilities with questions about reporting requirements submit inquiries via the e-GGRT Help Desk to get questions answered regarding monitoring or reporting requirements. We request comment on whether this existing process is adequate for supporting questions regarding individual third-party notifications received by a reporter and request suggestions on how the EPA verification process could better support the other large release event calculation and reporting requirements.

The supplemental proposal for NSPS OOOOb and EG OOOOc, as described in section II of this preamble, included a matrix for alternative screening approaches for fugitive emissions from well sites and compressor stations that would allow the use of advanced measurement technologies to detect emissions under the proposed NSPS OOOOb and EG OOOOc. As part of that proposal, the EPA also requested comment on how to evaluate and design a requirement for owners and operators to investigate and remediate large emission events, which could include the use of alternative screening techniques and advanced measurement technologies, all of which, if finalized, could potentially be used to identify “other large release events” under subpart W. While some methods that could be used to identify and estimate the magnitude of these “other large release events,” such as monitors installed on mobile vehicles or aircraft or CH<sub>4</sub> satellite imagery, would not be specifically included as measurement methods listed in 40 CFR 98.234 of subpart W, these methods may be used to quantify the emissions release for “other large release events” under the “engineering estimates” and “best available data” provisions of the proposed calculation methodology. To improve the EPA’s understanding of the

technologies and methods used to identify reported “other large release events,” including the impact of periodic screenings with advanced measurement technologies on the identification of large release events, we are proposing reporting provisions that would require reporters to indicate whether each “other large release event” was identified as part of compliance with NSPS OOOOb or the applicable state plan or applicable Federal plan in 40 CFR part 62.

### C. New and Additional Emission Sources

Sources of emissions that are required to be reported to subpart W are listed in 40 CFR 98.232 for each industry segment, with the methodology and reporting requirements for each source provided in 40 CFR 98.233 and 98.236, respectively. The EPA finalized this list of emission sources for each of the eight original industry segments as part of the 2010 Final Rule and identified emission sources for the Onshore Petroleum and Natural Gas Gathering and Boosting and Onshore Natural Gas Transmission Pipeline industry segments when those segments were added to subpart W in 2015 (80 FR 64262, October 22, 2015). Per the TSD for the 2010 Final Rule (hereafter referred to as the “2010 subpart W TSD”),<sup>28</sup> there were several factors that impacted the EPA’s decision on whether an emissions source should be included for reporting. These factors included how significant the contribution of the source was to the U.S. GHG Inventory, the type of emission expected from the source (vented versus fugitive), the best practice monitoring methods available to measure emissions from the source, accessibility of the emission source, geographical dispersion of the emission source, and the applicability of population versus leaker factors.

The EPA has evaluated the sources covered under subpart W in comparison with present-day inventories of the oil and gas industry, such as the 2022 U.S. GHG Inventory<sup>29</sup> and the American Petroleum Institute (API) 2021 *Compendium of Greenhouse Gas Emissions Methodologies for the Natural Gas and Oil Industry* (2021 API

Compendium).<sup>30</sup> The EPA also reviewed stakeholder feedback, including public comments from the 2022 Proposed Rule, on missing sources of emissions from subpart W. As a result, the EPA is proposing to add several emission sources identified in this review that are anticipated to have a meaningful impact on reported emissions, are commonplace in the oil and gas industry, and/or have existing emission calculation methodologies and reporting provisions in the current subpart W regulatory text. For some of these emission sources, discussed in additional detail in section III.C.1 of this preamble, reporting is currently required for some, but not all, industry segments in which they exist. Other proposed emission sources, discussed in additional detail in sections III.C.2 through 5 of this preamble, are not currently required to be reported for any industry segments in which they exist. The proposed addition of sources to subpart W would be expected to enhance the overall quality of the data collected under the GHGRP and improve the accuracy of total emissions reported from facilities, consistent with Congress’ direction in the IRA and section II.A of this preamble.

The following sections detail the proposed additions of emission sources to subpart W.

#### 1. Current Subpart W Emission Sources Proposed for Additional Industry Segments

Upon review of the U.S. GHG Inventory and the 2021 API Compendium, as well as other publications,<sup>31</sup> the EPA determined that several of the emission sources included in at least one industry segment in subpart W are not currently required to be reported by facilities in all the industry segments in which those sources exist. As such, consistent with section II.A of this preamble, we are proposing to add requirements to report CO<sub>2</sub>, CH<sub>4</sub>, and nitrous oxide (N<sub>2</sub>O) emissions (as applicable for the source

type) from the following sources under 40 CFR 98.232 and 98.236(a):<sup>32</sup>

- Onshore petroleum and natural gas production: Blowdown vent stacks
- Onshore natural gas processing: Natural gas pneumatic device venting, Hydrocarbon liquids and produced water storage tank emissions
- Onshore natural gas transmission compression: Dehydrator vents
- Underground natural gas storage: Dehydrator vents, Blowdown vent stacks, Condensate storage tanks
- LNG storage: Blowdown vent stacks, Acid gas removal unit vents
- LNG import and export equipment: Acid gas removal unit vents
- Natural gas distribution: Natural gas pneumatic device venting, Blowdown vent stacks
- Onshore natural gas transmission pipeline: Equipment leaks at transmission company interconnect metering-regulating stations, Equipment leaks at farm tap and/or direct sale metering-regulating stations, Transmission pipeline equipment leaks

We are also proposing several revisions that would facilitate implementation of the proposal to require reporting of these emission sources from additional industry segments. We are proposing to revise the name of the current emission source type “onshore production and onshore petroleum and natural gas gathering and boosting storage tanks” to “hydrocarbon liquids and produced water storage tanks” and revise “storage tank vented emissions” to “hydrocarbon liquids and produced water storage tank emissions” throughout subpart W. The proposed removal of the reference to “onshore production and onshore petroleum and natural gas gathering and boosting” would reflect a more appropriate name corresponding to the proposed addition of the reporting of these storage tank emissions for the Onshore Natural Gas Processing industry segment; the addition of “produced water” to the name is discussed in detail in section III.C.3 of this preamble. Additionally, we are proposing to revise the emission source type name in 40 CFR 98.233(k) and 98.236(k) from “transmission storage tanks” to “condensate storage tanks,” which would reflect a more appropriate name corresponding to the proposed addition of the reporting of these storage tank emissions for the

<sup>28</sup> *Greenhouse Gas Emissions Reporting from the Petroleum and Natural Gas Systems Industry: Background Technical Support*. November 2010. Docket Id. No. EPA-HQ-OAR-2009-0923-3610; also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>29</sup> *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2020*. U.S. EPA. April 2022. Available at <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2020> and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>30</sup> *Compendium of Greenhouse Gas Emissions Methodologies For The Natural Gas And Oil Industry*. Produced by URS Corporation for American Petroleum Institute. November 2021. Available at <https://www.api.org/-/media/files/policy/esg/ghg/2021-api-ghg-compendium-110921.pdf>. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>31</sup> For example, American Petroleum Institute (API), *Liquefied Natural Gas (LNG) Operations Consistent Methodology for Estimating Greenhouse Gas Emissions*. Prepared for API by The LEVON Group, LLC. Version 1.0, May 2015. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>32</sup> It should be noted that the EPA did not identify any subpart W emission sources missing from the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment.

Underground Natural Gas Storage industry segment.<sup>33</sup>

We are also proposing revisions to the calculation methodologies and/or emissions reporting structure for each of these emission source/industry segment combinations that would be needed in 40 CFR 98.233 and 98.236, respectively. For industry segments for which we are proposing to additionally require reporting of emissions from AGR vents, dehydrator vents, hydrocarbon liquids and produced water storage tank emissions, and condensate storage tank emissions, we are proposing that reporters would use the same calculation methods and report the same information as reporters in the industry segments in which those source types are already reported. For these sources, the EPA is not aware of differences in the operation of the emission sources between industry segments that would necessitate separate calculation methodologies. The remainder of this section describes additional proposed amendments to 40 CFR 98.233.

For the proposed addition of natural gas pneumatic device venting as an emission source for the Onshore Natural Gas Processing industry segment, we are proposing that those facilities would use the proposed calculation methodologies as described in section III.E of this preamble. For any reporters to the Onshore Natural Gas Processing industry segment that would use proposed Calculation Methodology 3, the emission factors we are proposing are the same as the proposed revised emission factors for the Onshore Natural Gas Transmission Compression and Underground Natural Gas Storage industry segments. As noted in the subpart W TSD (available in the docket), the data available to develop emission factors for the Onshore Natural Gas Processing industry segment are limited, and because operations defined as being part of these three industry segments are similar and can occur at the same facilities, the EPA has historically applied the same population and leaker emission factors to these three segments (e.g., equipment leaks). See section III.E of this preamble for additional details about the proposed calculation methodologies.

As noted earlier in this section, we are proposing to add blowdown vent stack reporting to the Onshore Petroleum and Natural Gas Production, Underground Natural Gas Storage, LNG Storage, and Natural Gas Distribution industry

segments. Subpart W currently requires reporting of blowdowns either using flow meter measurements (existing 40 CFR 98.233(i)(3)) or using unique physical volume calculations by equipment or event types (existing 40 CFR 98.233(i)(2)). There are two lists of equipment or event types. One applies to the Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, LNG Import and Export Equipment, and Onshore Petroleum and Natural Gas Gathering and Boosting segments (proposed 40 CFR 98.233(i)(2)(iv)(A), as discussed in section III.J.2 of this preamble). The other list of equipment or event types (in proposed 40 CFR 98.233(i)(2)(iv)(B), as discussed in section III.J.2 of this preamble) was developed for the Onshore Natural Gas Transmission Pipeline industry segment when that segment was added to subpart W in 2015 (80 FR 64275, October 22, 2015). To allow reporters in the new industry segments to calculate emissions by equipment or event types, the EPA is proposing to specify the appropriate list of equipment or event types. We are proposing that facilities in the Onshore Petroleum and Natural Gas Production, Underground Natural Gas Storage, and LNG Storage industry segments following the methodology in 40 CFR 98.233(i)(2) would be required to categorize blowdown vent stack emission events into the seven categories provided in proposed 40 CFR 98.233(i)(2)(iv)(A), as the types of blowdown vent stack emission events for these segments are similar to those for the segments currently required to categorize under this provision.

We are proposing that facilities in the Natural Gas Distribution industry segment would be required to categorize blowdowns into the eight categories listed in proposed 40 CFR 98.233(i)(2)(iv)(B), as the types of blowdowns that occur in the Natural Gas Distribution industry segment are expected to be pipeline blowdowns similar to those in the Onshore Natural Gas Transmission Pipeline industry segment. We note that during the early stages of our review of potential new sources, we considered whether to add emissions from mishaps (dig-ins) in the Natural Gas Distribution industry segment as a new emission source. However, mishaps (dig-ins) are already included on the list of equipment and event types in proposed 40 CFR 98.233(i)(2)(iv)(B), specifically emergency shutdowns including pipeline incidents as defined in 49 CFR 191.3. Therefore, a proposed

amendment is not necessary to include those events.

We are proposing one other amendment related to the calculation of emissions from blowdown vent stacks. The EPA previously determined that for reporters in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment using the methodology provided in existing 40 CFR 98.233(i)(2) and equation W-14A, it is reasonable to allow engineering estimates based on best available information when determining temperature and pressure for emergency blowdowns, due to the geographically dispersed nature of the facilities in this industry segment. As discussed in section III.J.3 of this preamble, we are proposing to also allow engineering estimates based on best available information when determining temperature and pressure for emergency blowdowns for the Onshore Natural Gas Transmission Pipeline industry segment, as facilities in this industry segment are also geographically dispersed. Due to the fact that facilities in the Onshore Petroleum and Natural Gas Production and Natural Gas Distribution industry segments are similarly geographically dispersed, we are proposing that reporters in those industry segments using the methodology provided in 40 CFR 98.233(i)(2) and equation W-14A would also be allowed to use engineering estimates based on best available information available when determining temperature and pressure for emergency blowdowns.

For the Onshore Natural Gas Transmission Pipeline industry segment, as noted earlier in this section, we are proposing to add reporting of emissions from equipment leaks from transmission pipelines, transmission company interconnect metering-regulating stations, and farm tap and/or direct sale stations. The EPA proposes to add these sources to the calculation methodologies provided in 40 CFR 98.233(r), with associated proposed updates to the variable definitions in equation W-32A to include components in the Onshore Natural Gas Transmission Pipeline industry segment. We are also proposing to add default CH<sub>4</sub> population emission factors for the components specified in this paragraph at facilities in the Onshore Natural Gas Transmission Pipeline industry segment in proposed Table W-5 of subpart W. The EPA derived these proposed emission factors from the 1996 Gas Research Institute (GRI)/EPA study *Methane Emissions from the Natural Gas Industry* (hereafter referred to as "the 1996 GRI/EPA study"), specifically

<sup>33</sup> Revisions are also proposed to 40 CFR 98.232(e)(3) to reference the source as "condensate storage tanks."

Volumes 9 and 10.<sup>34</sup> The precise derivation of the proposed emission factors is discussed in more detail in the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234. We are proposing that emissions from these components would be reported using population emission factors, as we are not aware of any currently available information or data that could be used to develop leaker emission factors from transmission pipelines, transmission company interconnect metering-regulating stations, or farm tap and/or direct sale stations. We are seeking comments on whether there are study data available which could be used to develop default leaker factors whereby subpart W could include the use of equipment leak surveys, default component-specific leaker emission factors, and the calculation method in 40 CFR 98.233(q) as an option for transmission pipeline facilities to quantify emissions from transmission company interconnect metering-regulating stations, or farm tap and/or direct sale stations. Similarly, we are seeking comment on whether an option to survey components at transmission company interconnect metering-regulating stations, or farm tap and/or direct sale stations using the existing methods in subpart W in 40 CFR 98.234 (e.g., EPA Method 21, optical gas imaging (OGI)) and directly measuring and reporting emissions consistent with proposed 40 CFR 98.233(q)(3) should be provided; or whether a methodology in which a multi-year leak survey cycle and the application of either default emission factors or measurements used with the methods provided in 40 CFR 98.233(q) should be provided analogous to the methodology provided for above grade transmission-distribution transfer stations should be provided. We are specifically interested in comments on which approach would be preferred and the supporting rationale.

Separately, concerning the quantification of emissions from transmission pipelines, we are seeking comments on alternative methods for surveying for equipment leaks as well as quantifying and reporting emissions from these emission sources. We are specifically interested in what survey

techniques would be appropriate and why, including supporting information on specific instruments and their detection capabilities and whether certain methods would be more suitable for the survey of pipeline leaks than others. We are also seeking comment on what quantification techniques would be best suited for measuring emissions from pipeline leaks and whether these techniques require digging down to the pipeline in order to quantify emissions and also verify pipeline characteristics. As an example, the EPA performed a review of recent study data (Weller et al. 2020) that used an alternative technology, namely AMLD, for the purposes of performing surveys to identify leaks and as a method to quantify emissions from pipeline leaks. For the reasons discussed in section III.Q.2 of this preamble and discussed in more detail in the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234, we are not proposing amendments based on that study or use of that technology. Instead, we are seeking comment on the scope and frequency of leak detection surveys and measurements for transmission pipelines. We are considering whether we should require annual surveys of the entire pipeline system or whether a reduced frequency of survey (i.e., partial surveys over a multi-year survey cycle in which the entire system is surveyed during the survey cycle and approximately equal portions of the system are surveyed each year of the multi-year survey cycle) is more appropriate and why. Finally, we are seeking comment on whether facilities should be permitted to develop facility-specific pipeline emission factors based on direct measurements and if so, what the appropriate number of measurements should be for determining a representative emission factor for each pipeline material including supporting rationale.

## 2. Nitrogen Removal Units

The EPA is proposing to revise existing 40 CFR 98.232, 98.233(d), and 98.236(d) to add calculation and reporting requirements for CH<sub>4</sub> emissions from nitrogen removal units used in the Onshore Petroleum and Natural Gas Production, Onshore Natural Gas Processing, Onshore Petroleum Natural Gas Gathering and Boosting, LNG Storage, and LNG Import and Export Equipment industry segments. Nitrogen removal units remove nitrogen from the raw natural gas stream to meet pipeline requirements and for compressing

natural gas into LNG.<sup>35</sup> <sup>36</sup> The nitrogen removal unit typically follows in series after other process units that remove acid gas (e.g., CO<sub>2</sub>, hydrogen sulfide), water, and heavy hydrocarbons. It is estimated that 11 percent of current daily production and 16 percent of known gas reserves in the U.S. contain some nitrogen.<sup>37</sup> Methane emissions from nitrogen removal units occur from the vent and as fugitives. A nitrogen removal unit separates the nitrogen gas from the CH<sub>4</sub> resulting in an outlet CH<sub>4</sub> stream that contains approximately 2 to 5 percent nitrogen<sup>38</sup> and an outlet nitrogen stream that can contain 1 to 5 percent CH<sub>4</sub> (EPA 2005).<sup>39</sup> Optimization of the nitrogen removal unit can reduce CH<sub>4</sub> in the outlet nitrogen stream to 2 percent (EPA 2005) and even to 1 percent CH<sub>4</sub> by volume.<sup>40</sup> The EPA GasSTAR program already accounts for CH<sub>4</sub> emissions from nitrogen removal unit vents and fugitives.

Based upon a 2002 field study conducted at four natural gas processing plants,<sup>41</sup> the EPA estimates that emissions from nitrogen removal unit vents that would be reported to the GHGRP would be approximately 2,400 mt CH<sub>4</sub> per year. For more information on the estimation of potential CH<sub>4</sub> emissions from nitrogen removal unit venting see the subpart W TSD, available in the docket for this

<sup>35</sup> Kuo, J.C., K.H. Wang, C. Chen. Pros and cons of different Nitrogen Removal Unit (NRU) technology. 7 (2012) 52–59. *Journal of Natural Gas Science and Engineering*, July 2012. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>36</sup> Park, J., D. Cho. Decision methodology for nitrogen removal process in the LNG plant using analytic hierarchy process. *Journal of Industrial and Engineering Chemistry*. 37 (2016) 75–83. 2016. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>37</sup> Kuo 2012.

<sup>38</sup> Weidert, D.J., and R.B. Hopewell. Holding the Key. *Hydrocarbon Engineering*. August 2016. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>39</sup> EPA 2005. *Optimizing Nitrogen Rejection Units, Lessons Learned from Natural Gas STAR*. Gas Processors Association, Devon Energy, Enogex, Dynegy Midstream Services, and EPA's Natural Gas STAR Program. Presented at Processors Technology Transfer Workshop. April 22, 2005. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>40</sup> *Nitrogen Rejection Unit Optimization, PRO Fact Sheet No. 905*. U.S. Environmental Protection Agency, Partner Reported Opportunities (PROs) for Reducing Methane Emissions. 2011. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>41</sup> *Identification and Evaluation of Opportunities to Reduce Methane Losses at Four Gas Processing Plants*. Prepared for Gas Technology Institute under U.S. EPA Grant No. 827754–01–0. Clearstone Engineering. June 20, 2002. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>34</sup> *Methane Emissions from the Natural Gas Industry, Volume 9: Underground Pipelines, Final Report* (GRI–94/0257.26 and EPA–600/R–96–080i) and *Volume 10: Metering and Pressure Regulating Stations in Natural Gas Transmission and Distribution, Final Report* (GRI–94/0257.27 and EPA–600/R–96–080j). Gas Research Institute and U.S. Environmental Protection Agency. June 1996. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

The EPA is proposing to define “nitrogen removal unit” in 40 CFR 98.238 as a process unit that separates nitrogen from natural gas using various separation processes (e.g., cryogenic units, membrane units) and “nitrogen removal unit vent emissions” as the nitrogen gas separated from the natural gas and released with CH<sub>4</sub> and other gases to the atmosphere, flare, or other combustion unit. The EPA is proposing to amend 40 CFR 98.232(c)(17), 98.232(d)(5), 98.232(g)(10), 98.232(h)(9), and 98.232(j)(3) to add nitrogen removal unit vents to the list of source types for which the industry segments previously specified would be required to report emissions. Corresponding additions are proposed at 40 CFR 98.236(a) to add nitrogen removal units to the list of equipment and activities that would be reported for each of these industry segments.

The EPA is proposing CH<sub>4</sub> emission calculation methodologies for nitrogen removal units that are identical to the existing calculation methodologies in 40 CFR 98.233(d) for AGRs (which currently apply to calculating emissions of CO<sub>2</sub>). These methods include use of vent meters, engineering calculations based upon flowrate of gas streams, or calculation using simulation software. Further, the EPA is proposing to add relevant reporting elements for CH<sub>4</sub> emissions from nitrogen removal units to 40 CFR 98.236(d) for each of the proposed allowable calculation methodologies. As a part of this proposed rulemaking, the EPA is also proposing to require the reporting of CH<sub>4</sub> emissions from AGR vents. Refer to section III.F.1 of this preamble for more detailed discussion of the calculation methodologies, including additional revisions proposed as part of this rulemaking and which we propose would also apply to nitrogen removal units.

The EPA is proposing that nitrogen removal unit vents routed to a flare would follow the same calculation requirements as other flared emission source types in proposed 40 CFR 98.233(n) and that flared nitrogen removal unit emissions (CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O) would be reported under proposed 40 CFR 98.236(n) separately from vented nitrogen removal unit emissions (CH<sub>4</sub>). The flared nitrogen removal unit emissions would be included with “other” flared source types for purposes of the proposed disaggregation provisions in proposed 40 CFR 98.233(n)(10) and proposed 40 CFR 98.236(n)(19). See section III.N of this preamble for more information on the

proposed flaring calculation and reporting provisions.

The EPA is seeking comment on the proposal to require reporting of CH<sub>4</sub> emissions from nitrogen removal unit venting, including the estimated magnitude of emissions, which industry segments, if any, should be required to report nitrogen removal unit vent emissions, and whether the existing calculation methods for AGR vents are appropriate and if there are other methods the EPA should consider.

### 3. Produced Water Tanks

The EPA is proposing to add CH<sub>4</sub> emissions from produced water tanks to subpart W. The EPA is proposing to define “produced water” consistent with the definition in the effluent guidelines for the oil and gas extraction point source category (40 CFR 435.11(bb)), which is the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process. Produced water is the largest wastewater source by volume generated during oil and gas extraction.<sup>42</sup> The ratio of produced water to recovered hydrocarbon is extremely variable across the U.S., ranging from less than 1:1 to more than 100:1.<sup>43</sup> In the 2022 U.S. GHG Inventory emissions estimate for 2020, the EPA estimated approximately 140,300 mt CH<sub>4</sub> emissions from produced water tanks associated with natural gas wells and 88,600 mt CH<sub>4</sub> emissions from produced water tanks associated with oil wells.

The EPA is proposing amendments to 40 CFR 98.233(j) to require reporters with atmospheric pressure storage tanks receiving produced water to calculate CH<sub>4</sub> emissions using any of the three calculation methodologies specified in 40 CFR 98.233(j)(1) through (3).<sup>44</sup> For facilities with produced water storage tanks electing to model their CH<sub>4</sub> emissions consistent with 40 CFR 98.233(j)(1), the EPA is proposing to allow facilities to select any software option that meets the requirements currently stated in 40 CFR 98.233(j)(1)

<sup>42</sup> Summary of Input on Oil and Gas Extraction Wastewater Management Practices Under the Clean Water Act. Final Report. EPA-821-S19-001. U.S. Environmental Protection Agency, Engineering and Analysis Division, Office of Water. Washington, DC May 2020.

<sup>43</sup> *Ibid.*

<sup>44</sup> As part of the proposed amendment to require reporters to calculate and report emissions from produced water tanks, we are also proposing conforming edits throughout subpart W to refer to hydrocarbon liquids and produced water instead of just hydrocarbon liquids.

(i.e., to select a modeling software that uses the Peng-Robinson equation of state, models flashing emissions from produced water, and speciates CH<sub>4</sub> emissions that result when the produced water from the separator or non-separator equipment enters an atmospheric pressure storage tank), but we request comment on whether the Peng-Robinson equation of state should be used for produced water tanks and whether there are other parameters that should be considered requirements for modeling emissions from produced water tanks. We expect that modeling flashing emissions from produced water tanks would calculate accurate estimates of CH<sub>4</sub> emissions, as it is widely accepted that these models provide accurate estimates of flashing emissions from hydrocarbon liquids atmospheric storage tanks. Therefore, we expect process simulation software options such as Bryan Research & Engineering (BRE)'s ProMax<sup>®</sup><sup>45</sup> (ProMax) would be appropriate for modeling produced water CH<sub>4</sub> emissions. For example, BRE has produced a white paper regarding ProMax's accuracy in predicting produced water emissions.<sup>46</sup> However, per the 2021 API Compendium, the EPA is aware that API 4697 E&P Tanks v3.0 program<sup>47</sup> is not appropriate for determining emissions from produced water tanks, as the program's methodology is based on properties specific to crude oil. Given that API's E&P Tanks software cannot model produced water tanks, we are proposing to specifically state in 40 CFR 98.233(j)(1) that API's E&P Tanks should only be used for modeling atmospheric storage tanks receiving hydrocarbon liquids.

There are several documents that address produced water emissions; however, the emission factors used in all of these documents all ultimately trace back to the 1996 GRI/EPA study.<sup>48</sup>

<sup>45</sup> BRE Promax<sup>®</sup> software available from BRE website (<https://www.bre.com/>).

<sup>46</sup> *Are Produced Water Emission Factors Accurate?* Bryan Research & Engineering, Inc. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>47</sup> E&P Tanks v3.0 software and the user guide (Publication 4697) formerly available from the API website.

<sup>48</sup> Studies referencing the 1996 GRI/EPA study produced water emission factors include: (1) 2021 API Compendium; (2) *Oil & Gas Production Protocol, Annex II to the General Reporting Protocol*, Version 1.0. The Climate Registry. February 2010; (3) *2011 Oil and Gas Emission Inventory Enhancement Project for CenSARA States*. Produced by ENVIRON International Corporation and Eastern Research Group, Inc. (ERG) for Central States Air Resources Agencies (CenSARA). December 2012; and (4) *Instructions for Using the 2017 EPA Nonpoint Oil and Gas*

Therefore, the EPA is proposing to add CH<sub>4</sub> emission factors to 40 CFR 98.233(j)(3) that were developed as part of the 1996 GRI/EPA study,<sup>49</sup> which is consistent with the factors used by the U.S. GHG Inventory.<sup>50</sup> The emission estimates from the 1996 GRI/EPA study were estimated using an ASPEN PLUS process simulation assuming the natural gas industry produces 497 million barrels of salt water annually, including approximately 100 million barrels from coal bed CH<sub>4</sub> wells; 70 percent of the water from gas wells is reinjected with the remaining 30 percent stored in atmospheric tanks; and hydrocarbon composition is 100 percent CH<sub>4</sub>.<sup>51</sup> The 1996 GRI/EPA study estimated produced water emissions for salt contents of 2, 10, and 20 percent, and pressures of 50, 250, and 1,000 pounds per square inch. The 2021 API Compendium (Table 6–26) provides the 1996 GRI/EPA emission factors converted from units of million pounds per year to units of metric tons per thousand barrels (based upon the assumption of 497 million barrels of produced water annual production). In addition, average emission factors were calculated for each pressure.

We also propose to add reporting requirements for produced water tanks. The provisions in 40 CFR 98.236(j)(1) are proposed to be revised to refer to both hydrocarbon liquid and produced water atmospheric storage tanks. Additionally, we are proposing to add reporting requirements to 40 CFR 98.236(j)(2) for total annual produced water volumes for each pressure range, estimates of the fraction of produced water throughput that is controlled by flares and/or vapor recovery, counts of controlled and uncontrolled produced water tanks, and annual CH<sub>4</sub> emissions vented directly to atmosphere from produced water tanks. Flared produced water tank emissions would be reported

*Emissions Estimation Tool, Production Module.* Produced by Eastern Research Group, Inc. (ERG) for U.S. Environmental Protection Agency. October 2019.

<sup>49</sup> *Methane Emissions from the Natural Gas Industry, Volume 6: Vented and Combustion Source Summary, Final Report.* GRI–94/0257.23 and EPA–600/R–96–080f. Gas Research Institute and U.S. Environmental Protection Agency. June 1996. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>50</sup> U.S. EPA. *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2019: Updates for Produced Water Emissions.* April 2021. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>51</sup> *Atlas of Gas Related Produced Water for 1990.* 95/0016. Produced by Energy Environmental Research Center, University of North Dakota, and ENSR Consulting and Engineering for Gas Research Institute. May 1995. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

under 40 CFR 98.236(n), as proposed in section III.N.2 of this preamble. Industry segments required to report emissions from produced water tanks would include Onshore Petroleum and Natural Gas Production, Onshore Petroleum and Natural Gas Gathering and Boosting, and Onshore Natural Gas Processing. The EPA is also proposing to revise the emission source type name in 40 CFR 98.233(j) and 40 CFR 98.236(j) from “onshore production and onshore petroleum and natural gas gathering and boosting storage tanks” to “hydrocarbon liquids and produced water storage tanks” to reflect the proposed addition of produced water tanks. The EPA is also proposing to revise the source type provided in 40 CFR 98.232(c)(10) and 40 CFR 98.232(j)(6) to “Hydrocarbon liquid and produced water storage tank emissions” which reflects the addition of produced water tanks.

#### 4. Mud Degassing

The EPA is proposing to add a new emission source type to subpart W for emissions from drilling mud degassing. The proposed amendments for this new source type would add calculation and reporting requirements for CH<sub>4</sub> emissions from mud degassing associated with well drilling for onshore petroleum and natural gas production facilities in 40 CFR 98.232(c), 98.233(dd), and 98.236(dd). In this proposal, the EPA is not proposing to require the reporting of CO<sub>2</sub> emissions from this source. Based on available research, it appears that CH<sub>4</sub> is the primary GHG emitted from this source, while emissions of CO<sub>2</sub> are expected to be very small. However, as noted later in this section, the EPA is seeking comment on requiring reporting of CO<sub>2</sub> emissions from mud degassing, including comment on the expected magnitude of CO<sub>2</sub> emissions from mud degassing and appropriate calculation methods for CO<sub>2</sub> emissions from mud degassing.

The term “drilling mud,” also referred to as “drilling fluid,” refers to a class of viscous fluids used during the drilling of oil and gas wells. Throughout the drilling process, drilling mud is pumped continuously through the drill string and out the bit to cool and lubricate the drill bit, carry cuttings away from the drill bit, and to maintain the desired pressure within the well. The three types of drilling mud used in the oil and gas industry are water-based, oil-based, and synthetic-based muds. The density of the mud can be controlled to counteract formation pressure, and drilling mud adds stability to the bore hole. During drilling, gas is freed from rock drilled

out of the wellbore and becomes entrained in the drilling mud that is being pumped continuously through the drill string.

As drilling mud circulates through the wellbore, natural gas and heavier hydrocarbons can become entrained in the mud. Mud degassing refers to the practice of extracting the entrained gas from drilling mud once it is outside the wellbore. Gas entrained in the drilling mud is separated from the mud in a mud separator and then vented directly to the atmosphere or flared. The entrained gas contains CH<sub>4</sub> and can contain other pollutants such as volatile organic compounds (VOC) and possibly CO<sub>2</sub>, depending on the gas characteristics of the hydrocarbon-bearing zones through which the borehole is drilled, including the target zone. Although the majority of natural gas will be released when the mud passes through the mud separator, small quantities of natural gas will remain entrained in the drilling mud and in the rock cuttings after the mud passes through the traps. These small quantities will eventually be released to the atmosphere as the drilling mud and associated cuttings are stored, processed and disposed.

Based on our review of the available information regarding mud degassing emissions, we note that mud degassing has been included only in a limited number of U.S. state-level, regional and national inventories of the onshore oil and gas production segments, mostly due to a lack of sufficient data to characterize the emissions. In a 1977 EPA publication titled, *Atmospheric Emissions from Offshore Oil and Gas Development and Production*,<sup>52</sup> the EPA estimated two total hydrocarbon (THC) emission factors in units of emissions per drilling day, one for water-based mud degassing and the other for oil-based mud degassing, based on engineering calculations. The 1977 EPA publication does not include emission factors for synthetic-based mud. Several entities, such as the state of New York and the Central States Air Resources Agency (CenSARA), have incorporated estimates for mud degassing in their inventory estimates. A CenSARA study conducted in 2011 developed default emission factors derived from the 1977 EPA report.<sup>53</sup> The CenSARA study

<sup>52</sup> *Atmospheric Emissions from Offshore Oil and Gas Development and Production.* Produced by Energy Resources Co. for Environmental Protection Agency. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>53</sup> *2011 Oil and Gas Emission Inventory Enhancement Project for CenSARA States.* Produced by ENVIRON International Corporation

added a THC emission factor for synthetic drilling muds and also provided emission factors in mt CH<sub>4</sub> per drilling day. The THC emission factors are 881.84 pounds per drilling day for water-based muds and 198.41 pounds per drilling day for oil-based and synthetic drilling muds. The CH<sub>4</sub>-specific emission factors are 0.2605 mt CH<sub>4</sub> per drilling day for water-based muds and 0.0586 mt per drilling day for oil-based and synthetic drilling muds; they are based on an assumption of 83.85 percent CH<sub>4</sub> in the gas stream vented from mud degassing. The CenSARA methodology does allow for adjustment of the CH<sub>4</sub> default emission factors to local conditions by multiplying the nationwide emission factor to the ratio of the local CH<sub>4</sub> mole percent of vented gas to the mole percent of CH<sub>4</sub> from the vented gas used to derive the CenSARA emission factor (83.85).

For its emissions inventory, the state of New York based its emission factor for mud degassing on the CenSARA study, while also concluding that communication with experts indicated that there were not any more recent estimates available.<sup>54</sup> Furthermore, New York only adopted the CenSARA CH<sub>4</sub> emission factor of 0.2605 mt CH<sub>4</sub> per drilling day for water-based muds. This factor serves as the single emission factor for New York. Unlike CenSARA, New York's calculation methods do not provide the ability for users to make a local adjustment to the emission factor. Both CenSARA and New York define the number of drilling days as the completion date minus the spud date.

The U.S. GHG Inventory does not currently include mud degassing emissions. In 2020, the EPA released a memorandum discussing the potential inclusion of CH<sub>4</sub> emissions estimates for mud degassing as an update under consideration for the U.S. GHG Inventory, based on the THC emission factors presented in the 1977 EPA publication.<sup>55</sup> Specifically, the

memorandum provided emission factors of 0.32 mt CH<sub>4</sub> per drilling day for water-based drilling muds and 0.07 mt CH<sub>4</sub> per drilling day for oil-based drilling muds in the discussion. The CH<sub>4</sub> emission factor presented for consideration for updating the U.S. GHG Inventory assumed a default CH<sub>4</sub> fraction (by weight) of 61.2 percent for associated gas. The EPA has not to date incorporated the use of these emission factors, and mud degassing is not included in the current U.S. GHG Inventory.

Separately, API published updated CH<sub>4</sub> and whole gas emission factors based on the emission factors from the 1977 EPA publication in their 2021 API Compendium.<sup>56</sup> API's updated CH<sub>4</sub> emission factors are based on a gas content of 65.13 weight percent CH<sub>4</sub>, derived from sample data provided in the 1977 EPA publication. While including the same THC and CH<sub>4</sub> emission factors as CenSARA, API specifies that these are for offshore drilling only. The API Compendium presents lower emission factors for onshore drilling. In the 2021 API Compendium, API stated that it adjusted the 1977 EPA values for borehole size and porosity to better reflect those used in onshore drilling. API's onshore production CH<sub>4</sub> emission factors are 0.0458 mt per drilling day for water-based mud and 0.0103 mt per drilling day for oil-based and synthetic muds. Similar to CenSARA, the API methodology allows for the nationwide emission factors to be adjusted to local conditions by applying a ratio of the mole percent in vented gas from degassing at local operations to the nationwide mole percent of 83.85.

Although most efforts have focused on the development of emission factors for mud degassing, the 2021 API Compendium also encourages operators to use site-specific CH<sub>4</sub> (and CO<sub>2</sub> if present) measurements to estimate emissions if possible. Generally, measured data would involve use of mud-logger services with hydrocarbon gas sensors. In some cases, operators may use gas chromatography, but gas chromatography alone does not allow calculation of gas concentration in the

mud. Gas emissions would be determined by using the volumetric flowrate of the mud, the amount of time of mud flow and the concentration of CH<sub>4</sub> and CO<sub>2</sub> in the mud.

After careful consideration of the available literature and well drilling and mud degassing practices, the EPA is proposing two options in a new paragraph (40 CFR 98.233(dd)) to measure CH<sub>4</sub> emissions from drilling mud degassing: use of measurements taken through mudlogging and gas detection at representative wells and use of emission factors and activity counts.

Calculation Method 1 would require the reporter to calculate CH<sub>4</sub> emissions from mud degassing for a representative well. To qualify as a representative well, the well would be required to be drilled in the same sub-basin and at the same targeted total depth from the surface as the wells it is representative of. Calculation Method 1 would be required to be used when the reporter has taken mudlogging measurements, including gas trap-derived gas concentration and mud pumping rate, for at least one well in the sub-basin at the approximate total depth. A CH<sub>4</sub> emissions rate from mud degassing would be calculated for the representative well and the CH<sub>4</sub> emission rate for the well would be applied to the total time drilling mud is circulated through the wellbore during drilling for each of the other wells drilled in the same sub-basin and targeting the same approximate total depth from surface in the reporting year.

The operator would be required to identify and calculate natural gas emissions for a new representative well at least once every 2 years for each sub-basin and targeted depth within the facility to ensure that the emissions from representative wells are representative of the operating and drilling practices within each applicable sub-basin in the facility. In the Onshore Petroleum and Natural Gas Production industry segment, facilities are defined at the basin-level. In the first year of reporting, however, the operator may use measurements from the prior reporting year if measurements from the current reporting year are not available.

Proposed Calculation Method 1 uses a three-step approach to calculate emissions from mud degassing for each well in a particular sub-basin and at the same approximate total targeted depth. In the first step, reporters would calculate CH<sub>4</sub> emissions for the representative well using proposed equation W-41. For this step, the reporter would need to know the average efflux mud rate from the mud pump in gallons per minute (gpm),

for Central States Air Resources Agencies. November 2011. Available at [https://www.deq.ok.gov/wp-content/uploads/air-division/EI\\_OG\\_Final\\_Report\\_CenSara\\_122712.pdf](https://www.deq.ok.gov/wp-content/uploads/air-division/EI_OG_Final_Report_CenSara_122712.pdf) and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>54</sup> *New York State Oil and Gas Sector: Methane Emissions Inventory*. Produced by Abt Associates for New York State Energy Research and Development Authority. November 2022. Available at <https://www.nyseda.ny.gov/-/media/Project/Nyserda/Files/Publications/Energy-Analysis/22-38-New-York-State-Oil-and-Gas-Sector-Methane-Report-acc.pdf> and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>55</sup> U.S. EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2019: Update under Consideration for Mud Degassing Emissions*.

September 2020. Available at <https://www.epa.gov/sites/default/files/2020-09/documents/ghgi-webinar2020-degassing.pdf> and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>56</sup> *Compendium of Greenhouse Gas Emissions Methodologies For The Natural Gas And Oil Industry*. Produced by URS Corporation for American Petroleum Institute. November 2021. Available at <https://www.api.org/-/media/files/policy/esg/ghg/2021-api-ghg-compendium-110921.pdf> and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

“MR<sub>r</sub>”; the total amount of time in minutes that drilling mud is circulated in the representative well, “T<sub>r</sub>”; the percentage of the fluid flow that is gas, “X<sub>n</sub>”; and the measured mole concentration of CH<sub>4</sub>, “GHG<sub>CH<sub>4</sub></sub>.” If a representative well cannot be identified because mudlogging was not used for any well within the same sub-basin and at the same targeted approximate total depth, the reporter may choose a representative well within the facility that is drilled into the same formation and at the same approximate total depth.

In the second step, reporters would calculate the CH<sub>4</sub> emissions rate for the representative well using proposed equation W-42. The emissions rate would be derived by dividing the representative well’s total annual CH<sub>4</sub> emissions, “E<sub>s,CH<sub>4,r</sub></sub>,” by the total time that drilling mud is circulated in the representative well, “T<sub>r</sub>.” In the third step, reporters would apply the CH<sub>4</sub> emissions rate calculated in the second step to other wells in the sub-basin that are at the same approximate total depth to derive the total volume of CH<sub>4</sub> emissions for each well at that depth. In this step, the reporter would calculate total CH<sub>4</sub> emissions for each well, “p,” in the same sub-basin and at the same approximate total depth as the representative well using proposed equation W-43, where the total time drilling mud is circulated in the well would be multiplied by the representative well’s emissions rate, “ER<sub>s,CH<sub>4,p</sub></sub>,” determined using equation W-42 in step 2.

If mudlogging measurements were not taken, the EPA is proposing that reporters would use Calculation Method 2 and determine emissions from mud degassing using proposed equation W-44, which incorporates the nationwide emission factors provided by the CenSARA study. Specifically, the EPA is proposing an emission factor of 0.2605 mt CH<sub>4</sub> per drilling day per well for water-based mud and a factor of 0.0586 mt CH<sub>4</sub> per drilling day per well for oil-based and synthetic drilling muds. As noted by New York state, there are limited data and few studies on mud degassing emissions. The EPA is proposing these emission factors as an alternative calculation method because our assessment of the available literature is that these proposed emission factors are generally appropriate if measurements are not available. In addition, the emission factors proposed are consistent with those of several organizations that calculate and publish emissions from mud degassing in their inventories. As noted previously in this section, these

factors are based on a CH<sub>4</sub> mole percent of 83.85 in the gas stream vented from mud degassing. The EPA is not proposing to allow adjustment of the emission factors for local conditions under proposed Calculation Method 2 because the use of emission factors under this proposed calculation method would only be allowed if the operator did not have site-specific measurements (*i.e.*, would not have the measurement that would be the basis of such an adjustment).

Although the EPA is proposing to use the nationwide emission factors provided by the CenSARA study, the EPA is proposing to define the number of drilling days differently than the study. Rather than considering the first drilling day to be the day the well is spudded, we are proposing that the total number of drilling days is the sum of all days from the first day that the borehole penetrates the first hydrocarbon-bearing zone through the completion of all drilling activity. The EPA believes that penetration of the first hydrocarbon-bearing zone more accurately reflects the point in time where CH<sub>4</sub> will start becoming entrained in drilling mud. The EPA is also defining the last drilling day as the day drilling mud ceases to be circulated in the well. Reporters would calculate emissions for each well by multiplying the emission factor by the number of drilling days per well per year.

The EPA is seeking comment on these calculation methodologies, including whether there are calculation methodologies other than the proposed methods that the EPA should consider for calculating CH<sub>4</sub> emissions from mud degassing. The EPA is also seeking comment on CO<sub>2</sub> emissions from mud degassing, including the magnitude of CO<sub>2</sub> emissions from this source type, whether emissions of CO<sub>2</sub> should be reported, and suggested calculation methods for CO<sub>2</sub> emissions. The EPA is also seeking comment on whether to consider mud weight balance in the derivation of emission factors, and if so, how to incorporate such considerations. Underbalanced, balanced, and overbalanced all lead to varying hydrostatic weights of the mud and could affect the flow of hydrocarbons into the well bore, possibly impacting emissions calculations. However, we are not aware of any studies to date that have considered mud weight balance.

In addition to the calculation requirements, the EPA is proposing corresponding reporting requirements for emissions by well in 40 CFR 98.236(dd). Specifically, for all wells with mud degassing emissions that use Calculation Method 1, the reporter

would report the well ID number for each well for which mud degassing emissions are calculated, the approximate total depth of the well in feet below surface, and the total time in minutes that drilling mud is circulated in the well. Reporters would also report whether the drilling mud used was water-based, oil-based, or synthetic. Additionally, for a well that is not a representative well, reporters would report the well ID number of the representative well that was used to derive the CH<sub>4</sub> emissions rate used to calculate emissions from the non-representative well.

For reporters using Calculation Method 1, the EPA is also proposing to require additional data on representative wells, including the average mud flow rate in gpm, the concentration of natural gas in the drilling mud, the measured mole fraction of CH<sub>4</sub> in the drilling mud, and the CH<sub>4</sub> emissions rate. For reporters using Calculation Method 2, the EPA is proposing that reporters would report the well ID number for each well for which mud degassing emissions are calculated, the total number of drilling days at each well, and whether the drilling mud used was water-based, oil-based, or synthetic. Annual CH<sub>4</sub> emissions in mt CH<sub>4</sub> would be reported for each well whether emissions were calculated using Calculation Method 1 or Calculation Method 2.

To clearly define the emission source type and parameters to use in the emissions calculations, the EPA is proposing to define three new terms in 40 CFR 98.238. The EPA is proposing to define “drilling mud” as a mixture of clays and additives with water, oil, or synthetic materials continuously pumped through the drill string and out the bit while drilling to cool and lubricate the drill bit and to move cuttings through the wellbore to the surface. The EPA is proposing to define “drilling mud degassing” as the practice of safely removing pockets of free gas entrained in the drilling mud once it is outside of the wellbore. “Mud rate” is proposed to mean the pumping rate of the mud by the mud pumps, usually measured in gpm. The mud rate would be an input to proposed equation W-41.

Finally, we note that in proposing these new requirements, we considered adding mud degassing emissions to two existing source categories in the Onshore Petroleum and Natural Gas Production industry segment, well completions and workovers with hydraulic fracturing and well completions and workover without hydraulic fracturing, rather than proposing calculation and reporting

requirements for mud degassing as a new emissions source. Upstream oil and gas development is undertaken in two stages, exploration and production. The exploration stage consists of well drilling followed by well completion, including casing of the well and hydraulically fracturing the well (in the case of hydraulically fractured completion). However, for purposes of this proposal, the EPA has determined that well drilling activities are a distinct activity separate from well completion. For example, a common practice in the oil and gas industry is to drill a well but leave the borehole uncompleted (referred to in the oil and gas industry as “drilled but uncompleted”). These boreholes are left uncompleted for a period of time until economic conditions improve, completion crews are available, or for other reasons. Even without completion, the drilling activity still has the potential to produce emissions. Therefore, the EPA is proposing drilling mud degassing as a new emissions source type source for onshore petroleum and natural gas production facilities.

#### 5. Crankcase Venting

The EPA is proposing to add calculation and reporting requirements for CH<sub>4</sub> emissions from a new emission source type, crankcase ventilation from RICE or GT used in the Onshore Petroleum and Natural Gas Production, Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, Underground Natural Gas Storage, LNG Storage, LNG Import and Export Equipment, Natural Gas Distribution, and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments. Crankcase ventilation is the process of venting or removing blow-by from the void spaces of an internal combustion engine outside of the combustion cylinders to prevent excessive pressure build-up within the engine.<sup>57</sup> This proposed source does not include ingestive systems that vent blow-by into the engine where it is returned to the combustion process.<sup>58</sup>

The EPA first proposed including “crankcase vents” in subpart W in the January 2016 proposal to add leaker

emission factors (81 FR 4987, January 29, 2016). At that time in 2016, the EPA proposed to add new monitoring methods for detecting leaks from oil and gas equipment in the petroleum and natural gas systems source category consistent with the leak detection methods in the then proposed NSPS OOOOa (80 FR 56593, September 18, 2015). Specifically, in 2016, the EPA proposed aligning subpart W equipment components with the 2015 proposed NSPS OOOOa definition of “fugitive emissions component,” which was “any component that has the potential to emit fugitive emissions of [CH<sub>4</sub>] or VOC at a well site or compressor station site, including but not limited to valves, connectors, pressure relief devices, open-ended lines, access doors, flanges, closed vent systems, thief hatches or other openings on storage vessels, agitator seals, distance pieces, crankcase vents, blowdown vents, pump seals or diaphragms, compressors, separators, pressure vessels, dehydrators, heaters, instruments, and meters” (80 FR 56593, September 18, 2015). The proposed NSPS OOOOa definition of “fugitive emissions component” also indicated that it did not include devices that “vent as part of normal operations.” Commenters on the proposed NSPS OOOOa indicated that some of the examples listed within the proposed definition of “fugitive emissions component” did include devices that vent as part of normal operations, including crankcase vents.<sup>59</sup> As a result of these comments, the final definition for “fugitive emissions component” in the NSPS OOOOa (81 FR 35824, June 3, 2016) did not include the reference to “crankcase vents” or other types of devices that vent as part of normal operations, consistent with the EPA’s stated intent in the 2015 NSPS OOOOa proposal not to include those devices in the definition. The 2016 promulgated amendments to subpart W for fugitive emissions aligned with the definition of “fugitive emissions component” in the final NSPS OOOOa.

We have estimated sector-wide emissions from crankcase ventilation using data from a 2015 study published by Johnson *et al.*, *Methane Emissions from Leak and Loss Audits of Natural Gas Compressor Stations and Storage Facilities*.<sup>60</sup> In this study, the audit of

three natural gas compressor stations and two natural gas storage facilities yielded an average ratio of crankcase-to-exhaust emissions of 14.4 percent. The study authors compared total emissions rate (crankcase plus exhaust) against literature values of a four-cylinder lean burning engine in EPA’s *Compilation of Air Pollutant Emission Factors* (AP-42).<sup>61</sup> The literature value overpredicted the combined emissions by 11.4 percent, which slightly exceeded the calculated uncertainty for exhaust emissions of 7.2 percent. This comparison indicates the measured value offers a reasonable estimate of CH<sub>4</sub> loss from natural gas compressor stations and storage facilities. Based on this study, the EPA conservatively estimates that the total CH<sub>4</sub> emissions from crankcase ventilation that could be reported to the GHGRP would be approximately 800,000 mt per year, assuming crankcase emissions are 14.4 percent of combustion emissions from all proposed industry segments. For more information on the estimation of potential CH<sub>4</sub> emissions from crankcase venting, see the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

The API provided an emission factor for CH<sub>4</sub> from crankcase ventilation in their 2021 API Compendium.<sup>62</sup> API’s emission factor was developed from results from Phase II of a comprehensive measurement program conducted to determine cost-effective directed inspection and maintenance control opportunities for reducing natural gas losses due to fugitive equipment leaks and avoidable process inefficiencies. Phase II of the program was conducted at five gas processing plants, seven gathering compressor stations, and twelve well sites during 2004 and 2005.<sup>63</sup>

Compressor Stations and Storage Facilities.” *Environ. Sci. Technol.* 2015, 49, 13, 8132–8138. July 4, 2015. Available at <https://doi.org/10.1021/es506163m> and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>61</sup> U.S. EPA. *AP-42 Compilation of Air Pollutant Emission Factors*, 5th ed. Volume I, Chapter 3: Stationary Internal Combustion Sources: Section 3.1 Stationary Gas Turbines and Section 3.2 Natural Gas-fired Reciprocating Engines. Available at <https://www.epa.gov/air-emissions-factors-and-quantification/ap-42-fifth-edition-volume-i-chapter-3-stationary-0> and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>62</sup> *Compendium of Greenhouse Gas Emissions Methodologies For The Natural Gas And Oil Industry*. Produced by URS Corporation for American Petroleum Institute. November 2021. Available at <https://www.api.org/-/media/files/policy/esg/ghg/2021-api-ghg-compendium-110921.pdf> and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>63</sup> *Cost-Effective Directed Inspection and Maintenance Control Opportunities at Five Gas*

<sup>57</sup> Cox, J. “Managing Engine Blow-by with Crankcase Ventilation Systems.” *The Solberg Blog*, June 17, 2022. Available at <https://www.solbergmfg.com/en/resources/blog/crankcase-ventilation-system-for-engine-in-the-pow> and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>58</sup> See, e.g., Caterpillar. *Application & Installation Guide: Crankcase Ventilation Systems*. LEBW4958-04. 2015. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>59</sup> U.S. EPA. *EPA’s Responses to Public Comments on the EPA’s Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources*. Chapter 4—Fugitives Monitoring. May 2016. Available as EPA-HQ-OAR-2010-0505-7632 and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>60</sup> Johnson, D.R., *et al.* 2015. “Methane Emissions from Leak and Loss Audits of Natural Gas

Based on the information provided in this section, the EPA is proposing to add 40 CFR 98.233(ee) to provide a component-level average emission factor approach for estimating emissions for crankcase ventilation based on the number of crankcase vents on RICE or GT in the facility. The proposed CH<sub>4</sub> emission factor for crankcase ventilation is 2.28 standard cubic feet per hour per source, as provided in the 2021 API Compendium. The 2021 API Compendium emission factor was selected as representative because it was developed from results of the most comprehensive field study of crankcase ventilation in the oil and natural sector available to date. Site-specific information required for the emission calculation would include the number of crankcase vents on RICE or GT, the operating time of each engine or GT, and the concentration of CH<sub>4</sub> in the gas stream entering the engines or GT. If site-specific CH<sub>4</sub> concentration is unknown, the proposed provision includes an option to determine the CH<sub>4</sub> concentration in the gas stream using either engineering estimates based on best available data or the provisions of 40 CFR 98.233(u)(2). The EPA is seeking comment on whether this calculation method is appropriate and whether there are other methodologies that we should consider providing, including details on how those additional methods would be applied to this source. For reporting, the EPA is proposing to add 40 CFR 98.236(ee) to require reporters to provide emissions, the number of crankcase vents at the facility, and engine or GT operating hours.

#### *D. Reporting for the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting Industry Segments*

Within the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments, GHG emissions and activity data are currently generally reported at the basin, county/sub-basin, or unit level, depending upon the specific emission source. Examples of emission sources that report at the sub-basin or county level include

*Processing Plants and Upstream Gathering Compressor Stations and Well Sites.* EPA Phase II Aggregate Site Report prepared for U.S. EPA Natural Gas STAR Program by Natural Gas Machinery Laboratory, Clearstone Engineering Ltd., and Innovative Environmental Solutions, Inc. March 2006. Available at [https://www.epa.gov/sites/default/files/2016-08/documents/clearstone\\_ii\\_03\\_2006.pdf](https://www.epa.gov/sites/default/files/2016-08/documents/clearstone_ii_03_2006.pdf) and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

liquids unloading, completions and workovers with hydraulic fracturing, and storage tanks. Sources that report at the facility (basin) level include natural gas pneumatic devices, blowdown vent stacks, and equipment leaks. The current aggregation of data reported within the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting segments can present challenges in the process of emissions verification, with corresponding potential impacts on data quality, and it also limits data transparency.

In order to address these concerns and improve data quality consistent with section I.I.C of this preamble, the EPA is proposing to disaggregate reporting requirements within the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments. As a first step, the EPA is proposing to revise the reporting requirements to be more explicitly consistent with the current reporting form structure for the well identification (ID) numbers at the facility, with two proposed changes and one addition. Currently, for certain emission sources directly related to wells (liquids unloading, completions and workovers with hydraulic fracturing, completions and workovers without hydraulic fracturing well testing, and associated natural gas), subpart W requires reporters to provide a list of well ID numbers in each sub-basin that contributed to the emissions (*e.g.*, a list of well IDs that had completions or workovers with hydraulic fracturing). Under existing 40 CFR 98.236(aa)(1)(ii)(D) through (H), reporters are also asked to provide the counts of wells that were producing, acquired, divested, completed, and/or permanently taken out of production for each sub-basin, along with a list of well ID number for the wells in each of those categories. For the subpart W reporting form, these requirements were implemented through addition of a single table, in which reporters provide a list of all well ID numbers, the sub-basin, the operating status per 40 CFR 98.236(aa)(1)(ii)(D) through (H), and any well-specific information required for the emission source types directly related to wells. The EPA is proposing to revise 40 CFR 98.236(aa)(1)(ii) and add requirements to 40 CFR 98.236(aa)(1)(iii) that reflect this reporting form structure, with two notable changes. First, the EPA is proposing to no longer require reporting of the sub-basin ID for each well. Instead, reporters would report the sub-

basin ID by well-pad and then report the well-pad ID on which the well is located. The well-pad ID is a new proposed data element and is described in the following paragraph. Second, the EPA is proposing to revise the requirements to provide a list of well IDs for the five emission source types directly related to wells (currently required in 40 CFR 98.236(f)(1)(ii), (f)(2)(i), (g)(1), (h)(1)(i), (h)(2)(i), (h)(3)(i), (h)(4)(i), (l)(1)(ii), (l)(2)(ii), (l)(3)(ii), (l)(4)(ii), (m)(1), (m)(7)(i), and (m)(8)(i)) to instead specify that reporters should report emissions and activity data for each of those emission source types by well within the source-specific reporting requirements, as described later in this section.

Second, the EPA is proposing to add the following data elements: well-pad ID (for Onshore Petroleum and Natural Gas Production segment) and gathering and boosting site ID (for Onshore Petroleum and Natural Gas Gathering and Boosting). These proposed data elements are hereafter collectively referred to as “site-level IDs.” The EPA is proposing to add to 40 CFR 98.236(aa)(1)(iv) (for Onshore Petroleum and Natural Gas Production) and 40 CFR 98.236(aa)(10)(v) (for Onshore Petroleum and Natural Gas Gathering and Boosting) requirements for reporting of information related to each well-pad ID and gathering and boosting site ID, respectively. The proposed reporting elements for each well-pad ID include a unique name or ID for each well-pad, the sub-basin ID, and the location (*i.e.*, representative latitude and longitude coordinates).

For the Onshore Petroleum and Natural Gas Gathering and Boosting industry segments, the EPA is proposing at 40 CFR 98.236(aa)(10)(v) to require reporters to provide a unique name or ID, the site type, and the location for each gathering and boosting site. For the “site type” for each gathering and boosting site, the EPA is proposing that reporters would select between “gathering compressor station,” “centralized oil production site,” “gathering pipeline site,” or “other fence-line site.” The EPA is proposing a definition of “gathering compressor station” in 40 CFR 98.238 to be used for the purposes of this reporting requirement and to differentiate gathering compressor stations from other types of compressor stations in subpart W (*e.g.*, transmission compressor stations). The Onshore Petroleum and Natural Gas Gathering and Boosting industry segment also includes centralized oil production sites that collect oil from multiple well-pads but that do not have compressors (*i.e.*,

are not “compressor stations”). The EPA is also proposing to add a definition of a “centralized oil production site” in 40 CFR 98.238 to be used for the purposes of this reporting requirement. For gathering pipelines, the EPA is proposing a definition of “gathering pipeline site” to specify that it is all the gathering pipelines at the facility within a single state. In addition, the EPA has received information from stakeholders noting that there are facility configurations that would not clearly fit within the proposed definition for “gathering compressor station” or “centralized oil production site,” including, but not limited to, booster stations, dehydration facilities, and treating facilities.<sup>64</sup> The EPA is proposing to provide the “other fence-line site” site type to cover these types of sites. For gathering pipelines, the EPA is proposing within the definition of “gathering and boosting site” that a gathering pipeline site is all the gathering pipelines at the facility within a single state. For the “location” reported for each gathering and boosting site, the EPA is proposing that reporters would provide the representative latitude and longitude coordinates where the site type is a gathering compressor station, centralized oil production site or other fence-line facility, and the state where the site type is a gathering pipeline.

For the emission source types in the Onshore Petroleum and Natural Gas Production industry segment directly related to wells that currently report by sub-basin (*i.e.*, well venting for liquids unloading, completions and workovers with hydraulic fracturing, completions and workovers without hydraulic fracturing, and associated gas venting or flaring) or by calculation method and use of a flare (*i.e.*, well testing), we are proposing to require reporting of emissions and activity data for each individual well instead of in the current aggregations (*e.g.*, by sub-basin). Where the current emission source-level provisions of 40 CFR 98.236 for the Onshore Petroleum and Natural Gas Production industry segment and the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment require reporting at either the facility or the sub-basin level (other than the emission source types directly related to wells), we are proposing to no

longer require reporting at the sub-basin level and instead require reporters to provide emissions and activity data by well-pad ID or gathering and boosting site ID for each facility. For emission source types that report at the unit level (*e.g.*, AGRs, dehydrators, and flares), we are proposing to maintain reporting at that level but are proposing to also require the reporter to identify the well-pad ID or gathering and boosting site ID. This proposed requirement would take the place of the reporting of the county or sub-basin ID, if applicable. The EPA is seeking comment as to whether the lower levels of aggregation of activity data to the site level within the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting segments would cause data elements that are currently not entitled to confidential treatment (*i.e.*, data elements that are not considered “emissions data” as described in section V of this preamble) to become entitled to confidential treatment. See section V of this preamble for further information about the proposed confidentiality determinations and reporting determinations for inputs to emissions equations.

In addition, the EPA is proposing revisions to the language of existing reporting requirements and proposing to require specific throughput data elements related to wells permanently shut-in and plugged during the reporting year. First, the EPA is proposing to revise the phrase “permanently taken out of production (*i.e.*, plugged and abandoned)” in proposed 40 CFR 98.236(aa)(1)(ii)(D) and (H) to read “permanently shut-in and plugged” for consistency with the language used in CAA section 136. This proposed amendment is for consistency in language rather than any expected difference in the wells to be reported or the interpretation of the terms. Second, the EPA is proposing to require reporting of the quantities of natural gas, crude oil and condensate produced that is sent to sale during the reporting year for each well that is permanently shut-in and plugged in 40 CFR 98.236(aa)(1)(iii)(C) through (E) for the Onshore Petroleum and Natural Gas Production industry segment and 40 CFR 98.236(aa)(2)(iv) through (vi) for the Offshore Petroleum and Natural Gas Production industry segment. Third, for each Onshore Petroleum and Natural Gas Production well-pad with a well that was permanently shut-in and plugged the EPA is proposing to require reporting of the total quantities of natural gas, crude oil and condensate

produced that is sent to sale in the reporting year for the wells on that well-pad. These proposed data elements, if finalized, are anticipated to be useful in the future evaluation of the plugged well provisions of CAA section 136(f)(7).

#### *E. Natural Gas Pneumatic Device Venting and Natural Gas Driven Pneumatic Pump Venting*

Subpart W currently requires calculation of GHG emissions from natural gas pneumatic device venting (existing 40 CFR 98.233(a)) and natural gas driven pneumatic pump venting (existing 40 CFR 98.233(c)) using default population emission factors multiplied by the number of devices and the average time those devices are “in-service” (*i.e.*, supplied with natural gas). In our 2022 Proposed Rule, we proposed to update the population emission factors for pneumatic devices based on recent study data. Consistent with section II.B of this preamble, we are proposing calculation methods based on measurements and leak screening for each source type as described in this section. Under the proposed calculation methods for pneumatic devices, the existing default population emission factors for intermittent bleed natural gas pneumatic devices would no longer be applicable and the default population emission factors for continuous bleed natural gas pneumatic devices would only be applicable for the leak screening method (proposed Calculation Method 3).

##### *1. Direct Measurement Methods for Natural Gas Pneumatic Devices and Natural Gas Pneumatic Pumps*

Consistent with section II.B of this preamble, we are proposing to provide a calculation method based on direct measurement of natural gas supplied to pneumatic devices in proposed 40 CFR 98.233(a)(1) and supplied to pneumatic pumps in proposed 40 CFR 98.233(c)(1). We are proposing that, if a flow monitoring device is installed on the natural gas supply line dedicated to one or a combination of pneumatic devices, or the natural gas supply line dedicated to one or more pneumatic pumps, that are vented directly to the atmosphere, then the measured flow must be used to calculate the emissions from the pneumatic devices or pneumatic pumps, as applicable, downstream of that flow monitor. We are also proposing to require this calculation method when the flow is continuously measured in a supply line that serves both pneumatic devices and natural gas driven pneumatic pumps that are all vented directly to the atmosphere. The

<sup>64</sup> Letter from Angie Burckhalter, The Petroleum Alliance of Oklahoma, to Administrator Michael S. Regan, U.S. EPA, Re: Docket Id. No. EPA-HQ-OAR-2019-0424; Revisions and Confidentiality Determinations for Data Elements Under the Greenhouse Gas Reporting Rule, October 6, 2022. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

flow monitor would be required to meet the requirements specified in existing 40 CFR 98.234(b). We are proposing to denote this natural gas supply measurement as Calculation Method 1 for pneumatic devices and pneumatic pumps. We are also proposing to add reporting requirements for each measurement location to report the type of flow monitor, the number of each type of pneumatic device being monitored at that location, and an indication of whether any natural gas driven pneumatic pumps are also monitored at that location, and the CH<sub>4</sub> and CO<sub>2</sub> emissions calculated for that monitoring location in proposed 40 CFR 98.236(b)(3). Comparable reporting requirements for natural gas driven pneumatic pumps are specified in proposed 40 CFR 98.236(c)(3).

For natural gas pneumatic devices that do not have or do not elect to install a flow meter dedicated to measuring the flow of natural gas supplied to one or a combination of pneumatic devices that are vented directly to the atmosphere, we are proposing in 40 CFR 98.233(a)(2) to allow reporters to measure the natural gas emissions from each pneumatic device vented directly to the atmosphere at the well-pad, gathering and boosting site, or facility, as applicable, using one of the measurement methods in existing 40 CFR 98.234(b) through (d). We are proposing to refer to the vent measurement method as Calculation Method 2 for pneumatic devices. For natural gas driven pneumatic pumps that do not have or do not elect to install a flow meter dedicated to measuring the flow of natural gas supplied to one or a combination of pneumatic pumps vented directly to the atmosphere, we are proposing to require that the reporter either measure the natural gas emissions from each such pneumatic pump at the facility as specified in proposed 40 CFR 98.233(c)(2) or calculate emissions from each such pneumatic pump at the facility using the default emissions factor as specified in proposed 40 CFR 98.233(c)(3). The proposed measurement option is referred to as Calculation Method 2 for pumps and is similar to the proposed Calculation Method 2 for pneumatic devices. The proposed pneumatic pump method based on a default emission factor is the same as the methodology in 40 CFR 98.233(c) of the existing rule and is referred to as Calculation Method 3 in the proposed rule.

If Calculation Method 2 is elected for pneumatic devices, we are proposing that all pneumatic devices that are vented directly to the atmosphere present at the facility (except those for

which natural gas supply is measured according to Calculation Method 1) would have to be measured at regular intervals and that for a well-pad, gathering and boosting site, or facility, as applicable, selected to be measured that year, all pneumatic devices that vent to the atmosphere must be measured according to Calculation Method 2 (except those for which natural gas supply is measured according to Calculation Method 1). For facilities in the Onshore Petroleum and Natural Gas Production and in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segments, a complete cycle of measurements would be required to be completed in no more than 5 years, and we are proposing that the number of pneumatic devices measured each year be approximately equal. We selected a 5-year interval for Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting facilities because of the high number of devices at these facilities and the time needed to measure all natural gas pneumatic devices. Additionally, we are proposing that when measurements are conducted at a particular well-pad or gathering and boosting site, all pneumatic devices at that well-pad or gathering and boosting site must be measured in the same year. This would help enhance the representativeness of the measurement data.

For facilities in the Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, Underground Natural Gas Storage, and Natural Gas Distribution industry segments, we are proposing the measurement interval to be dependent on the number of devices at the facility. For facilities with 25 or fewer natural gas pneumatic devices, we are proposing measurement of all devices annually. For facilities with 26 to 50 devices, we are proposing measurement of all devices in a two-year period. The proposed interval period increases with every 25 devices, until reaching a maximum cycle time of 5 years for facilities with 101 or more natural gas pneumatic devices that are vented directly to the atmosphere. The 25-device increment was selected because we estimated that this would be the typical number of devices that could be measured following the proposed methods in an 8-hour period.

Under Calculation Method 2, we are proposing that each pneumatic device vent measurement, except for isolation valve actuators, would be conducted for a minimum of 15 minutes; measurements for pneumatic isolation

valve actuators would be conducted for a minimum of 5 minutes. We are proposing a reduced monitoring duration for isolation valve actuators specifically because these devices actuate very infrequently, and the monitoring is targeted to confirm the valve actuators are not malfunctioning (*i.e.*, emitting when not actuating) rather than to develop an average emission rate considering some limited number of actuations. We are proposing that, if there is a measurable flow during the measurement period, the average flow rate measured during the measurement period would be used as the average flow rate for that device and multiplied by the total hours the device is in service (*i.e.*, supplied with natural gas) to calculate annual emissions (by pneumatic device type). For continuous bleed devices, if there is no measurable flow rate (*i.e.*, flow rate is below the method detection limit), we are proposing to require reporters to confirm the device is in service when measured and that the device type is correctly characterized. Once confirmed, we are proposing that the device must be retested (if designated as a high bleed device) or the manufacturer's steady state bleed rate must be used (if designated as a low bleed device) to estimate the device's emissions. For intermittent bleed devices, the lack of any emissions during a 5-minute or 15-minute period, as applicable, would indicate that the device did not actuate and that the device is seating correctly when not actuating. As such, we are proposing that engineering calculations would be made to estimate emissions per activation and that company records or engineering estimates would be used to assess the number of actuations per year to calculate the emissions from that device for the reporting year.

Under Calculation Method 2, if vent measurements are made over several years, we are proposing that all measurements made within a multi-year measurement would be used to calculate a facility-specific emission factor by device type (continuous high bleed, continuous low bleed, and intermittent bleed). The emissions measurements for the pneumatic device vents measured during the reporting year would be used directly for those devices. We are proposing that reporters would use the facility-specific emission factor developed from the cycle of measurements times the number of devices (by type) at the facility that were not measured during the reporting year to calculate the emissions from the

pneumatic devices that were not measured during the reporting year.

Reporters using proposed Calculation Method 2 would report for each well-pad, gathering and boosting site, or facility, as applicable, the total number of natural gas pneumatic devices by type, the number of years in the measurement cycle, the number of devices by measured in the reporting year, the value of the emissions factor for the reporting year as calculated using equation W-1A and the devices upon which the emission factor is based, the average time the devices were in service (*i.e.*, supplied with natural gas) during the calendar year, and the GHG emissions for each type of natural gas pneumatic device.

We are proposing calculation and reporting requirements for Calculation Method 2 for pneumatic pumps in proposed 40 CFR 98.233(c)(2) and proposed 40 CFR 98.236(c)(4), respectively, that are similar to the proposed Calculation Method 2 requirements for pneumatic devices, with differences described as follows. First, only facilities in the Onshore Petroleum and Natural Gas Production and in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segments are currently required to report emissions from pneumatic pumps and based on the analysis performed as described in section III.C.1 of this preamble and documented in the subpart W TSD, we are not proposing to add this source type for any other industry segment. Therefore, proposed Calculation Method 2 for pneumatic pumps only includes the provisions for a 5-year cycle and does not include the measurement cycles for other industry segments. The 5-year cycle is being proposed for natural gas driven pneumatic pumps for the same reason that it is being proposed for pneumatic devices (*i.e.*, a few facilities have a high number of pumps, and the time needed to measure all of the pumps in a single year would be excessive). To minimize the burden while still collecting sufficient data to calculate sufficiently accurate emissions, we are proposing an approach similar to the current approach that Natural Gas Distribution facilities may use to conduct equipment leak surveys. Second, the proposal specifies that reporters would measure for a minimum of 5 minutes while liquid is continuously being pumped. Five minutes is currently specified for other emission measurements in the rule (*e.g.*, leak rates from transmission storage tank vents in existing 40 CFR 98.233(k)(2), which are condensate storage tank vents in this proposal).

Typically, emissions from pumps are expected to be greater than leak rates from transmission storage tank leaks. Thus, it is expected that a sufficient volume of sample would be collected in 5 minutes of pump operation to be measurable with sufficient accuracy. Third, we are proposing that the emissions would be calculated as the product of the measured natural gas flow rate and the number of hours the pneumatic pump was pumping. Under proposed Calculation Method 2 for pneumatic pumps, proposed reporting data elements in 40 CFR 98.236(c)(4) per well-pad or gathering and boosting site would include the number of years in the measurement cycle; an indication of whether emissions were measured or calculated; the primary measurement method (when emissions were measured); the value of the calculated emissions factor, the total number of pumps measured and used in calculating the emission factor, the number of pumps that vented to atmosphere, and the estimated average number of hours per year that the vented pumps were pumping liquid (when the emissions were calculated); the total measured CO<sub>2</sub> and CH<sub>4</sub> emissions; and the total calculated CO<sub>2</sub> and CH<sub>4</sub> emissions.

We request comment on whether the option of up to a 5-year cycle is appropriate for all facilities in the onshore production and gathering and boosting industry segments. If a shorter time frame would be appropriate, we request comment on how long the maximum cycle should be and why that length of time would be adequate. We also request comment on the proposed sampling period of 5 minutes. If a longer test period would be needed or a shorter time period would be sufficient to collect representative emissions data, we request comment on what time period would be appropriate and the reasons why that test time would be appropriate. Finally, we request comment on suggestions for other approaches to emissions measurement that might be more effective and better achieve the goal of obtaining accurate vented emissions data from natural gas driven pneumatic pumps.

## 2. Intermittent Bleed Pneumatic Device Surveys

As part of our review to characterize pneumatic device emissions, we found a significant difference in the emissions from intermittent bleed pneumatic devices that appeared to be functioning as intended (short, small releases during device actuation) and those that appeared to be malfunctioning (continuously emitting or exhibiting

large or prolonged releases upon actuation). For natural gas intermittent bleed pneumatic devices, it is possible to identify malfunctioning devices through routine monitoring using OGI or other technologies. As noted in the introduction to section II of this preamble, the EPA recently proposed NSPS OOOOb and EG OOOOc for oil and natural gas sources. Under the proposed standards in NSPS OOOOb and the proposed presumptive standards in EG OOOOc (which would inform the state plans or, if necessary, the Federal plan in 40 CFR part 62), nearly all covered pneumatic devices (continuous bleed and intermittent vent) would be required to have a CH<sub>4</sub> (and, for NSPS OOOOb only, VOC) emission rate of zero. The only proposed exception would be for pneumatic devices in Alaska at locations where on-site power is not available, in which case owners and operators would be required to use low bleed pneumatic devices in place of high bleed pneumatic devices (unless a high bleed device is needed for a functional need such as safety), and to verify that any intermittent bleed pneumatic devices operate such that they do not vent when idle by monitoring these devices during the fugitive emissions survey.

We envision relatively few intermittent bleed pneumatic devices that vent GHG to the atmosphere under the proposed zero-emission standard and presumptive standard for these pneumatic devices, compliance with which would require the use of technology to achieve the zero-emission standard. As noted in the previous paragraph, we proposed in NSPS OOOOb and EG OOOOc to require periodic monitoring of those few intermittent bleed pneumatic devices in Alaska. In addition, as noted in section II of this preamble, the proposed amendments that would apply to sources subject to the NSPS OOOOb and approved state plans or applicable Federal plan in 40 CFR part 62 would not become effective for individual reporters unless and until their emission sources become subject to and are required to comply with either the final NSPS OOOOb or an approved state plan or applicable Federal plan in 40 CFR part 62. Prior to that time, a reporter may elect to conduct inspections or surveys of their intermittent bleed pneumatic devices. Therefore, the EPA is proposing amendments to subpart W to provide an alternative methodology to calculate emissions from intermittent bleed pneumatic devices based on the results of inspections or surveys, consistent with section II.B of this

preamble. Specifically, we are proposing to provide in 40 CFR 98.233(a)(3) an alternative calculation methodology for facilities that monitor for malfunctioning intermittent bleed pneumatic devices analogous to a “leaker factor” approach used for equipment leaks. We included this “leaker factor” approach in the 2022 Proposed Rule; however, we are proposing revisions to the “leaker factors” terms included in the calculation approach using peer reviewed study data. We are proposing to refer to this monitoring/leaker factor approach as Calculation Method 3 for pneumatic devices.

If Calculation Method 3 is elected, we are proposing that all intermittent bleed pneumatic devices that vent to the atmosphere at the well-pad, gathering and boosting site, or facility, as applicable, would be required to be monitored according to the leak detection methods in 40 CFR 98.234(a)(1) through (3), but with a monitoring duration of at least 2 minutes or until a malfunction is identified. Based on our review of the measurement studies that identified malfunctioning intermittent bleed devices, we found that most malfunctioning devices could be identified using a 2-minute monitoring duration, but malfunctioning devices could not be identified effectively using a typical “leak survey” monitoring duration, which is on the order of a few seconds. However, if a pneumatic device is observed to be malfunctioning in the first minute, there is no need to continue to monitor that device. Therefore, we are proposing that a minimum monitoring duration of 2 minutes or until a malfunction is identified be used for the purpose of identifying malfunctioning intermittent bleed pneumatic controllers.

Under Calculation Method 3, we are proposing that all intermittent bleed pneumatic devices that are vented directly to the atmosphere present at the facility (except those for which natural gas supply is measured according to Calculation Method 1) would have to be monitored to identify malfunctioning devices at regular intervals, with a complete cycle of measurements being completed in no more than 5 years for facilities in the Onshore Petroleum and Natural Gas Production and in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segments. Additionally, we are proposing that when monitoring is conducted at a particular well-pad or gathering and boosting site, all pneumatic devices at that well-pad or gathering and boosting site must be

monitored in the same year. This would help enhance the representativeness of the measurement data. For facilities in the Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, Underground Natural Gas Storage, and Natural Gas Distribution industry segments, we are proposing the monitoring interval to be dependent on the number of intermittent bleed pneumatic devices at the facility. For facilities with 100 or fewer natural gas intermittent bleed pneumatic devices, we are proposing monitoring of all devices annually. For facilities with 101 to 200 devices, we are proposing measurement of all devices in a 2-year period. The proposed interval period increases with every 100 devices, until reaching a maximum cycle time of 5 years for facilities with 401 or more natural gas pneumatic devices vented directly to the atmosphere. The 100-device increment was selected because we estimated that this would be the typical number of devices that could be monitored following the proposed methods in an 8-hour period. For all industry segments, we are proposing that, if you elect to monitor your pneumatic devices over multiple years, you must monitor approximately the same number of devices each year.

Under Calculation Method 3, if a “leak” is observed from the intermittent bleed pneumatic device for more than 5 seconds during a device actuation, then the device is considered to be “malfunctioning” and the malfunctioning device emission factor (similar to a leaker emission factor) would be applied to that device. Emissions from intermittent bleed pneumatic devices that were not observed to be malfunctioning would be calculated based on the default emission factor for “properly functioning” intermittent bleed pneumatic devices. We are proposing in the definition of the variable “ $T_z$ ” in proposed equation W-1C that the time that a device is assumed to be malfunctioning would be determined following the same procedures as the determination of the duration of equipment leaks identified during a leak survey conducted under 40 CFR 98.233(q) (see the variable “ $T_{p,z}$ ” in equation W-30 for equipment leaks). For example, if only one survey of intermittent bleed natural gas pneumatic devices is conducted during the reporting year, then any device found to be malfunctioning during the survey would be required to be assumed to be malfunctioning for the entire year.

If a complete survey of intermittent bleed pneumatic devices is completed over multiple years, we are proposing equation W-1D be used to calculate the

emissions. As proposed, this equation uses the ratio of the number of intermittent bleed devices identified to be malfunctioning during the current reporting year to the total number of intermittent bleed devices monitored during the reporting year to estimate the number of malfunctioning and properly functioning intermittent bleed devices for the intermittent bleed devices that were not monitored during the reporting year.

Under Calculation Method 3, we are proposing that emissions from continuous bleed pneumatic controllers (other than those for which the natural gas supply flow is measured as specified in Calculation Method 1) would be determined either by annually measuring the emissions from the pneumatic device vent following the methods provided in Calculation Method 2 or by using applicable default population emission factors for continuous high bleed and continuous low bleed pneumatic devices.

Reporters using proposed Calculation Method 3 would report for each the well-pad, gathering and boosting site, or facility, as applicable, the total number of natural gas pneumatic devices by type, the method used to estimate emissions from continuous bleed natural gas pneumatic devices, the frequency of monitoring for intermittent devices, the number of years in a monitoring cycle, the number of devices at the facility, the number monitored in the reporting year, the number found to be malfunctioning, the average time the malfunctioning devices were assumed to be malfunctioning under proposed 40 CFR 98.236(b)(5), the average time that devices that were monitored but were not detected as malfunctioning year were in service (*i.e.*, supplied with natural gas) during the calendar year, and the GHG emissions for each type of natural gas pneumatic device.

For more information regarding this proposed alternative calculation methodology for natural gas intermittent bleed pneumatic devices, see the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

### 3. Revisions to Emission Factors

As noted in section III.E of this preamble, subpart W currently requires calculation of GHG emissions from natural gas pneumatic device venting using default population emission factors multiplied by the number of devices and the average time those devices are “in-service” (*i.e.*, supplied with natural gas). Correspondingly, the current default population factors for natural gas pneumatic devices were

developed by taking both periods of actuation and periods without actuation into account. Subpart W provides two sets of pneumatic device emission factors, one for devices in the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments and one for the Onshore Natural Gas Transmission Compression and Underground Natural Gas Storage industry segments. Each set of emission factors consists of emission factors for three different types of natural gas pneumatic devices: continuous low bleed devices, continuous high bleed devices, and intermittent bleed devices.<sup>65</sup>

The EPA has become aware of several studies on emissions from natural gas pneumatic device vents since subpart W was first promulgated. For example, in April 2015, the EPA reviewed three recently published studies on emissions from pneumatic devices (also referred to as “pneumatic controllers” within the studies as well as in NSPS OOOOa, proposed NSPS OOOOb, and proposed EG OOOOc) at onshore production facilities and evaluated those studies for use in the U.S. GHG Inventory.<sup>66</sup> As part of this proposed rulemaking, we have reviewed these and other available studies to evaluate the potential for revisions to the natural gas pneumatic device emission factors in subpart W. As part of our review, we found there are significantly more data available now by which to characterize pneumatic device emissions. Therefore, consistent with section II.B of this preamble, we are proposing to amend the emission factors for all industry segments for which emissions from natural gas pneumatic device vents must be calculated.

Under Calculation Method 3 for pneumatic devices, default population emission factors can be used for continuous bleed devices. Therefore, for continuous low bleed pneumatic devices, we are proposing an emission factor of 6.8 standard cubic feet per hour per device (scf/hr/device) based on the available measurement data, which

considers devices that may be malfunctioning (*i.e.*, having higher steady state bleed rates than specified by the manufacturer) for all applicable industry segments in proposed Table W–1. For continuous high bleed pneumatic devices, we are proposing different population emission factors depending on the applicable industry segment. For facilities in the Onshore Petroleum and Natural Gas Production and in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segments, we are proposing an emission factor of 21 scf/hr/device for continuous high bleed devices in existing Table W–1A (proposed Table W–1) based on study data for these industry segments. For facilities in the Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, Underground Natural Gas Storage, and Natural Gas Distribution industry segments, we are proposing an emission factor of 30 scf/hr/device for continuous high bleed devices in proposed Table W–1 based on study data from transmission compression stations. These proposed continuous bleed emission factors consider emissions from pneumatic devices based on measurements while the devices are in service, not just actuating.

Because none of the three proposed calculation methods described in section III.E.1 and 2 of this preamble would allow the use of the current default population emission factor methodology for intermittent bleed pneumatic devices, we are proposing to remove the population emission factors for intermittent bleed pneumatic devices from existing Tables W–1A, W–3B, and W–4B and not include them in proposed Table W–1. The EPA requests comment on whether the EPA should instead retain the use of default population emission factors as an alternative calculation methodology (as Calculation Method 4) for sites, *i.e.* include in the final rule an option for sites to not conduct measurements or monitor intermittent bleed devices. If the population emission factor calculation method is retained, the EPA requests comment on the appropriate intermittent bleed pneumatic device emission factors to include in the final rule. Based on our review of the recently published pneumatic device study data, we would consider revising the intermittent bleed pneumatic device emission factor for facilities in the Onshore Petroleum and Natural Gas Production and in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segments to 8.8 scf/hr/device. This emission factor

considers emissions from pneumatic devices based on measurements while the devices are in service, not just actuating, and may include emissions from devices that were malfunctioning during the time of the measurement. We have limited new data specific to intermittent bleed pneumatic devices for other industry segments. We would consider retaining the intermittent bleed pneumatic device emission factor of 2.3 scf/hr/device for facilities in other applicable industry segments; however, this emission factor is based on engineering calculations and would likely underestimate emissions from devices that are malfunctioning (*e.g.*, bleeding continuously or bleeding more than expected during an actuation). The EPA requests comment and supporting data regarding potential revisions to the intermittent bleed pneumatic device population emission factors, if the use of population emission factors as a calculation methodology is retained.

For more information regarding this review and development of the proposed emission factors, see the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

Finally, we note that we are not proposing to revise or remove the default population emission factor in existing Table W–1A (proposed Table W–1) for natural gas driven pneumatic pumps. Reporters that do not have or elect to install a flow meter on the natural gas supply line dedicated to any one or more natural gas driven pneumatic pumps and that do not elect to measure the volumetric flow rate of emissions from all the natural gas driven pneumatic pumps vented directly to the atmosphere at a well-pad or gathering and boosting site would be required to continue using the current default population emission factor for pneumatic pumps vented directly to the atmosphere, as proposed Calculation Method 3. The existing emission factor is based on the average stroke volumes and frequencies for a range of typical pumps.<sup>67</sup> In contrast to some other equipment for which emission factors are currently used to calculate emissions (*e.g.*, intermittent bleed pneumatic devices), the emissions per unit of operating time for a given pump are not expected to vary significantly due to malfunctions as the pump ages. As such, we expect the natural gas

<sup>65</sup> The development of the current emission factors for natural gas pneumatic devices is described in *Greenhouse Gas Emissions Reporting from the Petroleum and Natural Gas Industry: Background Technical Support Document*, U.S. EPA, November 2010, (Docket Id. No. EPA–HQ–OAR–2009–0923–3610), also available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>66</sup> U.S. EPA. *Inventory of U.S. Greenhouse Gas Emissions and Sinks: Potential Revisions to Pneumatic Controller Emissions Estimate (Production Segment)*. April 2015. Available at <https://www.epa.gov/sites/production/files/2015-12/documents/ng-petro-inv-improvement-pneumatic-controllers-4-10-2015.pdf>.

<sup>67</sup> *Methane Emissions from the Natural Gas Industry, Volume 13: Chemical Injection Pumps, Final Report*. GRI–94/0257.30 and EPA–600/R–96–080m. Gas Research Institute and U.S. Environmental Protection Agency. June 1996. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

driven pneumatic pump emission factor to provide an acceptably accurate estimate of the average hourly emissions from natural gas driven pneumatic pumps. For this reason, we are proposing to retain the emission factor calculation method for this source type.

In the 2022 Proposed Rule we proposed clarifying the definition of the time parameter in equation W-2 of the current rule. The current definition is the “average estimated number of hours in the operating year that the pumps were operational.” We proposed changing the word “operational” to “in service (*i.e.*, supplied with natural gas).” This change was proposed to be consistent with the proposed change to the time term in equation W-1 for pneumatic devices. This change was proposed for the pneumatic device equation because the specified emission factors were developed based on emission measurement tests conducted over periods when the devices were actuating as well as periods when they were not actuating (*i.e.*, theoretical steady-state continuous bleeding, or for intermittent devices, when they theoretically were not emitting). However, after further review, we determined that the current emission factor for pneumatic pumps was developed based on observations of pump operation at several production facilities (*e.g.*, stroke rates and frequency of pump use) and pump manufacturer data (*e.g.*, gas consumption per volume of chemical pumped, plunger diameter, and stroke length) for a variety of chemical injection pumps.<sup>68</sup> This means the emission factor represents emissions when pumps are actuating, or, in other words, when they are actively pumping liquid. Thus, we are now proposing to clarify the definition of the term “T” in current equation W-2 (equation W-2B in proposed 40 CFR 98.233(c)) by replacing the word “operational” with “pumping liquid.” We request comment on the potential for natural gas to leak through a pump to the atmosphere when the pump is not actively pumping liquid and the mechanism for such leakage.

#### 4. Hours of Operation of Natural Gas Pneumatic Devices

In correspondence with the EPA via e-GGRT, some reporters have indicated that they are interpreting the term

“operational” in the definition of variable “T<sub>1</sub>” in equation W-1 in 40 CFR 98.233(a) and the term “operating” in the reporting requirements in 40 CFR 98.236(b)(2) differently than the EPA intended. Both the current emission factors and the proposed calculation methodologies described in sections III.E.1 through III.E.3 of this preamble for natural gas pneumatic devices were developed by taking both periods of actuation and periods without actuation into account;<sup>69</sup> in other words, the emission factors are population emission factors considering all times when the device was connected to natural gas supply line. To calculate emissions accurately using the existing population emission factor, the average number of hours used in equation W-1 should be the number of hours that the devices of a particular type are in service (*i.e.*, the devices are receiving a measurement signal and connected to a natural gas supply that is capable of actuating a valve or other device as needed). Similarly, based on the calculation methodology for the site-specific population emission factor in Calculation Method 2 or for the leaker emission factor approach proposed in Calculation Method 3, the number of hours that the devices of a particular type are in service (*i.e.*, the devices are receiving a measurement signal and connected to a natural gas supply that is capable of actuating a valve or other device as needed) must be used in the calculation. Therefore, consistent with section II.D of this preamble, we are proposing to revise the definition of variable “T<sub>1</sub>” in existing equation W-1 (proposed equation W-1B) in 40 CFR 98.233 and the corresponding reporting requirements in proposed 40 CFR 98.236(b)(4)(ii)(C)(4), (b)(4)(iii)(C)(4), and (b)(5)(i)(C)(2) to use the term “in service (*i.e.*, supplied with natural gas)” rather than “operational” or “operating,” to clarify the original and current intended meaning of that variable and term. We are also proposing to use this “in service” language for the time variables in the newly proposed equations W-1C and W-1D for the leaker factor approach for intermittent bleed pneumatic devices under Calculation Method 3.

#### 5. Natural Gas Pneumatic Devices and Natural Gas Driven Pneumatic Pumps Routed to Control

We understand that emissions from some natural gas pneumatic devices and/or natural gas driven pneumatic pumps are routed to control (*i.e.*, a flare, combustion unit, or vapor recovery system). The population emission factor is based on natural gas vented directly to the atmosphere from these pneumatic devices/pumps and does not accurately reflect emissions from controlled pneumatic devices/pumps. Therefore, consistent with section II.B of this preamble, we are proposing to revise 40 CFR 98.233(a) and (c) to clarify requirements for calculating emissions from natural gas pneumatic devices and natural gas driven pneumatic pumps, respectively, that are vented directly to the atmosphere versus pneumatic devices/pumps that are routed to control, consistent with the intent of the current rule. We are proposing revisions to 40 CFR 98.233(a) and (c) to clarify that the existing population emission factor calculation methodology is intended to apply only to pneumatic devices/pumps vented directly to the atmosphere. The proposed new calculation methodologies described in sections III.E.1 and 2 of this preamble also specify that they apply only to pneumatic devices/pumps vented directly to the atmosphere.

We are proposing that flared emissions from natural gas pneumatic devices or pumps are not required to be calculated and reported separately from other flared emissions. We are proposing to specify that instead emission streams from natural gas pneumatic devices or pumps that are routed to flares are required to be included in the calculation of total emissions from the flare according to the procedures in 40 CFR 98.233(n) and reported as part of the total flare stack emissions according to the procedures in 40 CFR 98.236(n), in the same manner as emission streams from other source types that are routed to the flare. Similarly, we are proposing that emissions from natural gas pneumatic devices or pumps that are routed to a combustion unit are required to be combined with other streams of the same fuel type and used to calculate total emissions from the combustion unit as specified in 40 CFR 98.233(z) and reported as part of the total emissions from the combustion unit as specified in 40 CFR 98.236(z). We are also proposing reporters would not calculate or report emissions from natural gas pneumatic devices or pumps if the emissions are routed to vapor

<sup>68</sup> *Methane Emissions from the Natural Gas Industry, Volume 13: Chemical Injection Pumps, Final Report*. GRI-94/0257.30 and EPA-600/R-96-080m. Gas Research Institute and U.S. Environmental Protection Agency. June 1996. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>69</sup> As noted previously, the development of the current emission factors for natural gas pneumatic devices is described in *Greenhouse Gas Emissions Reporting from the Petroleum And Natural Gas Industry: Background Technical Support Document*, U.S. EPA, November 2010, (Docket Id. No. EPA-HQ-OAR-2009-0923-3610), also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

recovery and are not subsequently routed to a combustion device (e.g., are routed back to process or sales).

We are also proposing to require in proposed 40 CFR 98.236(b)(2) and 98.236(c)(2) reporting of the total number of continuous low bleed, continuous high bleed, and intermittent bleed natural gas pneumatic devices and the total number of natural gas driven pneumatic pumps at the site (regardless of vent disposition), the number of these devices/pumps that are vented to the atmosphere for at least a portion of the year, and the number of these devices/pumps that are routed to control for at least a portion of the year (which includes natural gas pneumatic devices/pumps routed to a flare, combustion unit, or vapor recovery system). The total count of pneumatic devices or pumps is a proposed reporting element because the total count may not always be equal to the sum of the other two counts. For example, a reporter that switches from atmospheric venting to routing to control during a year for a particular pneumatic device or pump would include that pneumatic device or pump in both the count of devices or pumps that vent directly to atmosphere and in the count of devices or pumps that are routed to flares. However, that pneumatic device or pump would only be counted once towards the total number of pneumatic devices or pumps, allowing us to discern the number of devices or pumps that exclusively vent or exclusively route to control. The number of pneumatic devices or pumps vented directly to the atmosphere would be used in the verification of annual reports to the GHGRP. The total count of pneumatic devices or pumps at the facility and the number of pneumatic devices or pumps that are routed to a flare, combustion, or vapor recovery would provide the EPA with information to better characterize emissions from this source, including how many pneumatic devices or pumps are controlled across the industry and how the use of controls for pneumatic pumps changes across multiple years.

#### F. Acid Gas Removal Unit Vents

##### 1. Reporting of Methane Emissions From Acid Gas Removal Units

Reporters currently report only CO<sub>2</sub> emissions from AGR vents using one of the four calculation methodologies provided in 40 CFR 98.233(d). In the 2010 subpart W TSD, the EPA explained that “CH<sub>4</sub> emissions from AGR vents are insignificant, 0.06 percent of the total volume of CO<sub>2</sub> and CH<sub>4</sub> emissions,” leading to the decision at that time not to require reporting of CH<sub>4</sub> emissions

from AGR vents.<sup>70</sup> However, as described in more detail later in this section, both the number and size of the AGRs reported to the GHGRP in recent years are greater than the values used in that initial assessment, so current nationwide CH<sub>4</sub> emissions are likely greater than estimated in the 2010 subpart W TSD.

To determine the potential sources to be evaluated for inclusion in the original subpart W, the EPA used the emissions for the year 2006 as published in the 2008 U.S. GHG Inventory.<sup>71</sup> As documented in the 2010 subpart W TSD, the EPA estimated that AGR vents emitted 643 MMscf of CH<sub>4</sub> that year, which corresponds generally to the 12,380 mt CH<sub>4</sub> from AGR vents shown in Table A-114 of the 2008 U.S. GHG Inventory. The inputs for that estimate include the emission factor for AGR vents from *Volume 14: Glycol Dehydrators* of the 1996 GRI/EPA study (available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234), and an estimate of about 290 AGRs at processing plants, scaled from the 1992 estimate of 371 AGRs presented in the GRI/EPA study. However, the emission factor in the 1996 GRI/EPA study is based on an AGR throughput of about 35 MMscf per day, while the average feed rate of the AGRs reported at onshore natural gas processing plants in RY2021 was around 78 MMscf per day and the average feed rate of all reported AGRs in RY2021 was around 59 MMscf per day. In addition, there were 391 AGRs reported at onshore natural gas processing plants and 579 total AGRs reported in RY2021. In other words, the total quantity of natural gas treated in AGRs in RY2021 at onshore natural gas processing plants was about three times the total amount of natural gas estimated to be treated by the 2008 U.S. GHG Inventory. Therefore, the CH<sub>4</sub> emissions from AGR vents are likely to be significantly greater than estimated in the 2010 subpart W TSD, and as such, the EPA is proposing to amend 40 CFR 98.233(d) and 98.236(d) to require calculation and reporting of those emissions. The proposed inclusion of reporting for emissions of CH<sub>4</sub> from

AGR vents would improve the coverage of total CH<sub>4</sub> emissions reported to subpart W, consistent with section II.A of this preamble. For more information on the estimation of potential CH<sub>4</sub> emissions from AGR vents, see the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

There are four calculation methods currently provided in 40 CFR 98.233(d) for calculating CO<sub>2</sub> emissions from AGR vents. Calculation Method 1 is to use a continuous emissions monitoring system (CEMS) if one is installed (40 CFR 98.233(d)(1)), and Calculation Method 2 requires the use of a vent flow meter if there is one installed that is not part of a CEMS and use either a continuous gas analyzer or quarterly gas samples for composition (40 CFR 98.233(d)(2)). If neither a CEMS nor a vent flow meter is installed, reporters currently may use Calculation Method 3, engineering equations (40 CFR 98.233(d)(3)), or Calculation Method 4, modeling simulation via software (40 CFR 98.233(d)(4)).

As part of this proposal, the EPA evaluated the existing calculation methods for the purpose of proposing to require CH<sub>4</sub> emissions from AGR vents, and based on that assessment, Calculation Methods 2, 3, and 4, are generally appropriate to use for CH<sub>4</sub>. Calculation Method 1 is not considered an option for CH<sub>4</sub> because the EPA is not currently aware of continuous CH<sub>4</sub> monitors that meet the EPA’s criteria for CEMS.<sup>72</sup> Therefore, the EPA is proposing to specify that reporters must use Calculation Method 2 to calculate CH<sub>4</sub> emissions if they have a vent flow meter installed (including the flow meter of a CO<sub>2</sub> CEMS) and is proposing to revise the subscripts of the variables in equation W-3 slightly to specify that reporters should calculate both CO<sub>2</sub> and CH<sub>4</sub>. If there is no vent flow meter, the EPA is proposing that reporters would choose between Calculation Method 3 or Calculation Method 4. For Calculation Method 4, the EPA is proposing to add the CH<sub>4</sub> content of the feed natural gas and the outlet natural gas as parameters that must be used to characterize emissions. This specification is analogous to the existing requirement to use acid gas content of the feed natural gas and the acid gas content of outlet natural gas to characterize CO<sub>2</sub> emissions. For Calculation Method 3, the EPA is proposing to revise the existing equations W-4A and W-4B and to add

<sup>70</sup> *Greenhouse Gas Emissions Reporting from the Petroleum And Natural Gas Industry: Background Technical Support Document*, U.S. EPA, November 2010, (Docket Id. No. EPA-HQ-OAR-2009-0923-3610), also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>71</sup> U.S. EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990-2006*, April 2008. Available at <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2006> and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>72</sup> See <https://www.epa.gov/emc/emc-continuous-emission-monitoring-systems> for more information on CEMS.

a new equation W-4C. With the addition of CH<sub>4</sub> as a component for these equations, reporters would need to have information on four parameters rather than the three they currently need to know. For more information on the derivation of these proposed equations, see the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234. We request comment on whether these are the appropriate methods for calculating CH<sub>4</sub> from AGR vents, including whether there are continuous CH<sub>4</sub> monitors that meet the EPA's criteria for CEMS.

Although we used the 1996 GRI/EPA emission factor to assess the potential magnitude of CH<sub>4</sub> emissions from AGR vents, both in the 2010 subpart W TSD and for an initial assessment of whether to include additional reporting requirements in this proposal, we are not proposing use of that emission factor as a method for calculating emissions under subpart W. That emission factor is based on modeling of an average system from many years ago, and as discussed earlier in this section, the model AGR is much smaller than the AGRs reported to subpart W more recently. The emission factor is per AGR, so it does not take into account the feed rate of the AGR, the concentration of CO<sub>2</sub> entering the unit, or the level of treatment (*i.e.*, concentration of CO<sub>2</sub> exiting the unit).

The EPA is also proposing to add relevant reporting elements for CH<sub>4</sub> from each AGR to 40 CFR 98.236(d). The additional data elements include annual CH<sub>4</sub> emissions vented directly to the atmosphere; annual average volumetric fraction of CH<sub>4</sub> in the vent gas if using Calculation Method 2; additional inputs for Calculation Method 3, depending on the equation used (*i.e.*, as applicable, the annual average volumetric fraction of CH<sub>4</sub> in the natural gas flowing out of the AGR, annual average volumetric fraction of CH<sub>4</sub> content in natural gas flowing into the AGR, annual average volumetric fraction of CO<sub>2</sub> in the vent gas exiting the AGR and annual average volumetric fraction of CH<sub>4</sub> in the vent gas exiting the AGR); and the CH<sub>4</sub> content of the feed natural gas and outlet natural gas if using Calculation Method 4.

Finally, we note that under the current provisions of subpart W, reporters with AGRs routed to flares are required to report the CO<sub>2</sub> emissions from the AGR that pass through the flare as AGR vent emissions, and the emissions that result from combustion of any CH<sub>4</sub> in the AGR vent stream are reported as flare stack emissions. In the 2022 Proposed Rule, we proposed to provide more clarity regarding how to

determine the flow rate and composition of the gas routed to a flare if Calculation Method 3 or 4 were used to calculate CO<sub>2</sub> emissions. Because we are proposing to require reporting of CH<sub>4</sub> emissions from AGR vents, there would be no reason for subpart W to include special provisions for AGR vents routed to flares that are different from the provisions for all other emission source types routed to flares. Instead, the EPA is proposing that AGR vents routed to a flare would follow the same calculation requirements as other emission source types and would begin reporting flared AGR emissions (CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O) separately from vented AGR emissions (CO<sub>2</sub> and CH<sub>4</sub>). See section III.N of this preamble for more information on the proposed flaring calculation and reporting provisions. In a similar amendment, we are proposing to specify that AGR vents routed to an engine would calculate CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions using the provisions of 98.233(z) or subpart C, whichever is applicable to that industry segment. We are also proposing that AGRs routed to a flare or engine for the entire year would report the information in proposed 40 CFR 98.236(d)(1) except for the calculation method, the indication of whether any CO<sub>2</sub> emissions were recovered and transferred offsite, and the CO<sub>2</sub> and CH<sub>4</sub> emissions from the unit. If the AGR routed to a flare or an engine only for part of the year, the other information in proposed 40 CFR 98.236(d)(1) would be required to be reported for the part of the year in which emissions were vented directly to the atmosphere.

## 2. Calculation Method 4

Reporters with AGRs that elect to calculate emissions using Calculation Method 4 are currently required to calculate emissions using any standard simulation software package that uses the Peng-Robinson equation of state and speciates CO<sub>2</sub> emissions. According to existing 40 CFR 98.233(c)(4), the information that must be used to characterize emissions include natural gas feed temperature, pressure, flow rate, and acid gas content; outlet natural gas acid gas content and temperature; unit operating hours; and solvent temperature, pressure, circulation rate, and weight. These parameters currently must be determined for typical operating conditions over the calendar year by engineering estimate and process knowledge based on best available data. Consistent with section II.B of this preamble, we are proposing that the input parameters related to the natural gas feed that are used for the simulation software must be obtained by

measurement. Those parameters include natural gas feed temperature, pressure, flow rate, acid gas content, CH<sub>4</sub> content, and, for nitrogen removal units, nitrogen content. We are proposing that reporters would collect measurements reflective of representative operating conditions over the time period covered by the simulation. We are not proposing to change the requirement that the other parameters must be determined for operating conditions based on engineering estimate and process knowledge.

We are also proposing that the parameters that must be used to characterize emissions should reflect operating conditions over the time period covered by the simulation rather than just over the calendar year. Under this proposed change, reporters could continue to run the simulation once per year with parameters that are determined to be representative of operating conditions over the entire year. Alternatively, reporters would be allowed to conduct periodic simulation runs to cover portions of the calendar year, as long as the entire calendar year is covered. The reporter would then sum the results at the end of the year to determine annual emissions. In that case, the parameters for each simulation run would be determined for the operating conditions over each corresponding portion of the calendar year. Finally, we are proposing to clarify that the information reported under 40 CFR 98.236(d)(2)(ii) should be provided on an annual basis, either as an average across the year, or a total for the year (in the case of operating hours for the unit).

We are also proposing an additional change to the reported data for reporters with AGRs that elect to calculate emissions using Calculation Method 4. One of the required inputs to report is the solvent weight, in pounds per gallon (under existing 40 CFR 98.236(d)(2)(iii)(L)). A variety of different solvents may be used in an AGR (*e.g.*, chemical solvents such as monoethanolamine (MEA) and methyl diethanolamine (MDEA), physical solvents such as Selexol™ and Rectisol®), and the solubility of CO<sub>2</sub> varies across the different types of solvent. Requiring reporters to provide solvent characteristics provides information about the type of solvent used so the emissions calculated by the modeling run could be verified. However, the “solvent weight” is the only data element related to the identification of the solvent that is currently collected, and the values reported across all reporters have been inconsistent over the last few years, indicating that this data element is

likely not clear to reporters (*e.g.*, some reporters appear to be providing the density of the solvent and others appear to be providing the amine concentration in weight percent). In addition, the densities of common amine-based solvents are fairly close in value, so even among reporters that are providing values within the expected range of solvent densities, we have found it difficult to use this data element to identify the solvent type. Finally, the current requirement to report solvent weight does not specify how this value should be determined, but given the precise values being reported, it appears that reporters are either measuring the solvent or reporting a specific value provided by the vendor.

Therefore, we are proposing to replace the existing requirement to report solvent weight with a requirement (proposed 40 CFR 98.236(d)(2)(iii)(N)) to report the solvent type and, for amine-based solvents, the general composition. Reporters would choose the solvent type option from a pre-defined list that most closely matches the solvent type and, for amine-based solvents, the general composition, used in their AGR. The standardized response options would include the following: “Selexol™,” “Rectisol®,” “Purisol™,” “Fluor Solvent™,” “Benfield™,” “20 wt% MEA,” “30 wt% MEA,” “40 wt% MDEA,” “50 wt% MDEA,” and “Other (specify).” We are proposing to use commercially available trade names in this list rather than chemical compositions, as the trade names are more commonly used among AGR operators and therefore more readily available. This proposed amendment to collect standardized information about the solvent is expected to result in more useful data that would improve verification of reported data and better characterize AGR vent emissions, consistent with section II.C of this preamble. It would also improve the quality of the data reported compared to the apparently inconsistent application of the current requirements. In addition, the solvent type and composition rarely change from one year to the next, so once the data element is reported the first time, most reporters would be able to copy the response from the previous year’s reporting form each year. Therefore, the proposal to require reporters to select a solvent type and composition from these standardized responses is also expected to improve verification and the consistency of reported data compared to the current requirement, consistent with section II.C of this preamble. In the event that reporters use more than one type of

solvent in their AGR during the year, the proposed reporting requirement specifies that reporters would select the option that corresponds to the solvent used for the majority of the year.

### 3. Reporting of Flow Rates

We are proposing several amendments to improve the quality and verification of AGR flow rate information, consistent with sections II.C of this preamble. Reporters are currently required to report the total feed rate entering the AGR in units of million cubic feet per year (existing 40 CFR 98.236(d)(1)(iii), proposed 40 CFR 98.236(d)(1)(iv)). The existing rule does not specify million standard cubic feet per year or million actual cubic feet per year, so reporters may provide this feed rate in either of those units of measure. However, there is not currently a requirement for reporters to provide the actual temperature and pressure for the total feed rate if it is reported in million actual cubic feet, so it is difficult for the EPA to tell which are the correct units of measure. Reporters also provide flow rates that correspond with the calculation method chosen, and the subpart W reporting form currently requests the temperature and pressure corresponding to those flow rates, but they cannot necessarily be used to clarify the units of measure for the total feed rate. For example, for Calculation Method 1 or 2, reporters provide the annual volume of gas vented from the AGR in cubic feet (existing 40 CFR 98.236(d)(2)(i)(B), proposed 40 CFR 98.236(d)(2)(i)(C)), but the temperature and pressure of this vent gas does not correlate directly to the temperature and pressure for the AGR feed rate. In addition, while the reporting form requests the temperature and pressure corresponding to various flow rates, those data elements are not specifically included in 40 CFR 98.236(d), so there appears to be some inconsistency between the flow rates reported and the temperature and pressure reported. For example, in some cases, the flow rate appears to be reported in standard cubic feet but the temperature and pressure appear to represent actual conditions; in these cases, the temperature and pressure may have been the values used to convert the flow rate from actual conditions to the reported standard conditions, but it is not clear. As a result, the EPA has found it difficult to verify the AGR flow rates in some cases.

Therefore, we are first proposing to require that the total annual feed rate that is required to be reported for all AGRs regardless of the how the emissions are calculated (existing 40 CFR 98.236(d)(1)(iii), proposed 40 CFR

98.236(d)(1)(iv)) would be reported at standard conditions (*i.e.*, in units of MMscf per year). The revisions would make the units of measure for this total annual feed rate more consistent with the natural gas throughputs reported for each industry segment in existing 40 CFR 98.236(aa) and would standardize the units of measure for this total annual feed rate across all AGRs. Stakeholders have previously indicated that standard industry practice for either calculating or measuring the flow of gas into or out of an AGR would be in standard conditions.<sup>73</sup> Based on the data reported from RY2015 to RY2021, the EPA estimates that at least 80 percent of the AGR total annual feed rates were reported in MMscf per year (for the remaining 20 percent of the AGRs, the EPA either was able to determine that the AGR feed rate was reported in million actual cubic feet per year, or it is unclear whether the feed rate was reported in actual or standard conditions). Therefore, this proposed revision is not expected to result in changes for the majority of the reporters but would improve the quality of the overall data.

Second, we are proposing to specifically require the temperature and pressure that correspond to the flow rates reported for Calculation Methods 1, 2, or 3 (reporters using Calculation Method 4 are already required to report the temperature and pressure of the acid gas feed, under existing 40 CFR 98.236(d)(2)(iii)(B) and (C)). Depending on the calculation method selected, reporters are required to provide the vent gas flow rate, flow rate of natural gas into the AGR, and/or the flow rate of natural gas out of the AGR. The calculation methodologies in existing 40 CFR 98.233(d)(1) through (3) and the reporting requirements in existing 40 CFR 98.236(d)(2)(i) and (ii) accommodate use of flow rates in either actual or standard conditions to calculate emissions. The proposed additions, at proposed 40 CFR 98.236(d)(2)(i)(D) and (E) and (d)(2)(ii)(I), (J), (L), and (M), specify that reported temperature and pressure should be the actual temperature and pressure if the flow rate is reported in actual conditions, or standard temperature and pressure if the flow rate is reported in standard conditions. These proposed additions would provide the EPA with the ability to verify the emissions calculations more

<sup>73</sup> *E.g.*, see U.S. EPA. *Response to Public Comments on Greenhouse Gas Reporting Rule: 2014 Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems*, November 2014, Comment EPA-HQ-OAR-2011-0512-0084-A2, Excerpt Number 73.

efficiently and would provide a more consistent data set overall.

### G. Dehydrator Vents

Dehydrators are used to remove water from produced natural gas prior to transferring the natural gas into a pipeline or to a gas processing facility. Subpart W requires reporting of GHG emissions from dehydrator vents at onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, and natural gas processing facilities. Emissions are determined using one of the calculation methodologies for glycol dehydrators provided in existing 40 CFR 98.233(e) based on the unit's annual average daily natural gas throughput. For glycol dehydrator units with an annual average daily natural gas throughput less than 0.4 MMscf per day, reporters currently use population emission factors and equation W-5 to calculate volumetric CO<sub>2</sub> and CH<sub>4</sub> emissions per existing 40 CFR 98.233(e)(2) (Calculation Method 2). For glycol dehydrator units with an annual average daily natural gas throughput greater than or equal to 0.4 MMscf per day, reporters must follow the provisions under existing 40 CFR 98.233(e)(1), which require modeling GHG emissions using a software program (e.g., AspenTech HYSYS<sup>74</sup> or GRI-GLYCalc<sup>75</sup>) (Calculation Method 1). Facilities with desiccant dehydrators calculate volumetric CO<sub>2</sub> and CH<sub>4</sub> emissions using equation W-6 and the provisions of existing 40 CFR 98.233(e)(3) (Calculation Method 3). In the 2022 Proposed Rule, the EPA proposed to remove the emissions calculation and reporting requirements for desiccant dehydrators per 40 CFR 98.233(e)(3) and 40 CFR 98.236(e)(3). However, to avoid potential gaps in emissions data and improve the accuracy of the data collected in the GHGRP (consistent with section II.A of this preamble), the EPA is not proposing the removal of desiccant dehydrator requirements in this proposal.

#### 1. Selection of Appropriate Calculation Methodologies for Glycol Dehydrators

As noted in section III.G of this preamble, for dehydrators that have an annual average of daily natural gas throughput that is less than 0.4 MMscf per day, reporters currently use population emission factors and equation W-5 to calculate volumetric CO<sub>2</sub> and CH<sub>4</sub> emissions per Calculation

Method 2 (40 CFR 98.233(e)(2)) and report emissions per 40 CFR 98.236(e)(2). Reporters with glycol dehydrators that have an annual average of daily natural gas throughput that is greater than or equal to 0.4 MMscf per day are currently required to model their dehydrator emissions per Calculation Method 1 (40 CFR 98.233(e)(1)). Through requests submitted to the GHGRP Help Desk and correspondence with the EPA via e-GGRT, reporters have indicated the desire to use Calculation Method 1 for determining emissions from dehydrators that have a throughput that is less than 0.4 MMscf per day, as they stated that the population emission factors provided in 40 CFR 98.233(e)(2) are not always representative of their dehydrators' actual emissions. Process simulations and models require unit-specific inputs, so it is reasonable to expect that they would result in more accurate emissions estimates for dehydrators that have differing operating characteristics than those used to develop the Calculation Method 2 emission factors. Therefore, we are proposing to revise the calculation requirements of 40 CFR 98.233(e) to allow reporters the ability to use Calculation Method 1 or Calculation Method 2 when determining emissions from dehydrators that have an annual average of daily natural gas throughput that is less than 0.4 MMscf per day. We are also proposing to specify that if a facility is required to or elects to perform emissions modeling of a glycol dehydrator consistent with the methodology outlined in 40 CFR 98.233(e)(1), they must use the results of the model for estimating emissions under 40 CFR 98.233(e). It is the EPA's intention with this proposal that if reporters conduct modeling for environmental compliance or reporting purposes, including but not limited to compliance with Federal or state regulations, air permit requirements, annual inventory reporting, or internal review, they would use those results for reporting under subpart W. The EPA is also proposing revisions to 40 CFR 98.236(e) to specify the applicable reporting requirements based on the selected calculation method rather than the throughput of the dehydrator. This amendment is expected to improve the quality of the data collected, consistent with section II.B of this preamble.

#### 2. Controlled Dehydrators

In correspondence with the EPA via e-GGRT, some reporters have asked the EPA for guidance regarding calculating emissions from dehydrators that are routed to different control devices

throughout the reporting year (e.g., dehydrators that are routed to vapor recovery and subsequently vented to atmosphere or routed to a flare when the vapor recovery device is not operating). Given the proposed amendments to the calculation methodology and reporting of flare stack emissions (discussed in section III.N of this preamble), we are proposing to revise the methodologies for calculating emissions from dehydrator vents controlled by a vapor recovery system, flare, or regenerator firebox/fire tubes currently provided in 40 CFR 98.233(e)(5) and (6), respectively. The new language in proposed 40 CFR 98.233(e)(4) provides a methodology for calculating emissions vented directly to the atmosphere during periods of time when emissions are not routed to the vapor recovery system, flare, or regenerator firebox/fire tubes. For flared dehydrator emissions, the proposed 40 CFR 98.233(e) provisions would direct reporters to the proposed methodologies in 40 CFR 98.233(n). As a regenerator firebox/fire tubes does not meet the definition of a flare per 40 CFR 98.238, we are proposing methodologies for calculating combusted emissions from a regenerator firebox/fire tubes in 40 CFR 98.233(e)(5) using the combustion source equations W-39A, W-39B, and W-40 of 40 CFR 98.233(z)(3). We are also proposing new reporting requirements for dehydrator units with emissions routed to a firebox/fire tubes in proposed 40 CFR 98.236(e)(1)(xvi) and (xvii), (e)(2)(v), and (e)(3)(vii) that are consistent with the reporting requirements for combustion sources in 40 CFR 98.236(z)(2). By proposing these amendments, the EPA seeks to enhance the overall quality of the data collected under the GHGRP, consistent with sections II.B and II.D of this preamble.

The EPA is also proposing revisions to two terms consistent with the proposed amendments for reporting for glycol dehydrators with an annual average daily natural gas throughput greater than or equal to 0.4 MMscf per day. The EPA is proposing to amend the definition of "dehydrator vent emissions" in 40 CFR 98.6 to confirm that dehydrator emissions reporting should include emissions from both the dehydrator still vent, and if applicable, the dehydrator flash vent. We are also proposing to remove the term "reboiler" from the definition, as the term "regenerator" refers to the same piece of equipment. Finally, we are proposing to expand the dehydrator control types referenced in the definition to include regenerator fireboxes/fire tubes and vapor recovery systems. Additionally,

<sup>74</sup> AspenTech HYSYS<sup>®</sup> software available from AspenTech website (<https://www.aspentech.com/>).

<sup>75</sup> GRI-GLYCalc<sup>™</sup> software available from Gas Technology Institute website (<https://sales.gastechology.org/>).

the EPA is proposing to amend the definition of “vapor recovery system” in 40 CFR 98.6 to clarify that routing emissions from a dehydrator regenerator still vent or flash tank separator vent to the regenerator firebox/fire tubes does not qualify as vapor recovery for purposes of 40 CFR 98.233. The EPA has noted significant variability in the dehydrator emissions values reported over the past several years, with values ranging from extremely high to almost negligible emissions, which indicates that there are likely inconsistencies in how these terms are being interpreted among subpart W reporters. In proposing these edits, the EPA expects to improve the quality of the emissions data reported and confirm the original intent of these terms.

### 3. Calculation Method 1 for Glycol Dehydrators

Reporters with glycol dehydrator units that calculate emissions using Calculation Method 1 are currently required to determine emissions using any standard simulation software package that uses the Peng-Robinson equation of state to calculate the equilibrium coefficient; speciates CH<sub>4</sub> and CO<sub>2</sub> emissions from dehydrators; and has provisions to include regenerator control devices, a separator flash tank, stripping gas and a gas injection pump or gas assist pump. According to current 40 CFR 98.233(e)(1), the information that must be used to characterize emissions include natural gas feed flow rate and water content; outlet natural gas water content; absorbent circulation pump type, circulation rate, and absorbent type; use of stripping gas, use of flash tank separator (and disposition of recovered gas), hours operated, wet natural gas temperature, pressure, and composition. These parameters currently must be determined for typical operating conditions over the calendar year by engineering estimate and process knowledge based on best available data. Consistent with section II.B of this preamble, we are proposing that the input parameters related to the natural gas feed that are used for the simulation software must be obtained by measurement. Those parameters include feed natural gas flow rate, feed natural gas water content, wet natural gas temperature and pressure at the absorber inlet, and wet natural gas composition. We are proposing that reporters would collect measurements reflective of representative operating conditions over the time period covered by the simulation. We are not proposing to change the requirement that the other parameters must be determined for

operating conditions based on engineering estimate and process knowledge.

We are also proposing that the parameters that must be used to characterize emissions should reflect operating conditions over the time period covered by the simulation rather than just over the calendar year. Under this proposed change, reporters could continue to run the simulation once per year with parameters that are determined to be representative of operating conditions over the entire year. Alternatively, reporters would be allowed to conduct periodic simulation runs to cover portions of the calendar year, as long as the entire calendar year is covered. The reporter would then sum the results at the end of the year to determine annual emissions. In that case, the parameters for each simulation run would be determined for the operating conditions over each corresponding portion of the calendar year. Finally, we are proposing to clarify that the information reported under 40 CFR 98.236(e)(1) should be provided on an annual basis, either as an average across the year, or a total for the year (in the case of operating hours for the unit).

Subpart W currently lists two example software options, AspenTech HYSYS<sup>®</sup> and GRI-GLYCalc<sup>™</sup> (GLYCalc), that meet the software requirements in 40 CFR 98.233(e)(1). Reporters are not limited to only using these two example software options. However, the EPA recently approved the use of ProMax<sup>76</sup> software simulations for compliance with 40 CFR part 63, subpart HH, National Emission Standards for Hazardous Air Pollutants from Oil and Gas Production Facilities (hereafter referred to as “NESHAP HH”).<sup>77</sup> In the approval letter, the EPA concluded that the ProMax model results are typically equivalent or more conservative when compared to the results from the GLYCalc model and the total capture condensation method used

<sup>76</sup> BRE Promax<sup>®</sup> software available from BRE website (<https://www.bre.com/>).

<sup>77</sup> Letter from Steffan Johnson, Group Leader, Measurement Technology Group, U.S. EPA Office of Air Quality Planning and Standards, to Josh Ravichandran, Bryan Research & Engineering, LLC, Re: Response to request for broad source category-wide approval for use of Bryan Research & Engineering's process simulation software, ProMax<sup>®</sup> (ProMax) in lieu of the GRI-GLYCalc<sup>™</sup> software (GLYCalc) for modeling glycol dehydration unit emissions in demonstrating compliance with 40 CFR part 63, subpart HH, National Emission Standards for Hazardous Air Pollutants from Oil and Gas Production Facilities (Subpart HH). March 31, 2022. Available at [https://www.epa.gov/system/files/documents/2022-03/ravichandran-bre-promax-alt-final\\_147\\_signed.pdf](https://www.epa.gov/system/files/documents/2022-03/ravichandran-bre-promax-alt-final_147_signed.pdf) and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

by the EPA in its research. After considering this issue, we expect that ProMax meets the specifications of existing 40 CFR 98.233(e)(1) and, therefore, we are proposing to add ProMax as an example software program for calculating dehydrator emissions in 40 CFR 98.233(e)(1) for clarity for reporters. Consistent with the EPA's approval of ProMax for NESHAP HH compliance, the EPA is proposing that if reporters elect to use ProMax, they would be required to use version 5.0 or above.

As stated above, the EPA indicated in the referenced NESHAP HH ProMax approval that ProMax emissions results may be more conservative than emissions calculated using GLYCalc. In order to assess potential emissions changes between reporting years, the EPA is also proposing add a new provision under 40 CFR 98.236(e)(1)(xviii) to request reporting of the modeling software used to calculate emissions for each dehydrator unit using Calculation Method 1. We expect these proposed amendments would improve the quality of the data collected, consistent with section II.B of this preamble.

### 4. Calculation Method 1 Reporting

The EPA has reviewed the subpart W glycol dehydrator data and reporting requirements in existing 40 CFR 98.236(e) and has made a preliminary determination that additional information would help to more accurately characterize emissions from glycol dehydrators using Calculation Method 1. The EPA is proposing under 40 CFR 98.236(e) to require separate reporting of emissions for a modeled glycol dehydrator's still vent and flash tank vent. These vents often use different control techniques, so requiring the emissions and applicable controls from these vents to be reported separately would ensure that emissions are more accurately characterized. The proposed data elements are included in the output files from the modeling software used for glycol dehydrators and therefore, this provision is not expected to be difficult for reporters to implement. We expect these proposed amendments would improve the quality of the data collected, consistent with section II.C of this preamble.<sup>78</sup>

<sup>78</sup> In the 2022 Proposed Rule, the EPA proposed to add several new reporting requirements for Calculation Method 1 glycol dehydrators under 40 CFR 98.236(e)(1) in an effort to find a potential correlation between dehydrator emissions and operating parameters. However, after consideration of comments received on the 2022 Proposed Rule, we have decided not to propose these additional elements in this proposal.

In the 2022 Proposed Rule, the EPA proposed to collect additional information on Calculation Method 1 glycol dehydrators under 40 CFR 98.236(e)(1) in an effort to derive a correlation between vent flow rate, absorbent circulation rate, and glycol pump type. Comments on the 2022 Proposed Rule indicated that this additional information request would be unnecessarily burdensome to reporters. Therefore, we are not proposing the reporting of additional data elements for this purpose in this proposal.

#### 5. Calculation Method 2 for Glycol Dehydrators

As noted in section III.F.3 of this preamble, for glycol dehydrators with an annual average daily natural gas throughput less than 0.4 MMscf per day, reporters currently use population emission factors and equation W-5 to calculate volumetric CO<sub>2</sub> and CH<sub>4</sub> emissions per existing 40 CFR 98.233(e)(2) and report emissions per existing 40 CFR 98.236(e)(2). Under these current requirements, the count of glycol dehydrators with annual average daily natural gas throughput less than 0.4 MMscf per day could include dehydrators with annual average daily natural gas throughput of 0 MMscf per day (*i.e.*, glycol dehydrators that were not operated during the reporting year). As a result, some annual reports include a nonzero count of dehydrators per existing 40 CFR 98.236(e)(2)(i) without any corresponding CO<sub>2</sub> and CH<sub>4</sub> emissions. In these cases, it is not clear if the reporter did not report emissions because emissions are not expected, the emissions data were inadvertently omitted, or the nonzero count represents the total count of all dehydrators with annual average daily natural gas throughput less than 0.4 MMscf per day, including those that were not in use.

Therefore, the EPA is proposing to clarify in 40 CFR 98.233(e)(2) that the dehydrators for which emissions are calculated should be those with annual average daily natural gas throughput greater than 0 MMscf per day and less than 0.4 MMscf per day (*i.e.*, the count should not include dehydrators that did not operate during the year). Similarly, the EPA is proposing to clarify in 40 CFR 98.236(e)(2) introductory text that the count of dehydrators in existing 40 CFR 98.236(e)(2)(i) (proposed 40 CFR 98.236(e)(2)(ii)) should also be those with annual average daily natural gas throughput greater than 0 MMscf per day and less than 0.4 MMscf per day. These proposed amendments are expected to improve implementation and verification of reported data,

consistent with section III.C of this preamble.

Additionally, the EPA is proposing edits to the existing reporting requirements in current 40 CFR 98.236(e)(2). Specifically, we are proposing to revise the data collected under current 40 CFR 98.236(e)(2)(iii) (proposed 40 CFR 98.236(e)(2)(iv)) to emphasize the original intent of the rule. Currently, the requirement is to report whether any Calculation Method 2 dehydrator emissions are routed to a control device other than a vapor recovery system or a flare or regenerator firebox/fire tubes (and if so, the type of control device(s) and count of units routing to each control). We are proposing to specifically state that the reporting of “other” control devices should only include control devices that reduce CO<sub>2</sub> and/or CH<sub>4</sub> emissions. This proposed revision would allow the EPA to verify the expected reductions in vented CO<sub>2</sub> and/or CH<sub>4</sub> emissions due to the use of the control device. This proposed amendment is expected to improve implementation and verification of reported data, consistent with section III.C of this preamble.

#### 6. Desiccant Dehydrators

Subpart W requires reporting of desiccant dehydrators as a subcategory of dehydrator vents. The data required to be reported for desiccant dehydrators is consistent with the information that is reported for Calculation Method 2 for small glycol dehydrators: the total number of desiccant dehydrator units, whether any emissions from Calculation Method 3 units were routed to a vapor recovery system, flare, or other control (and if so, the count of units utilizing each of those controls), and the vented and/or combusted emissions from desiccant dehydrators. In June 2022, the EPA proposed to remove the reporting of desiccant dehydrators; however, as described in section II.B of this preamble, CAA section 136(h) directs the EPA to ensure that reporting under subpart W reflects total CH<sub>4</sub> emissions, and we are no longer proposing to remove this source. Instead, to better implement and verify the desiccant dehydrator data reported under subpart W (consistent with section II.C of this preamble), the EPA is proposing several updates to the current desiccant dehydrator reporting requirements of 40 CFR 98.236(e)(3).

Specifically, we are proposing to remove the cross-references from 40 CFR 98.236(e)(3) to 40 CFR 98.236(e)(2)(i) through (iv) and instead include all of the applicable reporting requirements from current 40 CFR 98.236(e)(2)(i) through (iv) for

Calculation Method 2 glycol dehydrators as reporting requirements for Calculation Method 3 desiccant dehydrators under 40 CFR 98.236(e)(3). Currently, the language in 40 CFR 98.236(e)(3)(i) simply states that the same information that is included under 40 CFR 98.236(e)(2)(i) through (iv) should be reported for dehydrators that use desiccant. While we acknowledge that the current language has been correctly interpreted by reporters as-is, replicating the requirements under 40 CFR 98.236(e)(3) would make the rule easier to follow and allow the EPA to further clarify the required reporting data elements for desiccant dehydrators. Additionally, the EPA is proposing to specify that only desiccant dehydrators that were opened during the reporting year should be included in the total number of desiccant dehydrators at the facility under proposed 40 CFR 98.236(e)(3)(ii). This revision would align the reported count of desiccant dehydrators with the applicability of Calculation Method 3 methodology, which requires facilities to calculate emissions from the amount of gas vented from vessels when they are depressurized and opened for the desiccant refilling process. Also, we are proposing to require reporting of the total volume of all opened desiccant dehydrator vessels and the total number of desiccant dehydrator openings in the calendar year as new data elements under proposed 40 CFR 98.236(e)(3)(iii) and (iv), respectively. These data elements are inputs into equation W-6 and should, therefore, be readily available to facilities. With the change to reported number of desiccant dehydrators under proposed 40 CFR 98.233(e)(3)(ii) and the proposed addition of the two new data elements for vessel volume and number of vessel openings, the EPA would be able to more effectively verify the reported desiccant dehydrator emissions from each facility.

The EPA is also proposing to revise the definitions of “dehydrator” and “desiccant” in 40 CFR 98.6 to conform with the inclusion of desiccant dehydrators in subpart W. Currently, the definition of “dehydrator” indicates that desiccant is an example of a liquid absorbent. Since desiccants are solid materials, we are proposing to remove desiccant from the list of example liquid absorbents and instead define dehydrators as devices that use either a liquid absorbent or a desiccant to remove water vapor from a natural gas stream. The current definition of “dehydrator” also indicates that the device is used to absorb water vapor.

However, since some desiccants work by adsorbing water, we are proposing to replace the word “absorb” with “remove.” The definition of “desiccant” indicates that desiccants “include activated alumina, pelletized calcium chloride, lithium chloride and granular silica gel material.” We are proposing to add “molecular sieves” to the list of example desiccant because they are a common type of desiccant. Since the list of example desiccants is not meant to be exhaustive or all-inclusive, we are also proposing to replace the word “including” with “including, but not limited to.” With these changes, the proposed definition would clarify that desiccants “include, but are not limited to, molecular sieves, activated alumina, pelletized calcium chloride, lithium chloride and granular silica gel material.” We expect these proposed amendments would improve the overall quality and completeness of the emissions data collected by the GHGRP, consistent with section II.A of this preamble.

Consistent with the proposed revisions to the definition of “desiccant” under 40 CFR 98.6, the EPA is proposing to add two additional data elements to the desiccant dehydrator reporting requirements in 40 CFR 98.236(e)(3). We are proposing to require reporting of the count of opened desiccant dehydrators that used deliquescent desiccant (*e.g.*, calcium chloride or lithium chloride) and the count of opened desiccant dehydrators that used regenerative desiccant (*e.g.*, molecular sieves, activated alumina, or silica gel) present at the facility (proposed 40 CFR 98.236(e)(3)(ii)(B) and (C), respectively). As regenerative desiccant dehydrators are not opened as often as deliquescent desiccant dehydrators, the EPA would use this new data to verify large swings in desiccant dehydrator emissions year-to-year and to gain a better understanding of the distribution of emissions between the two types of desiccant dehydrators. These proposed amendments would improve verification of reported data and ensure accurate reporting of emissions, consistent with section II.C of this preamble.

#### H. Liquids Unloading

##### 1. Selection of Calculation Method

Subpart W currently requires reporting of emissions from well venting for liquids unloading. Facilities currently calculate emissions using measured flow rates under Calculation Method 1 (40 CFR 98.233(f)(1)) or engineering equations under Calculation Method 2 for unloadings without

plunger lifts (40 CFR 98.233(f)(2)) and Calculation Method 3 for unloadings with plunger lifts (40 CFR 98.233(f)(3)). As noted in the preamble to the NSPS OOOOb supplemental proposal, facilities can face operational and safety issues managing liquids unloading with the EPA noting in the preamble that there could be situations where “it is technically infeasible or not safe to perform well liquids with zero emissions unloadings” (87 FR 74781, December 6, 2022). The EPA believes these safety and operational issues can possibly extend to taking measurements at wells with liquids unloading. Therefore, the EPA is proposing to continue providing reporters the option to use Calculation Methods 2 and 3 to calculate emissions from liquids unloading. Both equations rely on well-specific data, including well depth, tubing or casing diameter, and the flow line rate of gas, to calculate well-level emissions. However, consistent with section II.B of this preamble, the EPA is proposing that reporters with liquids unloadings must calculate emissions from unloadings for each well at least once every 3 consecutive calendar years or more frequently using Calculation Method 1 to ensure that the engineering equations accurately and consistently represent the quantity of emissions from unloading events.

To implement this change, the EPA is proposing to amend the introductory text in 40 CFR 98.233(f) to add the requirement that reporters must use Calculation Method 1 to calculate emissions from well venting for liquids unloading every 3 consecutive calendar years or more frequently. Calculation Method 1 currently requires reporters to install a recording flow meter on the vent line used to vent gas from the well to a separator or atmospheric tank and measure the flow rate of the unloading events. The reporter must measure flow rates at one or more wells in each sub-basin combination (sub-basin/plunger lift indicator/automated/manual indicator) where wells are subject to liquids unloading events. The average measured flow rate in standard cubic feet per hour is then applied to each well with unloadings in the same sub-basin combination for the time in hours during the year the well is unloaded. To support implementation of this requirement, the EPA is proposing to add 40 CFR 98.236(f)(2)(xi)(D) and 98.236(f)(2)(xii)(D) to require reporters to report the most recent calendar year Calculation Method 1 was used to calculate emissions from unloadings for the same sub-basin combination.

##### 2. Reporting for Calculation Methods 2 and 3

Under the current reporting requirements of 40 CFR 98.236(f), facilities must report whether plunger lifts were used when using Calculation Method 1 and must report the data elements used in equations W-7A and W-7B. For Calculation Methods 2 and 3, however, reporters currently only report a subset of the data elements used to calculate emissions in equations W-8 and W-9. Specifically, for Calculation Methods 2 and 3, reporters must provide a plunger lift indicator (*i.e.*, whether plunger lifts were used), total number of wells with well venting for liquids unloading, the total number of unloading events, and the casing diameter (Calculation Method 2) or the tubing diameter (Calculation Method 3).

In a 2019 study, Zaines *et al.*<sup>79</sup> evaluated various liquid unloading scenarios, and the results indicated that differentiating emissions only on the basis of type of unloading (plunger or non-plunger lift) may not accurately assess emissions from this source. In particular, Zaines *et al.* noted that type of unloading should be further differentiated for plunger lift unloadings between automated and manual unloadings, suggesting further granularity is necessary to properly characterize emissions. In particular, there could be significant differences in the number and duration of unloadings and, hence, differences in emissions between manual and automated plunger lift unloadings and liquids unloading emissions. A manual unloading occurs when field personnel attend to the well at the well-pad, for example, to manually plunge a well at the site using a rig or other method, to open a valve to direct flow to an atmospheric tank to clear the well, or to manually shut-in the well to allow pressure to build in the well-bore. Manual unloadings may be performed on a routine schedule or on “as needed” basis. An automated unloading is performed without manual interference. Examples of an automated unloading include a timing and/or pressure device used to optimize intermittent shut-in of the well before liquids choke off gas flow or to open and close valves, continually operating equipment that does not require presence of an operator such as rod pumping units, automated and unmanned plunger lifts, or other

<sup>79</sup> Zaines, G.G. *et al.* “Characterizing Regional Methane Emissions from Natural Gas Liquid Unloading.” *Environ. Sci. Technol.* 2019, 53, 4619–4629. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

unloading activities that do not entail a physical presence at the well-pad.

The Zaines *et al.* study did not evaluate manual and automated non-plunger lift unloadings separately, but further differentiating non-plunger lift unloadings between manual and automated unloadings in subpart W could also improve data quality. Correspondence with reporters via e-GGRT since subpart W reporting for the onshore production segment began in 2011 indicates potentially meaningful differences in the number of unloadings and emissions for manual versus automated non-plunger lift unloadings. When the EPA finalized the calculation methods and reporting requirements for well venting for liquids unloading, the reporting requirements did not differentiate between manual and automated non-plunger lift unloadings. However, reporters have clearly affirmed the use of automated non-plunger lift unloadings in response to multiple inquiries the EPA has made as part of the annual report verification process.

In addition, there are several data elements used to calculate emissions from liquids unloading in equations W-8 and W-9 for Calculation Methods 2 and 3 that are not currently required to be provided. Specifically, reporters do not report well depth (Calculation Method 2) or tubing depth (Calculation Method 3), the average flow-line rate of gas, the hours that wells are left open to the atmosphere during unloading events, and the shut-in, surface or casing pressure (Calculation Method 2) or the flow-line pressure (Calculation Method 3). Requiring reporting of these data elements would improve verification of annual reports to the GHGRP and would allow the EPA and the public to replicate calculations and more confidently confirm reported calculated emissions than is currently possible.

The EPA is, therefore, proposing to revise the reporting requirements in 40 CFR 98.236(f)(1) and (2) to require reporters to include the following data elements, consistent with section II.C of this preamble. In 40 CFR 98.236(f)(1), for Calculation Method 1, the EPA is proposing that reporters would identify the type of unloading as an automated or manual unloading in addition to identifying whether the unloading is a plunger lift or non-plunger lift unloading. We are also proposing in 40 CFR 98.236(f)(1) that reporters would report emissions by unloading type combination (with or without plunger lifts, automated or manual unloading). In addition, for each individual Calculation Method 1 well that was

tested during the year, we are proposing that reporters would specify the type of unloading as automated or manual unloading under 40 CFR

98.236(f)(1)(xi)(F) or 40 CFR 98.236(f)(1)(xii)(F), as applicable.

For non-plunger lift unloadings that use Calculation Method 2 in 40 CFR 98.233(f)(2), the EPA is proposing in 40 CFR 98.236(f)(2) that reporters would identify the type of non-plunger lift unloading as automated or manual non-plunger lift unloading and that reporters would report emissions and activity data separately for each unloading type combination. In addition, for each well with non-plunger lift unloadings, the EPA is proposing to revise and add requirements in existing 40 CFR 98.236(f)(2)(ix) (proposed 40 CFR 98.236(f)(2)(xi) in this proposed rule) to report the well depth for each well ( $WD_p$ ) and the shut-in pressure, casing pressure or surface pressure for each well, ( $SP_p$ ). Reporters would continue to report the internal casing diameter ( $CD_p$ ) as is currently required for non-plunger lift unloadings.

For plunger lift unloadings that use Calculation Method 3 in 40 CFR 98.233(f)(3), the EPA is proposing in 40 CFR 98.236(f)(2) that reporters would identify the type of plunger lift unloading as automated or manual plunger lift unloading and that reporters would report emissions and activity data separately for each unloading type combination. In addition, for all each well with plunger lift unloadings, the EPA is proposing to revise and add requirements in existing 40 CFR 98.236(f)(2)(x) (proposed 40 CFR 98.236(f)(2)(xii) in this proposed rule) to report the tubing depth ( $WD_p$ ) and the flow-line pressure for each well in the sub-basin ( $SP_p$ ). Reporters would continue to report the internal tubing diameter ( $TD_p$ ) as is currently required for plunger lift unloadings.

Finally, for each well with unloadings that uses Calculation Method 2 or 3, the EPA is proposing to add new requirements, as proposed 40 CFR 98.236(f)(2)(ix) and (x), to report the flow-line rate of gas ( $SFR_p$ ) and the cumulative number of hours that the well is left open to the atmosphere during unloading events ( $HR_{p,q}$ ), respectively.

To encourage accurate classification of manual and automated unloadings for all calculation methods, the EPA is proposing to add new terms in 40 CFR 98.238 for “Manual liquids unloading” and “Automated liquids unloading.” The terms are proposed to be defined consistent with the descriptions provided earlier in this section of this preamble.

### 3. Other Clarifying Amendments

The EPA is proposing an additional amendment to add clarity for reporters with liquids unloadings. The EPA is proposing to specify in the introductory text for 40 CFR 98.233(f) that calculation of emissions from unloading events is required only when the well is unloaded to the atmosphere or to a control device. The EPA is proposing this change because these unloadings are the events that result in emissions of GHG to the atmosphere. The proposed change, consistent with sections II.C and II.D of this preamble, is intended to provide clarity to reporters while also ensuring that the EPA continues to receive accurate and relevant data.

#### *I. Gas Well Completions and Workovers With Hydraulic Fracturing*

Reporters currently may use equation W-10A or W-10B to calculate emissions from gas well completions and workovers with hydraulic fracturing. Equation W-10A is used to calculate emissions from wells using inputs obtained from a representative sample of wells within a sub-basin and the ratio of the gas flowback rate to the production flow rate, and equation W-10B is used to calculate emissions using inputs obtained from all wells within a sub-basin and the flow rate and flow volume of the gas vented or flared. In addition, reporters must use Calculation Method 1 or Calculation Method 2 in existing 40 CFR 98.233(g)(1) for calculating inputs to equations W-12A and W-12B if using equation W-10A. Calculation Method 1 relies on direct measurement of gas flow rate during flowback to develop calculation inputs whereas Calculation Method 2 uses an engineering equation to produce a calculated flowback. Specifically, Calculation Method 2 uses the measured gas pressure differential across the well choke to estimate gas flow rate for natural gas well completions and workovers with hydraulic fracturing. It is, therefore, often referred to as the “Choke Flow” equation. The Choke Flow equation is only available for hydraulically fractured natural gas well completions and workovers. It cannot be used for hydraulically fractured oil well completions and workovers.

The majority of onshore production facilities with hydraulically fractured completions and workovers use equation W-10B to calculate emissions. In RY2021, 118 onshore production facilities reported 2418 hydraulically fractured gas well completions or workovers. Only 15 of those facilities used equation W-10A for emissions calculations for 385 gas well

completions or workovers. It is unknown what percentage of those facilities use Calculation Method 2, as the calculation methodology is not currently reported.

Consistent with section II.B of this preamble, the EPA is proposing to retain equations W-10A and W-10B, but is proposing to remove the option in 40 CFR 98.233(g)(1) for reporters to use Calculation Method 2, the Choke Flow equation, when using equation W-10A. The EPA believes that measurement of back flow rates is standard practice in the onshore production segment, whether through measurement of every well completion or workover or through measurement of a representative well or workover. Moreover, this is supported by the large number of reporters using equation W-10B compared with equation W-10A. The EPA believes this proposal would improve reporting of emissions from hydraulically fractured gas well completions and workovers while impacting very few reporters due to the small number of reporters using equation W-10A. The EPA understands that some reporters may be concerned that there could be situations where direct measurement is not possible for technical, operational or safety reasons; however, subpart W provides requirements for use of missing data procedures as specified in 40 CFR 98.235. The EPA is requesting comment on whether we should retain Calculation Method 2 for gas well completions and workovers with hydraulic fracturing. However, if the EPA retains Calculation Method 2 following consideration of public comment on this proposed rulemaking, the EPA expects we would also amend the reporting requirements in the final rulemaking to improve data quality and transparency. Specifically, if Calculation Method 2 is retained, the EPA expects we would add a new reporting requirement in 40 CFR 98.236(g) for reporters that use equation W-10A to indicate whether the backflow rate for the representative well was determined using Calculation Method 1 or Calculation Method 2.

### J. Blowdown Vent Stacks

#### 1. Reporting Equipment Categories for Pipelines

Subpart W currently requires reporting of blowdowns either using flow meter measurements (40 CFR 98.233(i)(3)) or using unique physical volume calculations by equipment or event types (40 CFR 98.233(i)(2)). Stakeholders have indicated through correspondence with the EPA via e-GGRT and the GHGRP Help Desk that

the descriptions of the “facility piping” and “pipeline venting” categories in 40 CFR 98.233(i)(2) as it is currently written reference “distribution” pipelines but compressor stations are generally not associated with distribution pipelines. Therefore, the EPA is proposing to revise the descriptions of the facility piping and pipeline venting categories in 40 CFR 98.233(i)(2) to reflect the EPA’s intent regarding which equipment or event type category is appropriate for each blowdown, consistent with section II.D of this preamble. Our intent is that the “facility piping” equipment category is limited to unique physical volumes of piping (*i.e.*, piping between isolation valves) that are located entirely within the facility boundary. In contrast, the intent for the “pipeline venting” equipment category is that a portion of the unique physical volume of pipeline is located outside the facility boundary and the remainder, including the blowdown vent stack, is located within the facility boundary. The proposed revisions to the equipment type descriptions would clarify these distinctions. Additionally, we are proposing to remove the reference to “distribution” pipelines in the description of these two categories because we did not intend to limit the pipeline venting category to unique physical volumes that include such pipelines. We agree with the industry stakeholders who have indicated that facilities subject to the blowdown vent stack reporting requirements typically are connected to other pipelines such as gathering pipelines or transmission pipelines, and on-site blowdowns from sections of these pipelines should be reported. Finally, we note that for the “facility piping” equipment category and the “pipeline venting” equipment category, the existing phrase “located within a facility boundary” in the descriptions of those categories generally refers to being part of the facility as defined by the existing provisions of subpart A or subpart W, as applicable, and we are not proposing to change that portion of those descriptions. In other words, blowdowns from unique physical volumes of gathering pipeline that are entirely considered to be part of the “facility with respect to onshore petroleum and natural gas gathering and boosting” as defined in 40 CFR 98.238 would be assigned to the “facility piping” equipment category. The “pipeline venting” equipment category would only apply if the unique physical volume includes some sections of gathering pipelines that are not part of

the “facility with respect to onshore petroleum and natural gas gathering and boosting” as defined in 40 CFR 98.238.

#### 2. Blowdown Equipment Types

As noted in section III.J.1 of this preamble, subpart W currently requires reporting of blowdowns either using flow meter measurements (40 CFR 98.233(i)(3)) or using unique physical volume calculations by equipment or event types (40 CFR 98.233(i)(2)). When the Onshore Natural Gas Transmission Pipeline industry segment was added to subpart W in 2015, after considering public comments that indicated that the existing equipment or event types were not appropriate for the new segment, the EPA developed new equipment or event types that apply only for the Onshore Natural Gas Transmission Pipeline industry segment (80 FR 64275, October 22, 2015). The new equipment or event types were added to the introductory paragraph of 40 CFR 98.233(i)(2), where the existing equipment or event types were already located, resulting in a complex introductory paragraph. These changes also resulted in identical third and last sentences in 40 CFR 98.233(i)(2) that currently read as follows: “If a blowdown event resulted in emissions from multiple equipment types and the emissions cannot be apportioned to the different equipment types, then categorize the blowdown event as the equipment type that represented the largest portion of the emissions for the blowdown event.”

The EPA is proposing, consistent with section II.D of this preamble, to move the listings of event types and the apportioning provisions to a new 40 CFR 98.233(i)(2)(iv) so that the introductory paragraph in 40 CFR 98.233(i)(2) would be more concise and provide clearer information regarding which requirements are applicable for each blowdown. Proposed 40 CFR 98.233(i)(2)(iv) includes separate paragraphs for each set of equipment and event type categories and would also provide clearer information regarding the applicable requirements for each industry segment.

#### 3. Blowdown Temperature and Pressure

In the 2015 amendments to subpart W (80 FR 64262, October 22, 2015), the EPA added the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment and the Onshore Natural Gas Transmission Pipeline industry segment and specified that both industry segments are required to report emissions from blowdown vents. Stakeholders representing the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment provided

comments on the proposed rule stating that the proposed definition of facility would make equipment geographically dispersed, and blowdowns may occur without personnel on-site or nearby, which would make it difficult to collect the information needed to calculate emissions from each blowdown (80 FR 64271, October 22, 2015). After considering those comments, the EPA also specified in the final amendments to equation W-14A that for emergency blowdowns at onshore petroleum and natural gas gathering and boosting facilities, engineering estimates based on best available information may be used to determine the actual temperature and actual pressure.

Since that time, the EPA has received questions through the GHGRP Help Desk indicating that facilities in the Onshore Natural Gas Transmission Pipeline industry segment also have unmanned blowdown vents. Given that a “facility with respect to the onshore natural gas transmission pipeline segment” is the total mileage of natural gas transmission pipelines owned and operated by an onshore natural gas transmission pipeline owner or operator, all of the blowdown vents at that facility would be outside the fenceline of a transmission compression station and would be geographically dispersed. The EPA considers it reasonable to assume that those blowdown vents may also be unmanned during an emergency blowdown, and thus it can similarly be difficult to collect the information needed to calculate emissions from each blowdown. Therefore, we are proposing to extend the provisions in equation W-14A of 40 CFR 98.233(i)(2)(i) that allow use of engineering estimates based on best available information to determine the temperature and pressure of an emergency blowdown to the Onshore Natural Gas Transmission Pipeline segment, which would align the requirements for the two geographically dispersed industry segments currently required to report blowdown vent stack emissions (Onshore Natural Gas Transmission Pipeline and Onshore Petroleum and Natural Gas Gathering and Boosting) and increase clarity of reporting requirements for Onshore Natural Gas Transmission Pipeline reporters, consistent with section II.D of this preamble. As described in section III.C.1 of this preamble, we are also proposing to allow use of engineering estimates to determine the temperature and pressure for emergency blowdowns in equation W-14A for the geographically dispersed industry segments that we are proposing would

begin reporting emissions from blowdown vent stacks (Onshore Petroleum and Natural Gas Production and Natural Gas Distribution).

In addition, similar provisions to allow use of engineering estimates based on best available information to determine the temperature and pressure of an emergency blowdown were not added to equation W-14B of 40 CFR 98.233(i)(2)(i) in 2015 (80 FR 64262, October 22, 2015). We have reviewed this equation and have determined that this omission was inadvertent. Therefore, we are proposing to add provisions to equation W-14B of 40 CFR 98.233(i)(2)(i) to allow use of engineering estimates to determine the temperature and pressure of an emergency blowdown for both the geographically dispersed industry segments that currently report blowdown vent stack emissions (Onshore Natural Gas Transmission Pipeline and Onshore Petroleum and Natural Gas Gathering and Boosting) as well as the geographically dispersed industry segments that we are proposing would be required to begin reporting blowdown vent stack emissions as described in section III.C.1 of this preamble (Onshore Petroleum and Natural Gas Production and Natural Gas Distribution), consistent with equation W-14A.

#### K. Atmospheric Storage Tanks

Facilities in the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments are currently required to report CO<sub>2</sub> and CH<sub>4</sub> emissions (and N<sub>2</sub>O emissions when flared) from atmospheric pressure fixed roof storage tanks receiving hydrocarbon liquids (hereafter referred to as “atmospheric storage tanks”).<sup>80</sup> Reporters with gas-liquid separators or onshore petroleum and natural gas gathering and boosting non-separator equipment (e.g., stabilizers, slug catchers) with annual average daily throughput of oil greater than or equal to 10 barrels per day are required to calculate annual CH<sub>4</sub> and

CO<sub>2</sub> using Calculation Method 1 or 2 as described in existing 40 CFR 98.233(j)(1) and (2), respectively. For wells flowing directly to atmospheric storage tanks without passing through a separator with throughput greater than or equal to 10 barrels per day, facilities must calculate annual CH<sub>4</sub> and CO<sub>2</sub> emissions using Calculation Method 2. For hydrocarbon liquids flowing to gas-liquid separators or non-separator equipment or directly to atmospheric storage tanks with throughput less than 10 barrels per day, reporters must currently use Calculation Method 3 as specified in existing 40 CFR 98.233(j)(3) to calculate annual CO<sub>2</sub> and CH<sub>4</sub> emissions.

#### 1. Open Thief Hatches

The purpose of a thief hatch on an atmospheric storage tank is generally to allow access to the contents of the tank for sampling, gauging, and determining liquid levels. The thief hatch also works along with the vent valve to maintain safe tank operating pressures. The EPA previously evaluated emissions from atmospheric storage tanks as part of the 2016 amendments to subpart W (81 FR 86500, November 30, 2016) and determined that the subpart W calculation methodology in 40 CFR 98.233(j) already includes emissions from thief hatches or other openings on atmospheric storage tanks in the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments. The subpart W calculation methodologies for controlled atmospheric storage tanks include procedures for determining emissions from storage tanks with a vapor recovery system (existing 40 CFR 98.233(j)(4)) and storage tanks with a flare (existing 40 CFR 98.233(j)(5)). The procedure for determining emissions from a tank with a vapor recovery system instructs reporters to adjust the storage tank emissions downward by the magnitude of emissions recovered using a vapor recovery system as determined by engineering estimate based on best available data (existing 40 CFR 98.233(j)(4)(i)). The procedure for determining emissions from an atmospheric storage tank with a flare references 40 CFR 98.233(n), which currently instructs reporters to use engineering calculations based on process knowledge, company records, and best available data to determine the flow to the flare if the flare does not have a continuous flow measurement device. If a reporter sees emissions from a thief hatch or other opening on a controlled atmospheric storage tank during an equipment leak survey

<sup>80</sup> As described in section III.C.3 of this preamble, the EPA is proposing to revise the source type in 40 CFR 98.233(j) from the current name of “onshore production and onshore petroleum and natural gas gathering and boosting storage tanks” to “hydrocarbon liquids and produced water storage tanks” to reflect the proposal to require reporting of storage tank emissions from additional industry segments as well as to reflect the proposed addition of reporting for produced water storage tanks. When used to describe proposed amendments in this section, the general term “atmospheric storage tanks” applies to the group of hydrocarbon liquids and produced water storage tanks that would be reporting emissions if these proposed amendments are finalized.

conducted using OGI, the reporter should consider that information as part of the “best available data” used to calculate emissions from that storage tank.

However, it appears that reporters may not be accurately accounting for emissions from open thief hatches on atmospheric storage tanks, as many reporters claim 100 percent capture efficiency from vapor recovery systems and flares. In order to emphasize the original intent of the rule and ensure the accuracy of reported data, the EPA is proposing several clarifying edits to 40 CFR 98.233(j)(4) and (5) (which, as described in section III.K.3 of this preamble, would be combined in proposed 40 CFR 98.233(j)(4)), consistent with sections II.B and II.C of this preamble. We are proposing to specifically state that emissions during times of reduced capture efficiency are required to be evaluated to determine if adjustments are needed to the calculated recovered mass from vapor recovery units or total emissions vented to atmosphere from tanks. Reduced capture efficiency may occur during periods when the control device is not operating or is bypassed when the control device is operating, such as open thief hatches. The emissions that are not captured by a vapor recovery system or sent to a flare must be considered when calculating emissions from atmospheric storage tanks vented directly to the atmosphere using Calculation Methods 1, 2, or 3.

Further, we are proposing to provide a calculation methodology for determining reduced capture efficiencies when a control device is in use but a thief hatch is not properly seated or closed. We are proposing to revise existing 40 CFR 98.233(j) to require facilities to assume that no emissions are captured by the control device (0 percent capture efficiency) when the thief hatch on a tank is open or not properly seated. As described above, emissions during this time would be reported as vented directly to the atmosphere as determined using Calculation Methods 1, 2, or 3. Additionally, in order to accurately quantify the time period that emissions are vented to atmosphere from an open or not properly seated thief hatch, consistent with section II.B of this preamble, the EPA is proposing in 40 CFR 98.233(j)(7) to require either the use of a thief hatch sensor, if present and operating, or if a thief hatch sensor is not present and operating, visual inspection of the tank to monitor the thief hatch. We are proposing that if a thief hatch sensor is present and operating on the tank, sensor data must

be used to inform the periods of time that a thief hatch is open or not properly seated. The thief hatch sensor must be capable of transmitting and logging data whenever a thief hatch is open or not properly seated and when the thief hatch is subsequently closed. Visual inspections would be required once per calendar year, at a minimum, if a thief hatch sensor is not present and operating. If the thief hatch is required to be monitored as a fugitive emissions component to comply with NSPS OOOOb or the applicable EPA-approved state plan or the applicable Federal plan in 40 CFR part 62, we are proposing that visual inspections must be conducted at least as frequent as the required visual, audible, or olfactory fugitive emissions components surveys described in NSPS OOOOb or the applicable EPA-approved state plan or the applicable Federal plan in 40 CFR part 62, or annually (whichever is more frequent). Similar to the provisions of 40 CFR 98.233(q), if one visual inspection is conducted in the calendar year and an open or not properly seated thief hatch is identified, the reporter would be required to assume that the thief hatch had been open for the entire calendar year. If multiple visual inspections are conducted in the calendar year and an open or not properly seated thief hatch is identified, the reporter would be required to assume that the thief hatch had been open since the preceding visual inspection (or the beginning of the year if the inspection was the first performed in a calendar year) through the date of the visual inspection (or the end of the year if the inspection was the last performed in a calendar year). As discussed in the TSD for the 2016 amendments to subpart W, we determined that this methodology provides an accurate quantification of emissions and it is consistent with the timeframe required for subpart W annual reports.<sup>81</sup> However, we are requesting comment on expanding the start date of the open thief hatch prior to the beginning of the reporting year. In this scenario, if the reporter can identify the start date and it spans reporting years, then that reporter would have to report the vented tank emissions from an open thief hatch that occurred in each reporting year and, if necessary, revise reports for the previous reporting year. The EPA is also seeking comment on alternative methodologies for

quantifying the time that a thief hatch is left open or not properly seated in lieu of a required visual inspection.

The EPA is also proposing revisions to the atmospheric storage tank reporting requirements in 40 CFR 98.236(j) with regard to open thief hatches. Specifically, the EPA is proposing to require reporting of the number of controlled atmospheric storage tanks with open or not properly seated thief hatches within the reporting year, as well as the total volume of gas vented through the open or not properly seated thief hatches, for all calculation methods. With these new reporting elements, the EPA seeks to quantify the impact of open thief hatches on atmospheric storage tanks and enhance the overall quality of the data collected under the GHGRP, consistent with section II.C of this preamble.

Stakeholders have voiced concerns through the GHGRP Help Desk regarding the potential for double counting of tank thief hatch emissions under 40 CFR 98.236(j), (q) and (r). The EPA has previously confirmed that there is no potential for double counting thief hatches in the methodologies provided in 40 CFR 98.233(q) and 40 CFR 98.233(r), and we have also confirmed that there is no potential for double counting thief hatches based on the proposed revisions to 40 CFR 98.236(j), (q) and (r). When determining leaks by population count per 40 CFR 98.233(r), the EPA is proposing updated major equipment emission factors in existing Table W-1A (proposed Table W-1) that were developed using Rutherford *et al.* (2021). Population emission factors are presented by major equipment, which includes tanks—leaks; however, the major equipment indicating venting emissions (e.g., tanks—unintentional vents) were not included. For equipment leak surveys per 40 CFR 98.233(q), existing Table W-1E (proposed Table W-2) references 40 CFR 98.232(c)(21) and (j)(10) for onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting, respectively. These provisions, which describe the list of components to be surveyed for equipment leaks, specifically state that thief hatches or other openings on a storage vessel should not be considered an “other component.” As such, we confirm that the proposed thief hatch emissions reporting requirements in 40 CFR 98.236(j) would not overlap with the equipment leak emission reporting requirements in 40 CFR 98.236(q) and (r). Also, we confirm that the proposed thief hatch emissions reporting requirements would not overlap with

<sup>81</sup> *Greenhouse Gas Reporting Rule: Technical Support for Leak Detection Methodology Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems*. November 1, 2016. Docket Id. No. EPA-HQ-OAR-2015-0764-0066; also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

emissions reporting in 40 CFR 98.236(y). As stated in section III.B of this preamble, only thief hatch emissions that exceed the emissions estimated under 40 CFR 98.233(j) by 250 mtCO<sub>2</sub>e or more, or 100 kg/hr of CH<sub>4</sub> or more, would be included in the calculation and reporting requirements for “other large release events.”

The EPA is aware that there are circumstances other than open or not properly seated thief hatches in which the capture efficiency of the control device(s) for atmospheric storage tanks is reduced. These circumstances include, but are not limited to, when the control device is bypassed due to an open pressure relief device or when the atmospheric storage tank covers and closed vent systems have openings that allow emissions to vent directly to atmosphere. We are proposing in 40 CFR 98.233(j)(4)(i)(D) to require facilities to account for time periods of reduced capture efficiency from causes other than open or not properly seated thief hatches when determining total emissions vented directly to atmosphere based on best available data. However, we are requesting comment on methodologies other than best available data for identifying and quantifying time periods of reduced capture efficiency in these situations. For example, the EPA is requesting comment on the prevalence of pressure monitoring systems on atmospheric storage tanks, how pressure monitoring systems can be used to identify and determine the duration of periods of reduced capture efficiency due to open pressure relief devices, and the cost of those pressure monitoring systems.

## 2. Malfunctioning Dump Valves

For Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting facilities with atmospheric storage tank emissions calculated using Calculation Method 1 (40 CFR 98.233(j)(1)) or Calculation Method 2 (40 CFR 98.233(j)(2)), reporters must also follow the procedures in current 40 CFR 98.233(j)(6) (proposed 40 CFR 98.233(j)(5)) and use equation W-16 to calculate emissions from occurrences of gas-liquid separator dump valves not closing properly. Equation W-16 estimates the annual volumetric GHG emissions at standard conditions from each storage tank resulting from the malfunctioning dump valve on the gas-liquid separator using a correction factor, the total time the dump valve did not close properly in the calendar year, and the hourly storage tank emissions. Per the definition of the variable “E<sub>n</sub>” in equation W-16, the input hourly storage

tank emissions should be those calculated using Calculation Methods 1 or 2 and should be adjusted downward by the magnitude of emissions recovered using a vapor recovery system, if applicable. The EPA is proposing to revise the equation variables (particularly the subscripts) in equation W-16 to clarify the intent of this equation. We are proposing to revise the variable “E<sub>n</sub>” to “E<sub>s,i</sub>” to further clarify that these are the volumetric atmospheric storage tank emissions determined using the procedures in 40 CFR 98.233(j)(1), (2), and (4). We are also proposing to replace the “n” and “o” subscripts in the other variables with a “dv” subscript to indicate that these are the emissions from periods when the gas-liquid separator dump valves were not closed properly and that the emissions from these periods should be added to the emissions determined using the procedures in 40 CFR 98.233(j)(1), (2), and (4).

One of the inputs to equation W-16 is the total time the dump valve did not close properly in the calendar year (T<sub>n</sub>). Currently, T<sub>n</sub> may be estimated based on maintenance, operations, or routine separator inspections that indicate the period of time when the valve was malfunctioning in open or partially open position. In order to improve the quality of the open dump valve emissions data collected, consistent with section II.C of this preamble, the EPA is proposing to formalize the requirement to perform routine visual inspections of separator dump valves to determine if the valve is stuck in an open position, thus allowing gas carry-through to the controlled tank(s).

The EPA is proposing to revise the current provisions in 40 CFR 98.233(j)(6) (which is proposed 40 CFR 98.233(j)(5)) to require visual inspection of the gas-liquid separator and determine if the liquid dump valve is stuck in an open or partially open position. Incorporating this proposed monitoring requirement would result in a more realistic time estimate being used in equation W-16 and thus, more accurate emissions reporting, consistent with section II.B of this preamble. Visual inspections would be required once per calendar year, at a minimum. Similar to the provisions of 40 CFR 98.233(q) and the proposed section 40 CFR 98.233(j)(7), if one visual inspection is conducted in the calendar year and a stuck dump valve is identified, the reporter would be required to assume that the dump valve had been stuck open for the entire calendar year. If multiple visual inspections are conducted in the

calendar year and a stuck dump valve is identified, the reporter would be required to assume that the dump valve had been stuck open since the preceding visual inspection (or the beginning of the year if the inspection was the first performed in a calendar year) through the date of the visual inspection (or the end of the year if the inspection was the last performed in a calendar year). As discussed in the TSD for the 2016 amendments to subpart W, we determined that this methodology provides an accurate quantification of emissions and it is consistent with the timeframe required for subpart W annual reports.<sup>82</sup> We are requesting comment on expanding the start date of the open thief hatch prior to the beginning of the reporting year. In this scenario, if the reporter can identify the start date and it spans reporting years, then that reporter would have to report the vented tank emissions from an open thief hatch that occurred in each reporting year and, if necessary, revise reports for the previous reporting year.

## 3. Applicability and Selection of Appropriate Calculation Methodologies for Atmospheric Storage Tanks

When determining the applicability of the different calculation methodologies described in existing 40 CFR 98.233(j), reporters must calculate their annual average daily throughput to determine whether flow of hydrocarbon liquids through the gas-liquid separator, well, or non-separator equipment is greater than or equal to 10 barrels per day. Through the GHGRP Help Desk and correspondence with the EPA via e-GGRT, it appears that reporters may be misinterpreting how hydrocarbon liquid throughputs from gas-liquid separators should be determined. Specifically, reporters appear to have differing conclusions regarding whether the throughput determination should be based on flow into or out of the separator and whether days when the separator was not operating should be included when calculating the annual average. Therefore, we are proposing revisions to the introductory text of 40 CFR 98.233(j) to emphasize the original intent of how the hydrocarbon liquid throughputs should be determined. Specifically, we are proposing to add language that clearly states that the annual average daily throughput of hydrocarbon liquids should be based on

<sup>82</sup> *Greenhouse Gas Reporting Rule: Technical Support for Leak Detection Methodology Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems*. November 1, 2016. Docket Id. No. EPA-HQ-OAR-2015-0764-0066; also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

flow out of the separator, well, or non-separator equipment determined over the actual days of operation. This amendment is expected to clarify the rule, consistent with II.D of this preamble and improve the quality of the data collected, consistent with section II.C of this preamble.

For hydrocarbon liquids flowing to gas-liquid separators or non-separator equipment or directly to atmospheric storage tanks with throughput greater than 0 barrels per day and less than 10 barrels per day, reporters currently use population emission factors and equation W-15 to calculate volumetric CO<sub>2</sub> and CH<sub>4</sub> emissions per Calculation Method 3 (40 CFR 98.233(j)(3)) and report emissions per 40 CFR 98.236(j)(2). However, facilities with hydrocarbon liquids flowing to gas-liquid separators or non-separator equipment or directly to atmospheric storage tanks with throughput greater than or equal to 10 barrels per day are given the option to either model their tanks per Calculation Method 1 (40 CFR 98.233(j)(1)) or use a mass balance approach per Calculation Method 2 (40 CFR 98.233(j)(2)). Through the GHGRP Help Desk and correspondence with the EPA via e-GGRT, reporters have expressed the desire to use Calculation Methods 1 or 2 for reporting emissions from storage tanks currently required to use Calculation Method 3, as they stated that the population emission factors provided in 40 CFR 98.233(j)(3) are not always representative of their tanks' actual emissions. Calculation Methods 1 and 2 require unit-specific inputs, so it is reasonable to expect that they would result in more accurate emissions estimates for atmospheric storage tanks that have differing operating characteristics than those used to develop the Calculation Method 3 emission factors. Therefore, the EPA is proposing to amend the requirements in 40 CFR 98.233(j) to specify reporters may use Calculation Method 1, Calculation Method 2, or Calculation Method 3 when determining emissions from hydrocarbon liquids flowing to wells, gas-liquid separators, or non-separator equipment with throughput greater than 0 barrels per day and less than 10 barrels per day. We are also proposing to specify in 40 CFR 98.233(j) that if a reporter is required or elects to perform emissions modeling of an atmospheric storage tank consistent with the methodology outlined in 40 CFR 98.233(j)(1), they must use the results of the model for estimating emissions under 40 CFR 98.233(j). It is the EPA's intention with this proposal that if reporters conduct modeling for

environmental compliance or reporting purposes, including but not limited to compliance with Federal or state regulations, air permit requirements, annual inventory reporting, or internal review, they would use those results for reporting under subpart W. Consistent revisions are also proposed for the reporting requirements in 40 CFR 98.236(j). These amendments are expected to improve the quality of the data collected and provide flexibility to reporters, consistent with section II.D of this preamble.

The current requirements in 40 CFR 98.233(j) require calculation of emissions from atmospheric pressure fixed roof storage tanks. As discussed in section III.C of this preamble, the EPA evaluated the sources included in present-day inventories of the oil and gas industry in comparison with sources covered in subpart W and is proposing to include additional sources in subpart W as a result of this evaluation. Based on a similar evaluation, we are proposing to remove the "fixed roof" language when referring to atmospheric pressure storage tanks subject to 40 CFR 98.233(j). This would expand the reporting of tank emissions to include floating roof tanks, which are a source included in the 2022 U.S. GHG Inventory for the petroleum industry. We are also proposing revisions to existing 40 CFR 98.236(j)(1)(x) and existing 40 CFR 98.236(j)(2)(i) to require separate reporting of the total count of fixed roof and floating roof tanks at the facility. To provide additional clarity for this proposed amendment, we are also proposing to revise all instances of "storage tanks," "atmospheric tanks," and "tanks" in 40 CFR 98.233(j) and 40 CFR 98.236(j) to instead use the term "atmospheric pressure storage tanks." We are proposing to define an atmospheric pressure storage tank as "a vessel (excluding sumps) operating at atmospheric pressure that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water and that is constructed entirely of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support. Atmospheric pressure storage tanks include both fixed roof tanks and floating roof tanks. Floating roof tanks include tanks with either an internal floating roof or an external floating roof." We expect these proposed amendments would improve the overall quality and completeness of the emissions data collected by the GHGRP, consistent with section II.A of this preamble.

#### 4. Controlled Atmospheric Storage Tanks

In correspondence with the EPA via e-GGRT, some reporters have asked the EPA for guidance regarding calculating emissions from atmospheric storage tanks that are routed to different control devices throughout the reporting year (e.g., tanks that are routed to vapor recovery and subsequently vented to atmosphere or routed to a flare when the vapor recovery device is not operating). Given the proposed amendments to the calculation methodology and reporting of flare stack emissions (discussed in section III.N of this preamble), we are proposing to revise the methodologies for calculating emissions from tanks controlled by a vapor recovery system or a flare currently provided in 40 CFR 98.233(j)(4) and (5), respectively. The new language in proposed 40 CFR 98.233(j)(4)(i) provides a methodology for calculating emissions vented to atmosphere during periods of reduced capture efficiency of the vapor recovery system or flare (e.g., when a thief hatch is open or not properly seated). The provisions of proposed 40 CFR 98.233(j)(4)(ii) would require facilities to use engineering estimates based on best available data to calculate recovered mass from vapor recovery systems, and also clarifies that reporters must take into account periods with reduced capture efficiency of the vapor recovery system (e.g., when a thief hatch is open or not properly seated or when the vapor recovery system is down for maintenance) when calculating mass recovered. For flared atmospheric storage tank emissions, the proposed 40 CFR 98.233(j) provisions would direct reporters to the proposed methodologies in 40 CFR 98.233(n). By proposing these amendments, the EPA seeks to enhance the overall quality of the data collected under the GHGRP, consistent with section II.D of this preamble.

#### 5. Calculation Methods 1 and 2 for Atmospheric Storage Tanks

Reporters with atmospheric storage tanks that calculate emissions using Calculation Method 1 are currently required to determine emissions using any standard simulation software package that uses the Peng-Robinson equation of state, models flashing emissions, and speciates CH<sub>4</sub> and CO<sub>2</sub> emissions from the atmospheric storage tank. According to current 40 CFR 98.233(j)(1), the information that must be used to characterize emissions include separator or non-separator equipment temperature and pressure, sales or stabilized hydrocarbon liquids API gravity, sales or stabilized

hydrocarbon liquids production rate, ambient air temperature and pressure, and separator or non-separator equipment hydrocarbon liquids composition and Reid vapor pressure. These parameters currently must be determined for typical operating conditions over the calendar year by engineering estimate and process knowledge based on best available data. Consistent with section II.B of this preamble, we are proposing that the input parameters related to the hydrocarbon liquid stream that are used for the simulation software must be obtained by measurement.<sup>83</sup> Those parameters include separator or non-separator equipment temperature and pressure, sales or stabilized hydrocarbon liquids API gravity, sales or stabilized hydrocarbon liquids production rate, and separator or non-separator equipment hydrocarbon liquids composition and Reid vapor pressure. We are proposing that reporters would collect measurements reflective of representative operating conditions over the time period covered by the simulation. We are not proposing to change the requirement that the other parameters must be determined for operating conditions based on engineering estimate and process knowledge.

We are also proposing that the parameters that must be used to characterize emissions should reflect operating conditions over the time period covered by the simulation rather than just over the calendar year. Under this proposed change, reporters could continue to run the simulation once per year with parameters that are determined to be representative of operating conditions over the entire year. Alternatively, reporters would be allowed to conduct periodic simulation runs to cover portions of the calendar year, as long as the entire calendar year is covered. The reporter would then sum the results at the end of the year to determine annual emissions. In that case, the parameters for each simulation run would be determined for the operating conditions over each corresponding portion of the calendar year.

For reporters with atmospheric storage tanks that calculate emissions using Calculation Method 2, all CH<sub>4</sub> and CO<sub>2</sub> in solution are assumed to be emitted from hydrocarbon liquids. For flow to storage tanks after passing through a separator, the CH<sub>4</sub> and CO<sub>2</sub> in

solution is determined by taking a sample of separator hydrocarbon liquids at separator pressure and temperature. However, for flow to atmospheric storage tanks direct from wells and flow to atmospheric storage tanks direct from non-separator equipment, facilities may only use either the latest compositional analysis already available at the facility or default liquid and gas compositions from modeling software programs to determine the CH<sub>4</sub> and CO<sub>2</sub> in solution; there is currently no requirement to take a representative sample during the calendar year. Consistent with these proposed amendments for atmospheric tanks with emissions calculated using Calculation Method 1, the EPA is proposing that the composition of the liquids flowing to all tanks with emissions calculated using Calculation Method 2 must be obtained by measurement, regardless of the source from which the liquids are supplied. We are proposing to remove the provisions of 40 CFR 98.233(j)(2)(ii) and (iii) that allowed for representative compositions to be used for tanks receiving liquids directly from wells or non-separator equipment. These amendments are expected to improve the accuracy of the data collected under the GHGRP, consistent with section II.B of this preamble.

Similar to the provision for dehydrators in 40 CFR 98.233(e)(1), subpart W currently provides two example software options, AspenTech HYSYS® or API 4697 E&P Tank, that meet the software requirements in 40 CFR 98.233(j)(1). Under the existing requirements, reporters are not limited using to these two software options when complying with 40 CFR 98.233(j)(1). However, many reporters have been using BRE's ProMax software to model their tank emissions. In RY2021, based on responses to 40 CFR 98.236(j)(1)(ii) (name of the software package used if using Calculation Method 1), 59 percent of facilities reporting emissions from Calculation Method 1 atmospheric storage tanks used ProMax as their modeling software, compared to 30 percent using API 4697 E&P Tank and 6 percent using AspenTech HYSYS®. Given the significant majority of reporters using ProMax, and considering our proposed addition and supporting rationale of ProMax to the list of example software options in 40 CFR 98.233(e)(1), we are proposing to add ProMax as an example software program for calculating atmospheric tank emissions per 40 CFR 98.233(j)(1). Consistent with the EPA's proposed revisions to 40 CFR 98.233(e)(1), the EPA is proposing to

require ProMax version 5.0 or above. We expect these proposed amendments would improve the quality of the data collected, consistent with section II.C of this preamble.

Additionally, we are aware that several process simulation software options have the ability to model emissions from atmospheric storage tanks that are receiving hydrocarbon liquids directly from wells. As such, the EPA is proposing to amend 40 CFR 98.233(j) such that facilities with wells flowing directly to atmospheric storage tanks without passing through a separator may use either Calculation Method 1, Calculation Method 2, or, for wells, gas-liquid separators, or non-separator equipment with annual average daily throughput less than 10 barrels per day, Calculation Method 3. We are also proposing conforming edits within 40 CFR 98.233(j)(1) and (2) and 40 CFR 98.236(j)(1) to refer to parameters and requirements for wells flowing directly to atmospheric storage tanks. These proposed amendments are expected to improve the accuracy of reported emissions, consistent with section II.B of this preamble.

Stakeholders have indicated through correspondence with the EPA via e-GGRT and the GHGRP Help Desk that flash emissions from atmospheric storage tanks are often determined through laboratory measurement of separator liquid gas to oil ratio (GOR). This emission calculation methodology involves taking a pressurized sample of crude or condensate from an upstream vessel (separator or non-separator equipment) and flashing the sample in a laboratory. To do this, part of the sample is brought to sampling temperature and pressure conditions, while another portion of the sample is brought to storage tank temperature and pressure conditions. The amount of gas released per volume of oil generated is measured to estimate the GOR. The chemical composition of the flash gas is then analyzed and the CH<sub>4</sub> and CO<sub>2</sub> concentrations are determined. The GHG emissions can be estimated by multiplying the GOR by the crude oil or condensate throughput, and then applying the CH<sub>4</sub> and/or CO<sub>2</sub> composition to the total gas rate to estimate the CH<sub>4</sub> and/or CO<sub>2</sub> emissions from the atmospheric storage tank. The EPA has determined that this methodology does not meet the requirements of Calculation Method 1 (as the emissions are not calculated using a modeling software) or Calculation Method 2 (as the emissions are not calculated assuming that all the CH<sub>4</sub> and CO<sub>2</sub> in solution at separator temperature and pressure is emitted).

<sup>83</sup> As described in section III.C.3 of this preamble, the EPA is also proposing to expand the applicability of 40 CFR 98.233(j)(1) to include produced water tanks.

However, upon review of storage tank emissions calculation guidance from states such as Louisiana<sup>84</sup> and Texas,<sup>85</sup> it appears that companies may be performing this testing to meet state-level requirements. Additionally, this methodology is included in the 2021 API Compendium as an option for determining atmospheric storage tank emissions.

Therefore, we are seeking comment on adding laboratory measurement of the GOR from a pressurized liquid sample as a new emission calculation methodology for atmospheric storage tanks under 40 CFR 98.233(j). If this methodology were to be added to 40 CFR 98.233(j), we anticipate providing an equation that would multiply the measured GOR by the annual throughput of the hydrocarbon liquid stream to the atmospheric storage tank (in barrels per year) to obtain the annual volumetric flash gas emissions. The CO<sub>2</sub> and CH<sub>4</sub> emissions from the atmospheric storage tank would then be calculated using CO<sub>2</sub> and CH<sub>4</sub> flash gas concentrations determined from the laboratory analysis. Facilities utilizing this methodology would report all data elements required under 40 CFR 98.236(j)(1), consistent with the reporting for Calculation Methods 1 and 2. We would also require additional data elements associated specifically with this new calculation method, such as the annual average GOR and total days of operation of the atmospheric storage tank(s) at the facility, well-pad, or gathering and boosting site. We specifically request comment on the accuracy of this methodology for calculating GHG emissions (with emphasis on comparison with Calculation Method 1 modeling), as well as how extensive its use may be in the oil and gas industry.

#### 6. Calculation Methods 1 and 2 Reporting

For facilities reporting atmospheric storage tank emissions calculated using Calculation Method 1 or Calculation Method 2, 40 CFR 98.236(j)(1) currently requires reporting of counts of the total number of atmospheric storage tanks

<sup>84</sup> Louisiana Department Of Environmental Quality. "Flash Gas Calculation Methods." <https://www.deq.louisiana.gov/page/flash-gas-calculation-methods>.

<sup>85</sup> Texas Commission on Environmental Quality Air Permits Division. May 2012. *Calculating Volatile Organic Compounds (VOC) Flash Emissions from Crude Oil and Condensate Tanks at Oil and Gas Production Sites*. Air Permit Reference Guide APDG 5942. Available at [https://www.tceq.texas.gov/assets/public/permitting/air/Guidance/NewSourceReview/guidance\\_flashemission.pdf](https://www.tceq.texas.gov/assets/public/permitting/air/Guidance/NewSourceReview/guidance_flashemission.pdf) and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

within the sub-basin or county (40 CFR 98.236(j)(1)(x)), the number of atmospheric storage tanks that are controlled by a vapor recovery system (40 CFR 98.236(j)(1)(xii)(A)), the number of atmospheric storage tanks that are controlled by a flare (40 CFR 98.236(j)(1)(xiv)(A)), and the number of atmospheric storage tanks that are not controlled by either a vapor recovery system or a flare (40 CFR 98.236(j)(1)(xiii)(A)).<sup>86</sup> Given the proposed amendments to require reporting of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from atmospheric storage tanks controlled by a flare under 40 CFR 98.236(n) (discussed in section III.N of this preamble), the EPA is proposing to reorganize the reporting requirements in 40 CFR 98.236(j)(1) to collect each of these tank counts under 40 CFR 98.236(j)(1)(x)(A) through (F).<sup>87</sup> The EPA is also proposing to move the reporting of CO<sub>2</sub> and CH<sub>4</sub> vented emissions and recovered mass to paragraph 40 CFR 98.236(j)(1)(xi) through (xiv). With this reorganization of the emissions reporting requirements for atmospheric storage tanks, the EPA expects to improve verification of atmospheric storage tank emissions, consistent with section II.C of this preamble.

Additionally, the EPA is proposing to remove the requirement to report an estimate of the number of atmospheric storage tanks that are not on well-pads and that are receiving the facility's oil (existing 40 CFR 98.236(j)(1)(xi)), consistent with section II.C of this preamble. This reporting requirement is currently, and under the proposed rule would still be, redundant because all Onshore Petroleum and Natural Gas Production facilities reporting atmospheric storage tank emissions calculated using Calculation Method 1 or Calculation Method 2 must also report the total number of atmospheric storage tanks in the sub-basin per existing 40 CFR 98.236(j)(1)(x) (proposed to be revised to the total

<sup>86</sup> In the 2022 Proposed Rule, the EPA proposed updates to the tank count reporting requirements in current 40 CFR 98.236(j)(1). These revisions are not included in this proposal, as the current tank count reporting requirements better align with the proposed flare stack revisions discussed in section III.N of this preamble.

<sup>87</sup> As discussed in section III.K.3 of this preamble, the EPA is expanding this source to include both fixed roof and floating roof atmospheric storage tanks. The total count of tanks within the facility is proposed to be further divided into the count of fixed roof atmospheric storage tanks and the count of floating roof atmospheric storage tanks. Also, as discussed in section III.K.1 of this preamble, the EPA is also proposing to collect the count of controlled atmospheric storage tanks with open or not properly seated thief hatches.

number of atmospheric storage tanks at the well-pad).

Under 40 CFR 98.236(j)(1)(vii) and (viii), reporters with atmospheric storage tank emissions calculated using Calculation Method 1 or Calculation Method 2 are currently required to provide the minimum and maximum concentrations (mole fractions) of CO<sub>2</sub> and CH<sub>4</sub> in the tank flash gas. Reporting of emissions and activity data for atmospheric storage tanks is aggregated at the sub-basin or county level under the current regulations, and the minimum and maximum flash gas concentrations were expected to provide the EPA with a broad characterization of the often-significant number of tanks reported for each sub-basin or county. However, through correspondence with reporters via e-GGRT, the EPA has found that the minimum and maximum flash gas concentrations do not accurately represent the majority of atmospheric storage tanks within the reported sub-basins and counties. Thus, the EPA is proposing to revise these two reporting requirements to request the flow-weighted average concentration (mole fraction) of CO<sub>2</sub> and CH<sub>4</sub> in the flash gas, rather than the minimum and maximum values. These values would be calculated as the sum of all products of the concentration of CO<sub>2</sub> or CH<sub>4</sub> in the flash gas for each storage tank times the total quantity of flash gas for that storage tank, divided by the sum of all flash gas emissions from storage tanks. The concentration of CO<sub>2</sub> or CH<sub>4</sub> in the flash gas and the throughput for each storage tank would be determined using the methodologies in Calculation Method 1 or Calculation Method 2. Consistent with section II.C of this preamble, the EPA expects that these revisions would improve both the representative nature of the data collected and the process of verifying annual reported atmospheric storage tanks emissions data under the GHGRP.

#### 7. Calculation Method 3 for Atmospheric Storage Tanks

For hydrocarbon liquids flowing to storage tanks from gas-liquid separators or non-separator equipment or directly to atmospheric storage tanks with throughput less than 10 barrels per day, reporters currently use population emission factors and equation W-15 to calculate volumetric CO<sub>2</sub> and CH<sub>4</sub> emissions per 40 CFR 98.233(j)(3) and report emissions per 40 CFR 98.236(j)(2). Under these current requirements, the count of separators, wells, or non-separator equipment with annual average daily throughput less than 10 barrels per day could include separators, wells, or non-separator

equipment with annual average daily hydrocarbon liquids throughput of 0 barrels (i.e., separators, wells, or non-separator equipment that were not operated during the reporting year). As a result, some annual reports include a nonzero count of wells with and without separators per existing 40 CFR 98.236(j)(2)(i)(E) and (F) (which, as described in section III.K.7 of this preamble, would be combined in proposed 40 CFR 98.236(j)(2)(ii)(E) and are proposed to be revised to the total number of separators, wells, or non-separator equipment to better match “Count” from equation W–15) without any corresponding CO<sub>2</sub> and CH<sub>4</sub> emissions. In these cases, it is not clear if the reporter did not report emissions because emissions are not expected, the emissions data were inadvertently omitted, or the nonzero count of all wells and separators includes those that had no throughput.

Therefore, the EPA is proposing to clarify in 40 CFR 98.233(j)(3) that the separators, wells, or non-separator equipment for which emissions are calculated should be those with annual average daily hydrocarbon liquids throughput greater than 0 barrels per day and less than 10 barrels per day (i.e., the count should not include separators, wells, or non-separator equipment that had no throughput during the year). Similarly, we are proposing to clarify that the count of separators, wells, or non-separator equipment to report under proposed 40 CFR 98.236(j)(2)(ii)(E) should also be those with annual average daily hydrocarbon liquids throughput greater than 0 barrels per day and less than 10 barrels per day. These amendments are expected to improve the quality of the data collected, consistent with section II.C of this preamble.

#### 8. Calculation Method 3 Reporting

The provisions in existing 40 CFR 98.236(j)(2)(ii) and (iii) currently require facilities to separately report Calculation Method 3 emissions from atmospheric storage tanks that did not control emissions with flares and those that controlled emissions with flares, respectively. As discussed in section III.N of this preamble, the EPA is proposing new reporting requirements for atmospheric storage tanks controlled by flares. The proposed revisions would require all flared emissions from atmospheric storage tanks with emissions calculated using Calculation Method 3 to be reported under 40 CFR 98.236(n). Therefore, the EPA is proposing to require reporting of all Calculation Method 3 emissions that are vented directly to atmosphere under 40

CFR 98.233(j)(2)(ii).<sup>88</sup> We are proposing to no longer require separate reporting of Calculation Method 3 emissions from atmospheric storage tanks that did not control emissions with flares and those that controlled emissions with flares. This proposed reporting structure would be similar to the emissions reporting structure for Calculation Methods 1 and 2 atmospheric storage tanks. Further discussion on the reasoning behind these proposed revisions is provided in section III.N of this preamble. In the 2022 Proposed Rule, we proposed to revise the reporting structure to specify that the reporting requirements in the current 40 CFR 98.236(j)(2)(iii) only apply to tanks whose emissions were calculated using Calculation Method 3 that used flares to control emissions from at least half the annual hydrocarbon liquids received. As this proposed amendment would not be consistent with the revisions to the flare stack reporting requirements discussed in section III.N of this preamble, the EPA is not including these revisions in this proposal.

For hydrocarbon liquids flowing to gas-liquid separators or non-separator equipment or directly to atmospheric storage tanks with throughput less than 10 barrels per day, reporters currently follow the Calculation Method 3 methodology specified in 40 CFR 98.233(j)(3) and equation W–15 (proposed equation W–15A). Equation W–15 uses population emission factors and the count of applicable separators, wells, or non-separator equipment to determine the annual total volumetric GHG emissions at standard conditions. The associated reporting requirements in 40 CFR 98.236(j)(2)(i)(E) through (F) require reporters to delineate the count used in equation W–15 into the number of wells with gas-liquid separators in the basin and those without gas-liquid separators. After reviewing these reporting requirements, the EPA has made a preliminary determination that they are not consistent with the language used in the definition of the “Count” variable in equation W–15, nor are they inclusive of all equipment to be included in the count. Therefore, the EPA is proposing to revise existing 40 CFR 98.236(j)(2)(i)(E) and (F), in combined proposed 40 CFR 98.236(j)(2)(ii)(E), to completely align the reporting requirement with the total “Count” input variable in equation W–15. We are also proposing to collect this information at the well-pad, gathering and boosting site, or facility level. The

EPA proposes to amend the language in proposed 40 CFR 98.236(j)(2)(ii)(E) to request the total number of separators, wells, or non-separator equipment used to calculate Calculation Method 3 storage tank emissions. The current language in existing 40 CFR 98.236(j)(2)(i)(E) requests the number of wells with gas-liquid separators in the basin, which is only a subset of the equipment included in the “Count” variable. Further, the EPA is proposing to remove the reporting requirement in existing 40 CFR 98.236(j)(2)(i)(F) that requires reporting of the number of wells without gas-liquid separators in the basin. These changes would ensure the consistency of the requirements for all facilities reporting atmospheric storage tanks emissions using Calculation Method 3 and provide activity data that better correlates with the calculated Calculation Method 3 atmospheric tank emissions. Consistent with section II.C of this preamble, reporters would no longer be required to determine two separate counts that may not align with the inputs used in equation W–15.

#### L. Flared Transmission Storage Tank Vent Emissions

Reporters in the transmission compression industry segment currently are required to report flared emissions specific to their transmission storage tanks under 40 CFR 98.236(k), separately from other flare stack emissions. In the years RY2015 through RY2020, between one and six facilities per year reported having a transmission tank vent stack routed to a flare, and each of these facilities reported no dump valve leakage from the tanks that were routed to flares. As a result, the reported flared emissions from transmission storage tank vent stacks in each of the last 6 years have been 0 mt of CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O. Based on these results, the EPA has made a preliminary determination that including flared emissions from transmission storage tank vents in the group of “other flared sources” instead of continuing to report source-specific flared emissions from transmission tanks would not affect data quality or accuracy, nor would it significantly impact the EPA’s knowledge of the industry sector, emissions or trends. Therefore, consistent with section II.C of this preamble, the EPA is proposing that transmission storage tanks (proposed to be renamed “condensate storage tanks” as described in section III.C.1 of this preamble) be classified as an “other” flared source such that any flared emissions from the tanks in the future would be reported only as part of the

<sup>88</sup> As described in section III.C.3 of this preamble, the EPA is proposing new reporting requirements in 40 CFR 98.233(j)(2)(iii) for produced water tanks.

total emissions from the flare. The proposed disaggregation of total flare emissions to individual source types as described in section III.N of this preamble would not apply to condensate storage tanks.

To implement this change for condensate storage tanks that are connected to a flare, the EPA is proposing to remove the current requirements in 40 CFR 98.233(k)(5) that require reporters to monitor the tank vent stack annually for leaks and to quantify the leak rate if a leak is detected. Reporting requirements would remain essentially the same except that flared mass emissions would no longer be reported under 40 CFR 98.236(k)(3). Note that if we decide not to finalize the proposed changes described in this section after considering public comment, then we alternatively propose that we would finalize provisions applying the proposed flare emissions disaggregation requirements as described in section III.N of this preamble to flared emissions from condensate storage tank vent stacks, consistent with the proposed disaggregation of emissions for other source types. Under this alternative, condensate storage tanks would be added to the list of source types in proposed 40 CFR 98.233(n)(10) for which disaggregation would be required. We would also not finalize the proposal to remove the current requirements in 40 CFR 98.233(k)(5) to monitor and quantify leak rates because it would not be possible to tell how much of the total flare emissions should be disaggregated to condensate storage tanks if the scrubber dump valve leakage is not monitored. We request comment on the advantages and disadvantages of both approaches we are considering relative to the current requirements.

### M. Associated Gas Venting and Flaring

#### 1. Associated Gas Venting

Associated gas venting or flaring is the venting or flaring of natural gas that originates at wellheads that also produce hydrocarbon liquids and occurs either in a discrete gaseous phase at the wellhead or is released from the liquid hydrocarbon phase by separation. Venting associated gas involves directly releasing associated gas into the atmosphere at the well-pad or tank battery. Flaring associated gas is a common, and usually preferred, alternative to venting for safety and environmental reasons. Subpart W currently requires reporters to calculate annual emissions from associated gas venting and flaring using equation W-

18, which uses the GOR, volume of oil produced, and volume of associated gas sent to sales to calculate the volume of gas vented. Associated gas venting emissions are then calculated using the results of equation W-18 and the gas composition determined using 40 CFR 98.233(u), and associated gas flaring emissions are calculated by applying the calculation method of flare stacks in 40 CFR 98.233(n) to the associated natural gas volume and gas composition determined for the associated gas stream routed to the flare.

For associated gas venting emissions, we are proposing provisions in 40 CFR 98.233(m)(3) to specify that if the reporter measures the flow to a vent using a continuous flow measurement device the reporter must use the measured flow volumes to calculate the volume of gas vented rather than using equation W-18. This proposed amendment would add calculation methodologies based on measurements and improve the accuracy of the data collected, consistent with section II.B of this preamble. We are proposing corresponding reporting requirements for associated gas venting emissions in 40 CFR 98.236(m)(7), including requiring an indication of whether a continuous flow monitor or continuous composition analyzer was used. We are also proposing to require reporting of the flow-weighted mole fractions of CH<sub>4</sub> and CO<sub>2</sub> and the total volume of associated gas vented from the well, in standard cubic feet for all wells whether using GOR or continuous flow measurement devices. Finally, we are proposing to specify that if the volumetric emissions from associated gas venting and flaring were determined using a continuous flow measurement device rather than equation W-18, then reporting of the inputs to equation W-18, including the GOR, the volume of oil produced, and the volume of gas sent to sales for wells with associated gas venting or flaring, would not be required for that well. We request comment on whether we should continue to require reporting of these data elements even if they are not used as inputs to an emissions calculation. 40 CFR 98.236(m)(7)(i) currently requires the reporter to provide the total number of wells and a list of well IDs in the sub-basin for wells that vented associated gas emissions. As noted in section III.D of this preamble, however, the EPA is proposing that reporters begin reporting information for this emission source by well rather than at the sub-basin level. Therefore, we are proposing to remove this reporting requirement. The well ID would be reported for each vented well

under proposed 40 CFR 98.236(m)(1) and the total number of wells reported at the sub-basin level is no longer necessary, because we are proposing to require reporting at the well level for associated gas venting rather than the sub-basin level.

As discussed further in section III.N of this preamble, the EPA is proposing several amendments to the calculation and reporting requirements for flare stacks that would impact associated gas flaring emissions calculations in existing 40 CFR 98.233(m)(5) and reporting in existing 40 CFR 98.236(m)(8). As a result, the EPA is proposing to remove existing 40 CFR 98.233(m)(5) and instead direct reporters to 40 CFR 98.233(n) to calculate emissions from associated gas flaring. The EPA is also proposing to remove 40 CFR 98.236(m)(8), as flared emissions would be reported under 40 CFR 98.236(n). In addition to flared emissions, 40 CFR 98.236(m)(8)(i) currently requires the reporter to provide a list of well IDs in the sub-basin for wells that flared associated gas emissions. As noted in section III.D of this preamble, however, the EPA is proposing that reporters begin reporting information for this emission source by well rather than at the sub-basin level. Existing 40 CFR 98.236(m)(3) requires reporters to indicate whether any associated gas was flared. The EPA is not proposing to revise this requirement. Thus, reporters would still be required to indicate whether associated gas was flared but would report this information at the well level rather than the sub-basin level under the proposed rule. Retaining the requirement to provide a list of well IDs as required by current 40 CFR 98.236(m)(8)(i) would effectively duplicate the proposed requirement to indicate if associated gas is flared in 40 CFR 98.236(m)(3) for each well. Therefore, the EPA is proposing to remove existing 40 CFR 98.236(m)(8)(i) in addition to all other requirements in 40 CFR 98.236(m)(8).

#### 2. Oil and Gas Volumes

As noted previously in this section, subpart W currently requires reporters to calculate annual emissions from associated gas venting and flaring using equation W-18. Two of the inputs in the equation are the volume of oil produced and volume of associated gas sent to sales for each well in the sub-basin during time periods in which associated gas was vented or flared. However, based on the values initially reported in some annual GHGRP reports and correspondence with reporters via e-GGRT, it appears that reporters, in a

limited number of cases, may have incorrectly interpreted the language of equation W-18 to require reporting of gas sent to sales summed across all sub-basins at the facility during time periods in which associated gas was vented or flared under existing 40 CFR 98.236(m)(6) rather than gas sent to sales in the sub-basin during these flaring and venting periods. Thus, the total sales volume reported for the associated gas source in these instances is the same as the total volume of gas sent to sales for the facility reported under existing 40 CFR 98.236(aa)(1)(i)(B). If these reporters are accurately reporting the volume of gas sent to sales during flaring and venting associated gas events and using that volume in equation W-18, then the associated gas venting and flaring emissions are likely overstated, as it is unlikely that all wells are venting or flaring associated gas 100 percent of the time. If the reporters are using accurate volumes of gas sent to sales during time periods in which associated gas was vented or flared for their emissions calculations but reporting total gas sent to sales, then the activity data reported do not match the emissions, leading to an inconsistent data set. Therefore, the EPA is proposing to add the word “only” to the definitions of the terms  $V_{p,q}$  and  $SG_{p,q}$  in equation W-18 (40 CFR 98.233(m)(3)) and to the reporting requirements for those data elements in 40 CFR 98.236(m)(5) and (6). These proposed amendments would lead to improved accuracy of reported emissions, consistent with sections II.C and II.D of this preamble.

The EPA is further proposing to clarify the definition of the variable  $SG_{p,q}$  in equation W-18 to account for associated gas used at the facility. Currently, the term is defined as “Volume of associated gas sent to sales, for well p in sub-basin q, in standard cubic feet of gas in the calendar year during time periods in which associated gas was vented or flared.” That volume is subtracted from the total volume of associated gas produced to provide a net volume of gas sent to a vent or flare at each well. However, an operator may use the produced gas at the well-pad, further reducing the volume of gas sent to sales. For example, produced gas is often used as fuel for internal combustion engines or for separators. For this reason, the EPA is proposing to amend the definition of  $SG_{p,q}$  in equation W-18 to include these additional uses. Specifically, we propose to revise the variable name to  $SG_p$  (i.e., we propose to remove the “q” subscript) to indicate that the emissions

would no longer be summed and reported by sub-basin (as described in more detail in section III.D of this proposal). We propose to define  $SG_p$  as the volume of associated gas sent to sales or volume of associated gas used for other purposes at the facility site, including powering engines, separators, safety systems and/or combustion equipment and not flared or vented, for well p, in standard cubic feet of gas in the calendar year only during time periods in which associated gas was vented or flared. Incorporating these proposed changes would add clarity to equation W-18, consistent with section II.D of this preamble, resulting in more accurate reporting of actual volumes of associated gas sent to a vent or flare and thus more accurate emissions reporting, consistent with section II.C of this preamble. Consistent with these changes, the EPA is also proposing to amend reporting requirements in 40 CFR 98.236(m)(6) to clarify that  $SG_{p,q}$  includes associated gas that is used on-site at the facility but not sent to a flare or vent.

#### N. Flare Stack Emissions

Flare stacks are an emission source type subject to emissions reporting by facilities in seven of the ten industry segments in the Petroleum and Natural Gas Systems source category.<sup>89</sup> Total  $CO_2$ ,  $CH_4$ , and  $N_2O$  emissions from each flare currently are required to be calculated using the methodology specified in 40 CFR 98.233(n). In addition to calculating total emissions from a flare, reporters currently must also separately calculate the flared emissions from several types of emission sources as specified in the requirements of 40 CFR 98.233 specific to that source type.<sup>90</sup> The procedures in the source-specific paragraphs of the existing rule cross-reference the

<sup>89</sup> Flare stacks are an emission source type currently subject to emissions reporting by facilities in the following industry segments: Onshore Petroleum and Natural Gas Production, Onshore Petroleum and Natural Gas Gathering and Boosting, Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, Underground Natural Gas Storage, LNG Import and Export Equipment, and LNG Storage.

<sup>90</sup> Facilities currently separately calculate the flared emissions from the following types of emission sources (if required for the applicable industry segment, per 40 CFR 98.232): dehydrator vents (40 CFR 98.233(e)(6)), well venting during completions and workovers with hydraulic fracturing (40 CFR 98.233(g)(4)), gas well venting during completions and workovers without hydraulic fracturing (40 CFR 98.233(h)(2)), onshore production and onshore petroleum and natural gas gathering and boosting storage tanks (40 CFR 98.233(j)(5)), transmission storage tanks (40 CFR 98.233(k)(5)), well testing venting and flaring (40 CFR 98.233(l)(6)), and associated gas venting and flaring (40 CFR 98.233(m)(5)).

calculation procedures in existing 40 CFR 98.233(n), but they also specify that the volume and composition of the gas routed to the flare are required to be determined according to the procedures for estimating vented emissions from the specific source type. For example, existing 40 CFR 98.233(e)(6) specifies that the volume and gas composition to use in calculating flared emissions from dehydrators must be determined according to the procedures for calculating vented emissions from dehydrators as specified in existing 40 CFR 98.233(e)(1) through (5). Since source-specific flared emissions often are a portion of the total emissions from a flare, existing 40 CFR 98.233(n)(9) specifies that the total  $CO_2$ ,  $CH_4$ , and  $N_2O$  for a particular flare must be adjusted downward by the amount of the source-specific emissions that are calculated for the same flare; this ensures that emissions from a flare are not double counted (i.e., reported for both the flare stacks source type and another emission source type). The resulting  $CO_2$ ,  $CH_4$ , and  $N_2O$  emissions to report for that flare according to existing 40 CFR 98.236(n)(9) through (11) should be only what is left after subtracting all of the source-specific flared emissions from the total emissions.

When a flare is dedicated to one or more source types that are all subject to source-specific flared emissions reporting, all of the mass emissions are currently reported under those source types, and zero mass emissions are reported for the flare stacks source types. However, even when the only streams routed to a flare are from source types that are subject to flared emissions reporting under those source types, the flare name or ID and all activity data related to the streams that are routed to the flare and the flare operating characteristics still must be reported under existing 40 CFR 98.236(n). These activity data include the volume of gas routed to the flare, average  $CO_2$  and  $CH_4$  mole fractions in the flared gas, flare combustion efficiency, fraction of flared gas routed to the flare when it was unlit, and indicators of whether a continuous flow measurement device and a continuous gas analyzer were used on the gas stream routed to the flare. These flare ID and activity data reporting requirements are specified in existing 40 CFR 98.236(n)(1) through (8). In the rare cases that a CEMS is used on the outlet of a flare, then according to existing 40 CFR 98.236(n)(12), only the flare ID and the measured  $CO_2$  emissions must be reported.

The EPA is proposing changes to the flared emissions calculation

methodologies, including the monitoring provisions, as well as the flare data reporting requirements for both the flared emissions from each source type and for each flare. The proposed changes would align the flared emissions calculation methodology and reporting with the requirements in CAA section 136(h) to report emissions that are based on empirical data and that accurately reflect the total CH<sub>4</sub> emissions from each facility, consistent with section II.B of this proposal. We are also proposing changes to clarify specific provisions.

#### 1. Calculation Methodology for Total Emissions from a Flare

The EPA is proposing several revisions to the flare emission calculation methods to improve the quality and accuracy of the calculated and reported data, consistent with section II.B of this proposal. First, we are proposing to revise the default combustion efficiency for flares. Currently, reporters may assume a default combustion efficiency of 98 percent, as provided in existing 40 CFR 98.233(n)(3). However, researchers conducting remote sensing tests of emissions from flares have reported finding lower combustion efficiencies. For example, Plant *et al.* conducted extensive testing in the Eagle Ford, Bakken, and Permian basins and found average combustion efficiencies ranging from less than 92 percent in the Bakken basin to slightly more than 97 percent in the Permian basin.<sup>91</sup> Consistent with the requirements of CAA section 136(h), we are proposing a tiered approach to setting the default combustion efficiency that would provide higher defaults when supported by data from the reporter implementing certain flare monitoring procedures, in proposed 40 CFR 98.233(n)(4). Specifically, under Tier 1, a default combustion efficiency of 98 percent would be allowed where the reporter conducts flare monitoring consistent with the procedures specified in 40 CFR 63.670 and 40 CFR 63.671 of the National Emission Standards for Hazardous Air Pollutants From Petroleum Refineries (40 CFR part 63, subpart CC) (hereafter referred to as “NESHAP CC”). The standard in NESHAP CC is to either reduce emissions by 98 percent or comply with the specified flare requirements, as verified via monitoring. Therefore, under NESHAP CC, it is presumed that

complying with the flare requirements achieve at least a 98 percent reduction in emissions. Under Tier 2, a default combustion efficiency of 95 percent would be allowed if the reporter is required to or elects to comply with the monitoring specified in proposed 40 CFR 60.5417b(d)(1)(viii) of NSPS OOOOb. The standard in NSPS OOOOb is 95 percent, and it is presumed that this standard is met when the specified monitoring is conducted and the corresponding activity data limits are met. The default combustion efficiency under Tier 3, which would apply if neither Tier 1 nor Tier 2 requirements are met, would be 92 percent. This value is based on the low end of the range of empirical results observed in testing over an extensive area in three of the most active basins in the United States (U.S.) in Plant *et al.* Our assessment is that this would be a reasonable combustion efficiency for subpart W sources that are not monitoring as specified under Tier 1 or Tier 2 because the overall average in the empirical results likely included many facilities that would comply with those tiers and thus should be excluded from the calculation of the average for Tier 3 flares. We are proposing Tier 3 to provide a default combustion efficiency that would apply before the flare owner or operator has implemented the monitoring that would be required to comply with either the final NSPS OOOOb or an approved state plan or applicable Federal plan in 40 CFR part 62 and that would be consistent with CAA section 136(h).

We request comment on our proposed approach and values, including whether available data would support the selection of other default values for any of the tiers. In addition, we request comment on whether Tier 3 should be included in the final provisions and if so, whether the data support using a default combustion efficiency of 92 percent or another value. If commenters do not agree that Tier 3 is appropriate, we request that the commenters include what alternative approach should be specified for reporters to use for calculating the combustion efficiency that would be consistent with the requirements in CAA section 136(h) to accurately reflect total CH<sub>4</sub> emissions and to base reporting on empirical data. Under an approach where only Tier 1 and Tier 2 were included, we expect that some period of time would be needed for flares not subject to NSPS OOOOb to implement the requirements, potentially the same period of time until the facility is subject to an approved state plan or applicable Federal plan in

40 CFR part 62. We request comment on this possible time frame and what procedures and combustion efficiency should be implemented in the interim.

Second, for all flares, regardless of the tier discussed above, we are proposing to require at least continuous parameter monitoring to determine gas flow to the flare. Currently, under 40 CFR 98.233(n)(1), if a continuous flow measurement device is used on part or all of the gas routed to the flare, then the measured values must be used in the calculation of emissions from the flare. For the portion of gas not measured by a continuous flow measurement device, the reporter currently may estimate the flow using engineering calculations based on process knowledge, company records, and best available data. We are proposing a more defined empirical method for determining the gas flow to the flare, consistent with section II.B of this proposal. Specifically, the proposed revisions to 40 CFR 98.233(n)(1) specify that the flow rate determination must be based on direct measurement using a flow meter if one is present, or if a flow meter is not available, it must be based on indirect calculation of flow using continuous parameter monitoring, such as line pressure, burner nozzle dimensions, and appropriate engineering calculations. We are also proposing that the monitoring could be conducted on either the inlet gas to the flare or on each of the individual streams that are combined for routing to the flare.

Third, for all flares, regardless of the tier discussed previously in this section, we are proposing in 40 CFR 98.233(n)(2) to require either continuous monitoring (proposed 40 CFR 98.233(n)(2)(i)) or visual inspection at least once per month (proposed 40 CFR 98.233(n)(2)(ii)) for the presence of pilot flame or combustion flame. During periods when a continuous monitoring device is out of service, we are proposing that visual inspections be conducted at least once per week for the first four weeks of the outage or until a new or repaired continuous monitoring device is operational. If the outage is less than one week, then we are proposing that at least one visual inspection must be conducted during the time the continuous monitoring device is out of service. If an outage lasts more than four weeks, then we are proposing that the reporter may switch to conducting visual inspections at least once per month in accordance with proposed 40 CFR 98.233(n)(2)(ii). Data from these measurements or inspections, combined with continuous flow data as described previously in this section, would be used to determine the

<sup>91</sup> Plant, G., *et al.* 2022. “Inefficient and unlit natural gas flares both emit large quantities of methane.” *Science*, 377 (6614). <https://doi.org/10.1126/science.abq0385>. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

amount of gas routed to the flare when it was unlit. Currently, subpart W specifies that the fraction of gas sent to an unlit flare is to be determined by engineering estimate and process knowledge based on best available data and operating records (as provided in the definition of the variable  $Z_U$  for existing equations W-19 and W-20 of 40 CFR 98.233). Researchers conducting remote sensing testing of flares have identified higher percentages of unlit flares than the average fractions of gas routed to unlit flares reported under subpart W.<sup>92</sup> Although the percentage of flares that are unlit may not equal the fraction of gas routed to unlit flares, the difference suggests there is a potential for the reported fractions of gas routed to unlit flares to be underestimated. Therefore, we are proposing a more defined empirical method of determining the fraction of gas sent to the flare when it is unlit, consistent with section II.B of this proposal. The proposed requirement for continuous monitoring or periodic visual inspection of the pilot flame or combustion flame would provide flare-specific information on the specific times when the flare was unlit. The proposed continuous determination of the flow of gas to the flare, as described earlier in this section, would provide an accurate determination of the flow during the periods when the flare is unlit. Together, the information from both measurements would be used to calculate the total amount of gas routed to the flare when it is unlit. Dividing this amount by the total annual flow would give the fraction sent to the flare when it was unlit, which would be used in equations W-19 and W-20 to calculate the total annual CH<sub>4</sub> and CO<sub>2</sub> emissions, respectively, from the flare. If a flame is not present during a visual inspection, then the reporter must assume it was unlit since the previous inspection that confirmed the presence of a flame and that it remains unlit until the next inspection that confirms the presence of a flame. These assumptions are consistent with the existing requirements for estimating the time over which a leak occurs based on equipment leak inspections.

Fourth, we are proposing changes to the determination of gas composition to make the results more accurate, consistent with section II.B of this proposal. Currently, under 40 CFR 98.233(n)(2), if a reporter is using a

continuous gas composition analyzer on gas to the flare, then the measured data must be used in the calculation of emissions from the flare. However, if the reporter does not use a continuous gas composition analyzer, we have reassessed the current subpart W requirements that apply and think that they should be revised to improve clarity and thus better correspondingly result in calculated emissions that accurately reflect CH<sub>4</sub> emissions at the facility. Specifically, existing 40 CFR 98.233(n)(2) requires determination of “the appropriate gas compositions for each stream of hydrocarbons going to the flare . . .” However, 40 CFR 98.233(u)(2)(i) for onshore petroleum and natural gas production facilities and onshore petroleum and natural gas gathering and boosting facilities requires the reporter to use an annual average gas composition based on the most recent available analysis of the facility. Although not explicitly stated, one interpretation is that the “most recent available analysis” should be for each stream of hydrocarbons routed to the flare. Another interpretation of 40 CFR 98.233(u)(2)(i) is that the composition of produced gas may be used for all streams routed to the flare. This interpretation is based on the first sentence in existing 40 CFR 98.233(u)(2)(i) that states: “If you have a continuous gas composition analyzer for produced natural gas, you must use an annual average of these values for determining the mole fraction.” Given the ambiguity in the existing regulations, to date the EPA has not sent validation messages to have all facilities report using only one of the possible interpretations. Another concern with the current procedures for determining gas composition when not using a continuous gas composition analyzer is that there is no requirement to conduct additional sampling and analysis over time, and subpart W does not specify how compositions from multiple streams are to be weighted to generate the constituent mole fractions of the total combined stream into the flare that are to be used in equations W-19 and W-20. The current requirements for determining gas compositions for flared streams in other industry segments are clearer. However, one of the options for transmission compression, underground natural gas storage, LNG storage, LNG import/export facilities, and transmission pipeline industry segments is to use a default CH<sub>4</sub> composition of 95 percent, which may not accurately represent the composition of the gas flow routed to flares for some facilities. The proposed revisions to the flare

stacks methodology would delete the cross-reference to 40 CFR 98.233(u)(2) and specify the gas composition determination requirements within proposed 40 CFR 98.233(n)(3). The proposed options are to use a continuous gas composition analyzer or to take samples for compositional analysis at least once each quarter in which the flare operated. If a continuous gas analyzer is used, then the measured data would be required to be used to calculate flared emissions. Reporters would be allowed to determine the composition of either the inlet gas to the flare or on each of the streams that are routed to the flare. If periodic samples are collected, then the measured concentrations would be combined with flow data over the same time periods to calculate flow-weighted annual average concentrations.

Fifth, for clarity, we are proposing to add requirements in existing 40 CFR 98.233(n)(5) to specify how flow and composition data would be used to calculate total emissions depending on different scenarios a reporter could use to determine the flow and gas composition. Proposed 40 CFR 98.233(n)(5)(i) specifies that if both flow and gas composition are determined for the inlet gas to the flare, then the inlet gas data would be used in a single application of equations W-19 and W-20 to calculate the total emissions from the flare. If the flow and gas composition are determined for each of the streams that are routed to the flare, then one proposed option in proposed 40 CFR 98.233(n)(5)(iii) would require the reporter to use each set of stream-specific flow and annual average concentration data in equations W-19 and W-20 to calculate stream-specific flared emissions for each stream, and then sum the results from each stream-specific calculation to calculate the total emissions from the flare. Alternatively, in such circumstances proposed 40 CFR 98.233(n)(5)(iii) would also allow reporters to sum the flows from each source to calculate the total gas flow into the flare and use the source-specific flows and source-specific annual average concentrations to determine flow-weighted annual average concentrations of CO<sub>2</sub> and hydrocarbon constituents in the combined gas stream into the flare. The calculated total gas flow and the calculated flow-weighted annual average concentrations would then be used in a single application of both equation W-19 and W-20 to calculate the total emissions from the flare. If flow is determined for all of the individual source streams while gas composition is determined for the

<sup>92</sup> See, e.g., Plant, G., *et al.* 2022. “Inefficient and unlit natural gas flares both emit large quantities of methane.” *Science*, 377 (6614). <https://doi.org/10.1126/science.abq0385>. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

combined stream into the flare, then proposed 40 CFR 98.233(n)(5)(ii) would require the reporter to sum the individual source flows to calculate the total flow into the flare. This summed volume and the gas composition determined for the stream into the flare would be used in a single application of equations W-19 and W-20 to calculate the total emissions from the flare. Finally, in 40 CFR 98.233(n)(5)(iv) we are proposing that a reporter may not calculate flared emissions based on the determination of the total volume at the inlet to the flare and gas composition for each of the individual streams routed to the flare. The proposal would not allow this combination of volume and gas composition determinations because there is no way to calculate flow-weighted average compositions of either the inlet gas to the flare or the individual source streams.

Sixth, we are proposing to delete the option to use a default higher heating value (HHV) in the calculation of N<sub>2</sub>O emissions and instead require all reporters to use either a flare-specific HHV or individual flared gas stream-specific HHVs in the calculation. Currently, 40 CFR 98.233(n)(7) requires the use of equation W-40 to calculate N<sub>2</sub>O emissions from flares. This equation requires the flared gas volume, the HHV of the flared gas, and the use of a default emission factor. For field gas or process vent gas, the variable definition for the HHV provides that either a site-specific or default value may be used; for other gas streams, a site-specific HHV must be used. We are proposing in 40 CFR 98.233(n)(8) to require the use of a flare-specific HHV when composition of the inlet gas to the flare is measured or when flow-weighted concentrations of the inlet gas are calculated from measured flow and composition of each of the streams routed to the flare. Similarly, we are proposing that reporters would calculate N<sub>2</sub>O emissions using flared gas stream-specific HHVs when flow and composition are determined for each of the individual streams that are routed to the flare and emissions are calculated per stream and summed to calculate total emissions from the flare. We are proposing this change because we believe flare-specific values more accurately represent the HHV of variable flared gas composition and would result in more accurate calculation of N<sub>2</sub>O emissions. Our assessment is that the methods for calculating CO<sub>2</sub> and CH<sub>4</sub> in 40 CFR 98.233(n) already require the use of flare-specific concentrations for the hydrocarbon constituents in the flared gas streams; therefore, we expect

that a flare-specific HHV is known (or can be calculated using the compositional data) without incurring additional burden, while increasing the accuracy of the emissions estimate. We are also proposing to add a requirement in 40 CFR 98.236(n)(9) to report the HHV(s) used to calculate N<sub>2</sub>O emissions. This data element would improve verification of reported N<sub>2</sub>O emissions and minimize the amount of communication with reporters via e-GGRT. It also would be useful for characterizing the differences in flared gas streams among the various industry segments and basins, and it is expected to be useful in analyses such as updates to the U.S. GHG Inventory.

Seventh, we are proposing changes to the emission calculation requirements for flares that use CEMS in order to address requirements in CAA section 136(h) as described in section II.B of this preamble. Currently, if a reporter operates and maintains a CEMS to monitor emissions from a flare, existing 40 CFR 98.233(n)(8) requires the reporter to calculate only CO<sub>2</sub> emissions from the flare. This proposal would revise existing 40 CFR 98.233(n)(8) (proposed 40 CFR 98.233(n)(9)) to require reporters to comply with all of the other emission calculation procedures in proposed 40 CFR 98.233(n), with one exception. The exception is that since CO<sub>2</sub> emissions would be measured with the CEMS, calculation of CO<sub>2</sub> emissions using equation W-20 would not be required. We expect that these proposed amendments would address a potential gap in CH<sub>4</sub> emissions reporting and improve the overall quality and completeness of the emissions data collected by the GHGRP, consistent with section II.A of this preamble.

Eighth, we are proposing to replace the current source-specific methodologies for calculating flared emissions (e.g., existing 40 CFR 98.233(e)(6) for dehydrators or existing 40 CFR 98.233(g)(4) for completions) with a requirement (proposed 40 CFR 98.233(n)(10)) that the reporter use engineering calculations and best available data to disaggregate the calculated total emissions per flare to the source types that routed gas to the flare. One issue with the current source-specific flared emission calculation methodologies is that the equation inputs developed under these methodologies (e.g., flared volumes and compositions) often differ from the inputs used in the methodology to calculate the total emissions from the flare (as specified in existing 40 CFR 98.233(n)). As a result, when using the existing methodologies, the sum of the

flared emissions calculated for individual source types sometimes exceeds the total emissions calculated using the methodology for calculating total emissions from the flare. The proposed change would eliminate this issue because only the flare methodology would be used to calculate emissions from a flare, and only these values would be included in the published data set for the reporting year. Since estimates of the flared emissions from source types that route emissions to flares are still useful in other analyses (e.g., assessing impacts of emission control regulations on nationwide emission trends), the proposed methodology also would require reporters to estimate the portions of the total emissions from each flare that are attributable to each type of source that is currently subject to flared emissions reporting (e.g., completions, storage tanks, associated gas). The expected accuracy of the estimated quantities per source type may sometimes be lower than the expected accuracy of the total emissions from the flare since the source-specific estimates would be based on best available data, which may be of more variable quality. However, the expectation is that the sum of the estimated emissions over all source types will always equal the calculated (and reported) total emissions from the flare, and it is expected that the results will be of sufficient accuracy for their intended purpose.

This proposed change would also address a common misperception among reporters regarding the flare activity data that is to be reported under existing 40 CFR 98.236(n). Many reporters have provided information through the GHGRP Help Desk and in correspondence with the EPA via e-GGRT indicating that they believe the adjustment requirement in existing 40 CFR 98.233(n)(9) applies to all flare data, not just the mass emissions (as intended). Thus, some reporters provide activity data information for a flare only if some of the mass emissions from the flare are due to combustion of gas from source types that are not subject to source-specific flared emissions reporting (i.e., miscellaneous flared sources). Although these reporters generally correctly report the mass emissions from the flare that are due to the miscellaneous flared sources, they incorrectly limit their activity data reporting to those same streams. The EPA has procedures in its verification process to identify such errors; if errors are identified, the EPA notifies the reporter, who can resolve the issue by correcting the data and resubmitting

their annual GHG report. Some reporters have also indicated that they dislike reporting activity data for a flare in one table in the reporting form (*i.e.*, Table N.1) and reporting the emissions in a different table; they suggest that it would be clearer to report all flare activity data and emissions related to a particular emission source type together in one location.

We also expect that the total emissions per flare calculated using the proposed methodology described above would be more accurate than the emissions calculated using the current source-specific methodologies. While similar changes to the methods for determining flow rate and composition of the gas routed to the flare could be proposed for each of the source-specific methodologies, we have tentatively determined that the additional accuracy in the source-specific flared emissions relative to calculation of disaggregated total emissions based on best available data is not needed given the additional burden that would be imposed, as the total flared emissions are expected to be accurate; in other words, applying source-level methods for flares over the proposed method would not be expected to have an impact on the accuracy of the total emissions calculated. However, the proposed approach would still maintain calculation and reporting of flared emissions per source type because of that information's importance for use in assessing trends in control over time and in policy determinations under the CAA, and it would also be useful in U.S. GHG Inventory development.

Finally, we are proposing to remove existing 40 CFR 98.233(n)(9) for consistency with the other proposed provisions in this subsection, as the requirement to correct flare emissions to avoid double counting would no longer be necessary because the disaggregated emissions would not be a separate source type.

## 2. Reporting Requirements for Flared Emissions

The EPA is proposing several changes to the reporting requirements for flares. These changes are being proposed to align reporting in 40 CFR 98.236(n) with the proposed revisions to the calculation methods specified in proposed 40 CFR 98.233(n), consistent with section II.B of this preamble, and to improve the verification process, obtain a better understanding of the design and operation of flares in each of the industry segment to help future policy determinations, and clarify ambiguous provisions.

First, the EPA is proposing to replace the source-specific flared CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O emissions reporting requirements currently in 40 CFR 98.236(e), (g), (h), (j), (l), (m), and (n) with a requirement to report source-specific CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O emissions that have been disaggregated from the total flare emissions as described in section III.N.1 of this preamble. The disaggregated emissions per source type would be reported per flare under proposed 40 CFR 98.236(n)(19). We are proposing to remove the source-specific flared CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O emissions reporting requirements currently in 40 CFR 98.236(k), but for the reasons discussed in section III.L of this preamble, we are not proposing to include condensate storage tanks in this list of source types for which emissions would be disaggregated in proposed 40 CFR 98.236(n)(19). We are also proposing to include AGR vents in the list of source types for which emissions would be disaggregated in proposed 40 CFR 98.236(n)(19), even though emissions from flaring are not currently reported separately for that source, due to the proposed addition of reporting of CH<sub>4</sub> emissions from that source type, as discussed further in section III.F.1 of this preamble. In addition to aligning the reporting with the proposed calculation methodology, reporting the disaggregated emissions per flare rather than per facility, sub-basin, or county (under the current provisions of subpart W), and rather than per well-pad, gathering and boosting site, or facility (as is being proposed for vented emissions), would provide the EPA and other stakeholders with a better understanding of the impact of different emission source types on the performance of flares. We are proposing to retain some of the unit-specific activity data for source types that are flared as described throughout this preamble in the sections that describe amendments specific to those source types (*e.g.*, section III.F.2 of this preamble for AGR vents, sections III.K.6 and III.K.8 of this preamble for atmospheric storage tanks, section III.M.1 for associated gas flaring).

Second, the EPA is proposing to add a requirement for facilities in the Onshore Petroleum and Natural Gas Production industry segment, the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment, and the Onshore Natural Gas Processing industry segment to report an estimate of the fraction of the gas burned in the flare that is obtained from other facilities specifically for flaring as opposed to being generated in on-site

operations. A finding from the currently reported data is that a number of facilities in these industry segments report significant amounts of emissions from miscellaneous flared sources. It is not clear what sources are generating the large amount of gas that is routed to these flares. It is important to know what source types are generating the large amounts of flared gas because the same source type may not always be routing the gas to a flare. If the source type also is not currently subject to source-specific reporting of vented emissions, then a potentially large quantity of vented emissions might go unreported. It appears that one potential source of currently undefined sources of flared emissions is emissions from one facility that are routed to another facility specifically for flaring. To help the EPA understand what source types are generating the large amounts of flared gas, we are proposing in 40 CFR 98.236(n)(10) to require reporting by facilities in these three industry segments of an estimate of the fraction of the gas burned in the flare that is obtained from other facilities specifically for flaring as opposed to being generated in on-site operations. As an example, if an owner or operator has an onshore petroleum and natural gas production and an onshore petroleum and natural gas gathering and boosting facility in the same basin and routes associated gas from wells in the onshore petroleum and natural gas production facility to a flare that is defined as part of the onshore petroleum and natural gas gathering and boosting facility, then the flared emissions would be reported by the onshore petroleum and natural gas gathering and boosting facility as emissions from "other flare stacks" sources under the current rule (or from other flared sources under the proposed amendments). If the other gas streams routed to the flare are from sources at the onshore petroleum and natural gas gathering and boosting facility, then for this proposed reporting requirement, the onshore petroleum and natural gas gathering and boosting facility report would include an estimate of the fraction of the total gas burned in the flare that is associated gas from the onshore petroleum and natural gas production facility. We request comment on the types of sources (both onsite sources and offsite sources) that may be generating these large emissions and whether other reporting elements could be specified that would better achieve the EPA's objective of clearly characterizing the sources of flared emissions from facilities in the three industry segments identified above. For

example, we have considered adding a reporting element to identify for each flare the source type in the category of “other flared sources” under this proposal that routes the largest quantity of gas to the flare. We also request comment on whether there should be a minimum threshold for the amount of gas routed from a source in the “other flared sources” category before reporting the identity of the source type would be required and the basis for any such threshold.

Third, we are proposing adjustments to several of the existing reporting elements to align with proposed changes to the calculation methodology. For example, existing 40 CFR 98.236(n)(4) requires reporting of the total volume of gas routed to the flare. As described in section III.N.1 of this preamble, we are proposing to add an option for reporters to monitor volume of each stream routed to the flare. To align with this monitoring approach, we are proposing in 40 CFR 98.236(n)(11) to require reporting of the volumes for each of the individual streams if the reporter elects to monitor the flow rate of the individual streams rather than the total. Similarly, existing 40 CFR 98.236(n)(7) and (8) require reporting of the CH<sub>4</sub> and CO<sub>2</sub> in the feed gas to the flare. To align with the proposed option that would allow determination of gas composition at all of the source stream levels as an alternative to determination of the composition at the flare inlet, as discussed in section III.N.1 of this preamble, proposed 40 CFR 98.236(n)(14) and (15) also would require reporting of the annual CH<sub>4</sub> and CO<sub>2</sub> mole fractions for each of the individual streams routed to the flare if the reporter elects to monitor composition of those streams. Existing 40 CFR 98.236(n)(6) requires reporting of the flare combustion efficiency. To align with the proposed monitoring tiers, as discussed in section III.N.1 of this preamble, proposed 40 CFR 98.236(n)(13) would require reporting of the default combustion efficiency associated with applicable monitoring tier. In addition, if a reporter switches from one monitoring tier to another and calculates emissions for part of the year using the default combustion efficiency for one tier and calculates emissions for the rest of the year using the default combustion efficiency for a different tier, then proposed 40 CFR 98.236(n)(13) would require reporting of a flow-weighted average combustion efficiency for that flare. We are proposing that flow-weighted average combustion efficiencies be reported to one decimal place. These data also

would help with verification of the reported emissions.

Existing 40 CFR 98.236(n)(12) requires reporting of whether a CEMS was used to measure CO<sub>2</sub> emissions from the flare. We are proposing to keep this reporting requirement (in proposed 40 CFR 98.236(n)(20)), but to align with the proposed calculation procedures when using CEMS, as described in section III.N.1 of this preamble, we are also proposing to specify that the CO<sub>2</sub> mole fraction of the gas sent to the flare should not be reported when using CEMS because equation W-20 is not used to calculate CO<sub>2</sub> emissions when using a CEMS.

We are proposing changes to the continuous flow and gas composition measurement indicator data elements to require reporting of specific measurement methodologies that were used instead of the current “yes/no” indicators. Currently, existing 40 CFR 98.236(n)(2) requires reporting of whether the flare stack has a continuous flow measurement device and existing 40 CFR 98.236(n)(3) requires reporting of whether the flare stack has a continuous gas analyzer (these are yes/no indicators). The proposed 40 CFR 98.236(n)(7) would require reporters to indicate whether flow is determined using a continuous flow measurement device or whether they use a continuous parameter monitoring system with engineering calculations. Similarly, the proposed 40 CFR 98.236(n)(8) would require reporters to indicate whether gas composition is measured using a continuous gas analyzer or by taking periodic samples.

We are also proposing to add a reporting element in proposed 40 CFR 98.236(n)(13)(i) for facilities that report flares using a combustion efficiency of 95 percent to indicate whether the flare is subject to NSPS OOOOb or a State or Federal plan in part 62 implementing EG OOOOc or whether the reporter is electing to implement flare monitoring procedures that are specified in NSPS OOOOb or a State or Federal Plan in part 62 implementing EG OOOOc. This information would help the EPA verify the reported data.

Finally, one objective of the current flare reporting requirements is to obtain information on the total number of flares and their operating characteristics. We are proposing to require a few new flare-specific reporting elements to help us better understand the state of flaring in the industry and to improve data quality, such as an indication of the type of the flare (*e.g.*, open ground-level flare, enclosed ground-level flare, open elevated flare, or enclosed elevated

flare) in 40 CFR 98.236(n)(4) and the type of flare assist (*e.g.*, unassisted, air-assisted (with indication of single-, dual-, or variable-speed fan), steam-assisted, or pressure-assisted) in proposed 40 CFR 98.236(n)(5). These data would help the EPA assess the impact of design and operation on emissions and may be useful in analyses for potential future policy decisions related to flares under the CAA. To harmonize the proposed reporting requirements with the proposed requirement to either continuously monitor or periodically inspect for the presence of a pilot flame as discussed in section III.N.1 of this preamble, we are proposing in proposed 40 CFR 98.236(n)(6) that reporters indicate for each flare whether they continuously monitor for the presence of a pilot flame, conduct periodic visual inspections, or both. If periodic visual inspections are conducted, we are proposing to require reporting of the count of inspections conducted during the year and an indication of whether the flare has a continuous pilot or auto igniter. For a pilot flame that is monitored continuously, we are proposing to require reporting of the number of times the continuous monitoring device was out of service or otherwise inoperable for a period of more than one week.

### 3. Definition of Flare Stack Emissions

In response to a verification message in e-GGRT, one reporter noted that the existing definition of the term “flare stack emissions” in 40 CFR 98.238 does not include CO<sub>2</sub> that is in streams routed to the flare. The term is currently defined to mean “CO<sub>2</sub> and N<sub>2</sub>O from partial combustion of hydrocarbon gas sent to a flare plus CH<sub>4</sub> emissions resulting from the incomplete combustion of hydrocarbon gas in flares.” Based on this definition, the reporter concluded that CO<sub>2</sub> in streams routed to the flare are not to be reported as flare stack emissions. The current definition, which was added to the 2010 Final Rule after consideration of comments on the 2010 re-proposal, does not clearly convey the EPA’s intent that the CO<sub>2</sub> that enters a flare should be reported as flare stack emissions. This intent is evident from the fact that equation W-20 includes a term for the inlet gas volume times the CO<sub>2</sub> mole fraction in the inlet gas. Additionally, in a response to a comment on the 2010 re-proposal, the EPA clearly stated that the total quantity of CO<sub>2</sub>, including both combusted CO<sub>2</sub> (*i.e.*, CO<sub>2</sub> created in the flare) and uncombusted CO<sub>2</sub> (*i.e.*, CO<sub>2</sub> that entered and simply passed through the flare), is to be calculated. Another

issue with the current definition is that it implies N<sub>2</sub>O emissions only result from partial combustion of hydrocarbons in the gas routed to the flare. This is likely the primary mechanism for generating N<sub>2</sub>O emissions when combusting fuels that include nitrogen-containing compounds. However, natural gas and field gas have negligible amounts of fuel-bound nitrogen. For combustion of these fuels, it appears the N<sub>2</sub>O is generated primarily from converting thermal nitrogen oxides (NO<sub>x</sub>) under certain operating conditions in the flare. Consistent with section II.D of this preamble, in order to eliminate the unintended inconsistency between the definition and the intent that CO<sub>2</sub> in gas routed to the flare is to be reported as emissions from the flare, to clarify the requirement to calculate and report total CO<sub>2</sub> that leaves the flare, and to clarify the source of flared N<sub>2</sub>O emissions, we are proposing to revise the definition of the term “flare stack emissions” in 40 CFR 98.238 to mean CO<sub>2</sub> in gas routed to a flare, CO<sub>2</sub> from partial combustion of hydrocarbons in gas routed to a flare, CH<sub>4</sub> resulting from the incomplete combustion of hydrocarbons in gas routed to a flare, and N<sub>2</sub>O resulting from operation of a flare.

#### O. Compressors

Compressors are used across the petroleum and natural gas industry to raise the pressure of and convey natural gas or CO<sub>2</sub>. The two main types of compressors used in the industry are centrifugal compressors and reciprocating compressors. Subpart W currently requires Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting facilities to calculate compressor emissions using population emission factors per existing 40 CFR 98.233(o)(10) and (p)(10). Population emission factors are multiplied by the count of equipment, in this case compressors of a certain type, to calculate emissions. For the Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, Underground Natural Gas Storage, LNG Storage, and LNG Import and Export Equipment industry segments, subpart W requires facilities to annually measure the emissions from the compressor sources applicable to the mode the compressor is in at the time of the measurement; facilities also have the option to continuously measure emissions from a compressor source per existing 40 CFR 98.233(o)(2) through (5) and (p)(2) through (5). The annual measurements are called “as found” measurements because the compressors

are to be measured in the mode in which they are found when the measurements are made. The “as found” measurements are required for each centrifugal and reciprocating compressor at least annually, but only for those compressor emission sources that have measurement requirements for the mode in which they are found (*i.e.*, the defined “compressor mode-source combinations”), as described in the following paragraph. If a given compressor was not measured in not-operating-depressurized-mode during the “as found” measurements for three consecutive years, a measurement in not-operating-depressurized-mode is currently required to be taken during the next planned scheduled shutdown of the compressor, per existing 40 CFR 98.233(o)(1)(i)(C) and (p)(1)(i)(D).

Subpart W at 40 CFR 98.238 currently defines the following “compressor sources”: wet seal degassing vent (for centrifugal compressors only); rod packing emissions (for reciprocating compressors only); blowdown valve leakage through the blowdown vent (for both centrifugal and reciprocating compressors) and unit isolation valve leakage through the open blowdown vent without blind flanges (for both centrifugal and reciprocating compressors). Subpart W also currently defines the following “compressor modes”: operating-mode (for both centrifugal and reciprocating compressors), standby-pressurized-mode (for reciprocating compressors only<sup>93</sup>), and not-operating-depressurized-mode (for both centrifugal and reciprocating compressors). Some compressor sources may only release emissions during certain compressor modes. Therefore, subpart W uses the term “compressor mode-source combination” to refer to the specific compressor sources that must be measured based on the mode in which the compressor is found. For centrifugal compressors, subpart W currently requires measurement in the following compressor mode-source combinations: wet seal oil degassing vents in operating-mode, blowdown valve leakage through the blowdown vent in operating-mode, and unit isolation valve leakage through an open blowdown vent without blind flanges in not-operating-depressurized-mode. For reciprocating compressors, subpart W currently requires measurement in the following compressor mode-source combinations: rod packing emissions in

operating-mode, blowdown valve leakage through the blowdown vent in operating-mode, blowdown valve leakage through the blowdown vent in standby-pressurized-mode, and unit isolation valve leakage through an open blowdown vent without blind flanges in not-operating-depressurized-mode.

#### 1. Mode-Source Combination Measurement Requirements

The EPA is proposing several amendments related to the “as found” measurement requirements to improve the quality of data collected for compressors. First, standby-pressurized-mode was not included as a mode for centrifugal compressors in the existing subpart W definition of “compressor mode” and no compressor mode-source combinations were defined for centrifugal compressors in standby-pressurized-mode. While centrifugal compressors are seldom in the standby-pressurized-mode, there have been several occasions when reporters have indicated through the GHGRP Help Desk that a centrifugal compressor was in this mode during the “as found” measurement. Therefore, we are proposing to revise the definition of compressor mode in 40 CFR 98.238 to add standby-pressurized-mode to the defined modes for centrifugal compressors and require measurement of volumetric emissions from the wet seal oil degassing vent or dry seal vent, as applicable (see discussion in following paragraph) and the volumetric emissions from blowdown valve leakage through the blowdown vent when the compressor is found in this mode (proposed 40 CFR 98.233(o)(1)(i)(C)), consistent with section II.A of this preamble.

Second, dry seals on centrifugal compressors were not included in the existing subpart W definition of “compressor source” and no compressor mode-source combinations were defined for dry seals on centrifugal compressors. While emissions from wet seal oil degassing vents are expected to be larger than from dry seals when the dry seal compressor is well-maintained and operating normally, dry seals still contribute to centrifugal compressor emissions, especially if they are poorly maintained or there are unforeseen upset conditions. Additionally, the measurement crew will already be at the centrifugal compressor to make the “as found” measurement for blowdown valve leakage, so they can also measure the emissions from the dry seal while they are onsite. Therefore, to better characterize the emissions from dry seal centrifugal compressors, we are proposing to revise the definition of

<sup>93</sup> Currently, subpart W does not require measurements for centrifugal compressors in standby-pressurized-mode and therefore does not define this mode for centrifugal compressors.

compressor source in 40 CFR 98.238 to add dry seal vents to the defined compressor sources for centrifugal compressors and require measurement of volumetric emissions from the dry seal vents in both operating-mode and in standby-pressurized-mode (proposed 40 CFR 98.233(o)(2)(iii)), consistent with section II.B of this preamble. Proposed measurement methods for the dry seal vents are similar to those provided for reciprocating compressor rod packing emissions and would include the use of temporary or permanent flow meters, calibrated bags, and high volume samplers. We are proposing that screening methods may also be used to determine if a quantitative measurement is required. We are proposing to specify that acoustical screening or measurement methods would not be applicable to screening dry seal vents because emissions from dry seal vents are not a result of through-valve leakage. These proposed revisions include a proposed new reporting requirement in proposed 40 CFR 98.236(o)(1)(x) to report the number of dry seals on centrifugal compressors and the reporting of emission measurements made on the dry seals.

Third, we are proposing to revise 40 CFR 98.233(p)(1)(i) to require measurement of rod packing emissions for reciprocating compressors when found in the standby-pressurized-mode because recent studies indicate that rod packing emissions can occur while the compressor is in this mode.<sup>94</sup> The inclusion of this compressor mode-source combination would more accurately reflect compressor emissions, consistent with section II.A of this preamble. Furthermore, the measurement crew will already be at the compressor to make the “as found” measurement for blowdown valve leakage, so they can also measure the emissions from the dry seal while they are onsite, and several reporters already make these measurements.

Fourth, as noted in section III.O of this preamble, if a given compressor was not measured in not-operating-depressurized-mode during the “as found” measurements for three consecutive years, a measurement in not-operating-depressurized-mode is currently required to be taken during the next planned scheduled shutdown

of the compressor, per 40 CFR 98.233(o)(1)(i)(C) and (p)(1)(i)(D). This provision requires reporters to schedule an extra “as found” measurement if the compressor was not found in this mode when the regularly scheduled “as found” measurements were taken. We are proposing to eliminate this requirement to conduct a measurement in not-operating-depressurized-mode at least once every three years, consistent with section II.C of this preamble. We originally included this requirement in subpart W in order to obtain a sufficient amount of data for this mode (75 FR 74458, November 30, 2010). However, based on data collected under subpart W thus far, many compressors are in not-operating-depressurized-mode for 30 percent of the time or more, so facilities would be able to obtain sufficient number of measurements in not-operating-depressurized-mode to calculate an accurate mode-source specific emission factor without the additional requirement. As such, the extra measurements are unnecessary, and we are proposing to eliminate this requirement and make the annual “as found” measurements true “as found” measurements. We are also proposing to remove the reporting requirement to indicate if the compressor had a scheduled depressurized shutdown during the reporting year (existing 40 CFR 98.236(o)(1)(xiv) and 40 CFR 98.236(p)(1)(xiv)) because that information is only collected to verify compliance with the requirement to conduct a measurement in not-operating-depressurized-mode at least once every three years.

## 2. Measurement Methods

The EPA is proposing several amendments related to the measurement method requirements to improve the quality of data collected for compressors. First, we are proposing to revise the allowable methods for measuring wet seal oil degassing vents. Since the inception of subpart W, the only method provided in 40 CFR 98.233(o)(2)(ii) for measuring volumetric flow from wet seal oil degassing vents has been the use of a temporary or permanent flow meter. The limitation in methods allowed for wet seal oil degassing vents was due to the expectation that the volumetric flows may exceed the quantitative limits of these other methods. In reviewing the data reported for the wet seal oil degassing vent, we found that the measured flow rates using flow meters are often within the limits of other measurement methods allowed for other compressor sources. We also found that

many reporters have overlooked the restriction on the methods allowed for wet seal oil degassing vents and often reported using other measurement methods (e.g., high volume samplers). We have found that most of these measured flow rates appear to be within the capacity limits of a typical high volume sampler. In the small minority of cases in which flow rates would be outside of the capacity limit of the instrument, facilities can use an alternate method, consistent with the requirements for other compressor source measurements. Consequently, we concluded that the measurement methods allowed for wet seal oil degassing vents could be expanded to include the use of calibrated bags and high volume samplers. Therefore, we are proposing to revise 40 CFR 98.233(o)(2)(ii) to allow the use of calibrated bags and high volume samplers. However, we are not proposing to allow the use of screening methods because wet seal oil degassing vents are expected to always have some natural gas flow. Therefore, we are proposing to retain and clarify this unique limitation on the use of screening methods for wet seal oil degassing vent measurement methods. This proposed revision would provide improved clarity of the wet seal oil degassing provisions and allow an additional measurement method that was determined to be accurate for this source, consistent with section II.B of this preamble.

Second, we are proposing to remove acoustic leak detection from the screening and measurement methods allowed for manifolded groups of compressor sources. As noted in existing 40 CFR 98.234(a)(5), acoustic leak detection is applicable only for through-valve leakage. The acoustic method can be applied to individual compressor sources associated with through-valve leakage (i.e., blowdown valve leakage or isolation valve leakage), but it cannot be applied to a vent that contains a group of manifolded compressor sources downstream from the individual valves or other sources that may be manifolded together. The inclusion of this method for manifolded compressor sources was in error and we are proposing to remove it from 40 CFR 98.233(o)(4)(ii)(D) and (E) and 40 CFR 98.233(p)(4)(ii)(D) and (E) to improve accuracy of the measurements, consistent with section II.B of this preamble.

Third, we are proposing a number of clarifications to the references to the allowed measurement methods to correct errors and improve the clarity of the rule, consistent with section II.D of

<sup>94</sup> Subramanian, R. *et al.* “Methane Emissions from Natural Gas Compressor Stations in the Transmission and Storage Sector: Measurements and Comparisons with the EPA Greenhouse Gas Reporting Program Protocol.” *Environ. Sci. Technol.* 49, 3252–3261. 2015. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

this preamble. These proposed revisions include: revising 40 CFR 98.233(o)(1)(i)(A) and (B) to reference 40 CFR 98.233(o)(2)(i) instead of specific subparagraphs of that paragraph that may be construed to limit the methods allowed for blowdown or isolation valve leakage measurements; revising 40 CFR 98.233(p)(1)(i)(A), (B) and (C) (as proposed) to reference 40 CFR 98.233(p)(2)(i) instead of specific subparagraphs of that paragraph that may be construed to limit the methods allowed for blowdown or isolation valve leakage measurements; revising 40 CFR 98.233(p)(1)(i)(A) and (C) (as proposed) to reference “paragraph (p)(2)(ii) or (iii) of this section as applicable” instead of only “paragraph (p)(2)(ii)” to clarify that measurement of rod packing emissions without an open-ended vent line are to be made according to 40 CFR 98.233(p)(2)(iii); and revising 40 CFR 98.233(p)(2)(ii)(C) and (iii)(A) to clarify that acoustic leak detection is not an applicable screening method for rod packing emissions (not a through-valve leakage).

### 3. Onshore Petroleum and Natural Gas Production or Onshore Petroleum and Natural Gas Gathering and Boosting

As noted in section III.O of this preamble, subpart W requires onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities to calculate compressor emissions using population emission factors. As noted in the introduction to section II of this preamble, the EPA recently proposed NSPS OOOOb and EG OOOOc for certain oil and natural gas sources. The proposed standards in NSPS OOOOb and the proposed presumptive standards in EG OOOOc include emission limits for reciprocating compressors, centrifugal compressors with wet seals, and centrifugal compressors with dry seals that would apply when the compressor is in operating-mode or standby-pressurized-mode. The proposed standards would require owners or operators to conduct volumetric emissions measurements from each reciprocating compressor rod packing or centrifugal compressor wet or dry seal on or before 8,760 hours of operation from startup or from the previous measurement. Similar to the 2016 amendments to subpart W specific to equipment leak surveys (81 FR 4987, January 29, 2016), the EPA is proposing to revise the calculation methodology for compressors at onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities in subpart W so that data derived from centrifugal

compressor or reciprocating compressor monitoring conducted under NSPS OOOOb or the applicable approved state plan or applicable Federal plan in 40 CFR part 62 could be used to calculate emissions for subpart W reporting, consistent with section II.B of this preamble. For compressors at onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting facilities not subject to either NSPS OOOOb or an applicable approved state plan or applicable Federal plan in 40 CFR part 62, we are proposing that reporters would have the option to calculate emissions for subpart W reporting using the same provisions for “as found” measurements as other industry segments.

Because the proposed standards in NSPS OOOOb and the proposed presumptive standards in EG OOOOc are not the same as the requirements in subpart W, the EPA is proposing a few additional requirements under subpart W for compressors subject to the proposed standards in NSPS OOOOb or standards in an applicable approved state plan or applicable Federal plan codified in 40 CFR part 62. First, subpart W requires measurement of compressor sources that would not be required to be measured under the proposed standards in NSPS OOOOb and the proposed presumptive standards in EG OOOOc (e.g., blowdown valve leakage through the blowdown vent). The EPA is proposing that reporters conducting measurements of compressors under NSPS OOOOb or the applicable approved state plan or applicable Federal plan in 40 CFR part 62 would conduct measurements of any other compressor sources required to be measured by subpart W at the same time. Second, because the time between measurements under the proposed standards in NSPS OOOOb and the proposed presumptive standards in EG OOOOc may not result in measurements being taken every reporting year, the EPA is proposing to specify that reporters would use equation W-22 or equation W-27, as applicable, to calculate emissions from all mode-source combinations for any reporting year in which measurements are not required. Finally, while we are proposing to eliminate the requirement to conduct a measurement in not-operating-depressurized-mode at least once every 3 years for compressors in the industry segments for which reporters are currently required to conduct “as found” measurements (as described in section III.O.1 of this preamble), we note that the proposed

standards in NSPS OOOOb and the proposed presumptive standards in EG OOOOc would only require measurements to be taken in operating-mode or standby-pressurized-mode. If no compressor sources are measured in not-operating-depressurized-mode, reporters would not have data to develop reporter emission factors for that mode-source combination using equation W-23 and equation W-28. Therefore, we are proposing in 40 CFR 98.233(o)(10)(i)(B) and 40 CFR 98.233(p)(10)(i)(B) that reporters with compressors subject to NSPS OOOOb or the applicable approved state plan or applicable Federal plan in 40 CFR part 62 would be required to conduct additional measurements of compressors in not-operating-depressurized-mode such that they can develop an annual reporter emission factor for isolation valve leakage in not-operating-depressurized-mode. Based on an analysis of all reciprocating and centrifugal compressor measurements for the other industry segments since 2015, approximately one-third of all compressor measurements were performed in not-operating-depressurized mode. We propose to maintain that percentage for reciprocating and centrifugal compressor measurements in the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments. Therefore, we are proposing to require reporters to measure emissions in not-operating-depressurized mode from isolation valve leakage for at least one-third of the subject compressors during any 3 consecutive calendar year period. We are also proposing to require reporters to provide the total count of compressors measured in not-operating-depressurized-mode over the previous 3 calendar years, as well as the total number of compressors subject to NSPS OOOOb or the applicable approved state plan or applicable Federal plan in 40 CFR part 62. We request comment on other ways to collect sufficient measurements to calculate a reporter emission factor for isolation valve leakage in not-operating-depressurized-mode.

For facilities in the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments that do not conduct measurements, we are proposing to clarify the language at 40 CFR 98.233(o)(10) and (p)(10) for compressors at Onshore Petroleum and Natural Gas Production or Onshore

Petroleum and Natural Gas Gathering and Boosting facilities, consistent with section II.B of this preamble. The compressor emission factors for these industry segments are specific to uncontrolled wet seal oil degassing vents on centrifugal compressors and uncontrolled rod packing emissions for reciprocating compressors. The language in 40 CFR 98.233(o) and (p) clearly indicates that the provisions of 40 CFR 98.233(o)(10) and (p)(10) do not apply for controlled compressor sources. However, proposed revisions are necessary to provide clarity regarding the compressor sources for which emissions are required to be calculated under 40 CFR 98.233(o)(10) and (p)(10) and reported under 40 CFR 98.236(o)(5) and (p)(5). Specifically, we are proposing minor revisions to 40 CFR 98.233(o)(10) and the corresponding reporting requirements in 40 CFR 98.236(o)(5) to clarify that the compressor count used in equation W-25 should be the number of centrifugal compressors with atmospheric (*i.e.*, uncontrolled) wet seal oil degassing vents. Similarly, we are proposing minor revisions to 40 CFR 98.233(p)(10) and the corresponding reporting requirements in 40 CFR 98.236(p)(5) to clarify that the compressor count used in equation W-29D should be the number of reciprocating compressors with atmospheric (*i.e.*, uncontrolled) rod packing emissions. We are also proposing to add requirements to report the total number of centrifugal compressors at the facility and the number of centrifugal compressors that have wet seals to 40 CFR 98.236(o)(5) and proposing to add a requirement to report the total number of reciprocating compressors at the facility to 40 CFR 98.236(p)(5). These additional data would provide the EPA with an improved understanding of the total number of compressors and the number of compressors that are controlled (*i.e.*, routed to flares, combustion, or vapor recovery systems) in the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments, consistent with section II.C of this preamble.

In addition, consistent with section II.B of this preamble, we are proposing to amend the CH<sub>4</sub> and CO<sub>2</sub> population emission factors in equation W-29D for reciprocating compressors at onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities. The current population emission factors were adopted from the 1996 GRI/EPA study *Methane Emissions from the*

*Natural Gas Industry; Volume 8: Equipment Leaks*.<sup>95 96</sup> In the time since the promulgation of the current population emission factor, Zimmerle *et al.* (2019)<sup>97</sup> reported the results of a nationally representative field assessment of equipment leak rates from facilities in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment. As part of this proposed rulemaking, the EPA reviewed Zimmerle *et al.* (2019) to evaluate the potential for revisions to the population emission factor in equation W-29D. We found that Zimmerle *et al.* (2019) uses a larger and more representative sample of 412 rod packing vent measurements, compared to the 40 compressor measurements available in the 1996 GRI/EPA study. Therefore, we are proposing a population emission factor for CH<sub>4</sub> based on the average population emission rate measured by Zimmerle *et al.* (2019), with a proposed CO<sub>2</sub> population emission factor derived by applying the ratio of the current CO<sub>2</sub> emission factor to the current CH<sub>4</sub> emission factor to the CH<sub>4</sub> emission factor obtained from Zimmerle *et al.* (2019). For more information regarding our review of Zimmerle *et al.* (2019) and the derivation of the proposed emission factors, see the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234. We request comment on whether there are other studies or data sets that provide information that could be used to further refine the emission factors for both reciprocating and centrifugal compressors at onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities, particularly data sets that include measurements for all compressor sources (*i.e.*, rod packing and blowdown

<sup>95</sup> The development of the current emission factors for reciprocating compressors in the Onshore Petroleum and Natural Gas Production or Onshore Petroleum and Natural Gas Gathering and Boosting sectors are described in *Compressor Modes and Thresholds*, U.S. EPA, November 2010, (Docket Id. No. EPA-HQ-OAR-2009-0923-3580), also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>96</sup> Campbell, L., M. Campbell, M. Cowgill, D. Epperson, M. Hall, M. Harrison, K. Hummell, D. Myers, T. Shires, B. Stapper, C. Stapper, J. Wessels, AND H. Williamson. *Methane Emissions From the Natural Gas Industry—Volume 8. Equipment Leaks*. U.S. Environmental Protection Agency, Washington, DC, EPA/600/R-96/080h, also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>97</sup> Zimmerle, D., Bennett, K., Vaughn, T., Luck, B., Lauderdale, T., Keen, K., Harrison, M., Marchese, A., Williams, L., & Allen, D. (2019). Characterization of methane emissions from gathering compressor stations: final report. Mountain Scholar. <https://doi.org/10.25675/10217/194544>. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

isolation valves for reciprocating compressors and wet seals, dry seals, and blowdown isolation valves for centrifugal compressors).

#### 4. Compressors Routed to Controls

Centrifugal and reciprocating compressors are the only sources for which capture for fuel use and thermal oxidizers currently are specifically listed as dispositions for emissions that would otherwise be vented (see 40 CFR 98.233(o) and (p) introductory text). The EPA's intent with the provisions is to differentiate flares, which are combustion devices that combust waste gases without energy recovery (per 40 CFR 98.238), from combustion devices with energy recovery, including for fuel use. However, some thermal oxidizers combust waste gases without energy recovery and therefore may instead meet the subpart W definition of flare. Consistent with section II.D of this preamble, in order to emphasize that the EPA's intent is generally to treat emissions routed to flares and combustion devices other than flares consistently, we are proposing to remove the references to fuel use and to thermal oxidizers in 40 CFR 98.233(o) and (p) and 40 CFR 98.236(o) and (p). Instead, we are proposing to define "routed to combustion" in 40 CFR 98.238 to specify the types of non-flare combustion equipment for which reporters would be expected to calculate emissions. In particular, for the Onshore Petroleum and Natural Gas Production, Onshore Petroleum and Natural Gas Gathering and Boosting, and Natural Gas Distribution industry segments, "routed to combustion" would mean the combustion equipment specified in 40 CFR 98.232(c)(22), (i)(7), and (j)(12), respectively (*i.e.*, the combustion equipment for which emissions must be calculated per 40 CFR 98.233(z)). For all other industry segments, "routed to combustion" would mean the stationary combustion sources subject to subpart C. The proposed definition of "routed to combustion" would apply for all subpart W emission sources for which that term appears (*e.g.*, natural gas driven pneumatic pumps).

#### 5. Reporting of Compressor Activity Data

We are proposing to remove some data elements that are redundant between 40 CFR 98.236(o)(1) and (2) for centrifugal compressors and between 40 CFR 98.236(p)(1) and (2) for reciprocating compressors. Specifically, current 40 CFR 98.236(o)(1)(vi) and 40 CFR 98.236(p)(1)(viii) require reporters to indicate which individual compressors are part of a manifolded

group of compressor sources, and current 40 CFR 98.236(o)(1)(vii) through (ix) and 40 CFR 98.236(p)(1)(ix) through (xi) require reporters to indicate whether individual compressors have compressor sources routed to flares, vapor recovery, or combustion. However, current 40 CFR 98.236(o)(2)(ii)(A) and 40 CFR 98.236(p)(2)(ii)(A) require the same information for each compressor leak or vent rather than by compressor. The information collected for each leak or vent is more detailed and is the information used for emissions calculations. Therefore, the EPA is proposing to remove the redundant reporting requirements in existing 40 CFR 98.236(o)(1)(vi) through (ix) and existing 40 CFR 98.236(p)(1)(viii) through (xi), consistent with section II.B of this preamble.

#### P. Equipment Leak Surveys

Subpart W reporters are currently required to quantify emissions from equipment leaks using the calculation methods in 40 CFR 98.233(q) (equipment leak surveys) and/or 40 CFR 98.233(r) (equipment leaks by population count). The equipment leak survey method currently uses the count of leakers detected with one of the subpart W leak detection methods in 40 CFR 98.234(a), subpart W leaker emission factors, and operating time to estimate the emissions from equipment leaks. The current leaker emission factors applicable to onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities are found in existing Table W-1E of subpart W. These leaker emission factors are based on the EPA's *Protocol for Equipment Leak Emission Estimates* published in 1995 (Docket Id. No. EPA-HQ-OAR-2009-0927-0043), also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234. The leaker emission factors are provided for components in gas service, light crude service, and heavy crude service that are found to be leaking via several different screening methods. In addition to being component- and service-specific, subpart W currently provides two different sets of leaker emission factors: one based on leak rates for leaks identified by Method 21 (see 40 CFR part 60, appendix A-7) using a leak definition of 10,000 ppm and one based on leak rates for leaks identified by Method 21 using a leak definition of 500 ppm. Currently, the other leak screening methods provided in subpart W (OGI, infrared laser beam illuminated instrument, and acoustic leak detection device) use the leaker emission factors

based on Method 21 data with a leak definition of 10,000 ppm.

#### 1. Revisions and Addition of Default Leaker Emission Factors

In the 2022 Proposed Rule, we proposed to revise the leaker emission factors to provide separate leaker factors for leaks detected using OGI based on recent study data from Zimmerle *et al.* (2020) and Pacsi *et al.* (2019). For the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments, the emission factors were calculated directly from these study data. For downstream industry segments, separate OGI emission factors were estimated using an "OGI enhancement factor," which was estimated as the ratio between the OGI emission factors and the Method 21 emission factors for the upstream industry segments. In this proposed rulemaking and as described in more detail later in this section, we are maintaining our proposal to provide separate emission factors for leaks detected using OGI based on recent study data from Zimmerle *et al.* (2020) and Pacsi *et al.* (2019). In this proposed rulemaking, we are proposing an update to the emission factors provided for downstream segments based on an "OGI enhancement factor" value that has been updated since the June 2022 proposal. Additionally, in this rulemaking we are proposing to use the Zimmerle *et al.* (2020) and Pacsi *et al.* (2019) study data to provide Method 21 at leak definitions of 500 ppm and 10,000 ppm. We expect these updated emission factors to provide a more accurate estimation of emissions estimated with default leaker emission factors as they use more recent data and are from a dataset of a larger size than the current emission factors.

In the years that have followed the adoption of the leaker emission factors into subpart W, there have been numerous studies regarding emissions from equipment leaks that provide measurement data to update the existing emission factors for leaks detected using Method 21 at a leak definition of either 10,000 ppm or 500 ppm as well as to quantify leaker emission factors for OGI screening methods at onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities.<sup>98</sup> With respect to the

OGI screening method, these studies have found that OGI identifies fewer yet larger leaks than the EPA's Method 21. Specifically, the average leaker emission factor determined from OGI leak detection surveys is often a factor of two or more larger than leaker emission factors determined when using Method 21 leak detection surveys. Therefore, the application of the same leaker emission factor to leaking components detected with OGI and Method 21 with a leak definition of 10,000 ppm, as is currently done in subpart W, likely understates the emissions from leakers detected with OGI.

Based on our review of these studies, we are proposing to amend the leaker emission factors in existing Table W-1E (proposed Table W-2) for onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities to update the Method 21 emission factors as well as include separate emission factors for leakers detected with OGI, consistent with section II.B of this preamble. We are proposing to revise the emission factors using study data from Zimmerle *et al.* (2020) and Pacsi *et al.* (2019). The Zimmerle *et al.* (2020) study contains hundreds of quantified leaks detected using OGI. The Pacsi *et al.* (2019) study also contains hundreds of equipment leak measurements from sites that were screened using Method 21 with a leak definition of 10,000 ppm and 500 ppm as well as OGI. We are proposing the use of these studies as the basis for the proposed emission factors because they included recent measurements of subpart W-specified equipment leak components from both oil and gas production and gathering and boosting sites in geographically diverse locations.

As noted above, numerous studies have found that the average size of the leaks detected by OGI are larger than those detected by EPA's Method 21. Using the Pacsi *et al.* study data, we estimate that the leaks detected by OGI are 1.63 times larger than leaks detected by Method 21 at a leak definition of

natural gas production sites in the United States." *Proceedings of the National Academy of Sciences of the United States of America*, Vol. 110, no. 44, pp. 17768-17773, October 29, 2013, available at <http://dept.ceer.utexas.edu/methane/study>. Docket Item No. EPA-HQ-OAR-2014-0831-0006; Pacsi, A.P., *et al.* "Equipment leak detection and quantification at 67 oil and gas sites in the Western United States." *Elem Sci Anth*, 7: 29, available at <https://doi.org/10.1525/elementa.368>. 2019; Zimmerle, D., *et al.* "Methane Emissions from Gathering Compressor stations in the U.S." *Environmental Science & Technology* 2020, 54(12), 7552-7561, available at <https://doi.org/10.1021/acs.est.0c00516>. The documents are also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>98</sup> See, e.g., ERG (Eastern Research Group, Inc.) and Sage (Sage Environmental Consulting, LP). *City of Fort Worth Natural Gas Air Quality Study: Final Report*. July 13, 2011, available at <https://www.fortworthtexas.gov/departments/development-services/gaswells/air-quality-study/final>; Allen, D.T., *et al.* "Measurements of methane emissions at

10,000 ppm and 2.81 times larger than leaks detected by Method 21 at a leak definition of 500 ppm. As noted, the Pacsi *et al.* (2019) study provided data on leaks detected by Method 21 at a leak definition of 10,000 ppm and 500 ppm as well as OGI data, however, the sample size of leaks screened in the Pacsi *et al.* (2019) study with Method 21 is smaller than those screened with OGI, particularly when combining the OGI data from Pacsi *et al.* (2019) with the Zimmerle *et al.* (2020) data. The combined OGI dataset from Pacsi *et al.* (2019) and Zimmerle *et al.* (2020) contains more than 700 measurements from leaks detected with OGI. Emission factors using these data are derived for each combination of well site type (*e.g.*, gas or oil) and component type (*e.g.*, valve). The more than 700 measurements in the combined OGI dataset results in an average of 44 measurements for each combination of well site type (*e.g.*, gas or oil) and component type (*e.g.*, valve). In contrast, the Pacsi *et al.* study has nearly 300 measurements for leaks detected using Method 21 at a leak definition of 500 ppm and 140 measurements for leaks detected using Method 21 at a leak definition of 10,000 ppm, which results in averages of 21 measurements and 10 measurements for each combination of site type and component type, respectively.

For OGI, we are proposing leaker emission factors that were developed using the combined data from Pacsi *et al.* (2019) and Zimmerle *et al.* (2020) by site type (*i.e.*, gas or oil). Equipment leaks are inherently variable; therefore, sample size is important when seeking to derive representative equipment leak emission factors. Therefore, we are proposing to use the OGI data and the ratio between OGI and the Method 21 at a leak definition of 10,000 ppm and a leak definition of 500 ppm (*i.e.*, 1.63 and 2.81, respectively) to derive the proposed emission factors for Method 21 at both leak definitions. This approach uses the most robust set of data available (OGI) to derive the proposed emission factors. The precise derivation of the proposed emission factors is discussed in more detail in the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

At onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities, very few facilities use infrared laser beam illuminated instruments or acoustic leak detection devices to conduct equipment leak surveys and there are no data available to develop leaker emission factors specific to these

methods. Based on our understanding of these alternative methods, we expect that their leak detection thresholds would be most similar to OGI, so that the average emissions per leak identified by these alternative methods would be similar to the emissions estimated using the proposed OGI leaker factors. Therefore, we are proposing that, if these alternative methods are used to conduct leak surveys, the proposed OGI leaker emission factors in proposed Table W-2 would be used to quantify the emissions from the leaks identified using these other monitoring methods. We are seeking comment on the performance of infrared laser beam illuminated instruments and acoustic leak detection devices including data that may support a separate detection method specific emission factor or that supports the proposal that OGI emission factors appropriately estimate leakers detected with these methods.

As described in the introductory section III.P of this section of this preamble, currently, equipment leak emissions quantified with the leaker method are calculated using the count of leakers and a default emission factor from existing Table W-1E that is specific to the type of component (*e.g.*, valve) and the service (*i.e.*, gas or oil). For onshore petroleum and natural gas gathering and boosting facilities, subpart W currently specifies and would continue to specify that all components should be considered to be in gas service consistent with the language in 40 CFR 98.233(q)(2)(iv); thus, the gas service factors from proposed Table W-2 should be applied to the count of equipment leak components consistent with the leak detection method used.

For onshore petroleum and natural gas production facilities, we are proposing to amend 40 CFR 98.233(q)(2)(iii) to state that onshore petroleum and natural gas production facilities must use the appropriate default whole gas leaker emission factors consistent with the well type (rather than the component-level service type), where components associated with gas wells are considered to be in gas service and components associated with oil wells are considered to be in oil service as listed in proposed Table W-2 to this subpart. This proposed amendment is intended to ensure that the application of the proposed emission factor using the well site type rather than component-level service type is consistent with the derivation of the emission factor. The emission factors were derived based on study-reported well site type, accounting for the idea that a gas well site can have components in oil service and vice

versa, and thus would be required to be applied by well site type.

As described previously, our analysis of measurement study data from onshore production and gathering and boosting facilities demonstrates that the OGI screening method finds fewer and larger leaks than Method 21. Consequently, the leaker emission factors derived using measurement data from the OGI screening method are larger than those derived using the measurement data from Method 21 screening method. We expect that the leaker emission factors for other industry segments that are based on measurements of Method 21-identified leaks may similarly underestimate the emissions from leaking equipment when OGI (or other alternative methods besides Method 21) are used to detect the leaks. In this proposal, we are applying the addition of an “OGI enhancement factor” to the leaker emission factors for the other subpart W industry segments, resulting in new proposed emission factors, to ensure that facilities estimate the same equipment leak emissions if they either (1) identify leaks with Method 21 and apply the Method 21 derived emission factors or (2) identify leaks with OGI and apply the OGI enhancement factor adjusted emission factors. More specifically, we are proposing to apply the “OGI enhancement” factor identified from measurement study data in the onshore production and gathering and boosting industry segments, a value of 1.63, to the leaker emission factors for the other subpart W industry segments as a means to estimate and propose an OGI emission factor set. In other words, the “OGI enhancement factor” is based on the average OGI-identified leak being 1.63 times larger than the average Method 21-identified leak when using a leak definition of 10,000 ppm in the measurement study data. Analogous to the proposed changes in proposed Table W-2 for the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments, this results in the proposed addition of emission factor sets specific to OGI, infrared laser beam illuminated instrument, or acoustic leak detection device screening methods. The proposed emission factor sets are included in proposed Tables W-4 and W-6 for the Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, Underground Natural Gas Storage, LNG Storage, LNG Import and Export Equipment, and Natural Gas Distribution industry segments. A

detailed description of the proposed emission factors is provided in the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

The existing reporting requirements for the equipment leak emission source types that are quantified by leaker method include activity and emissions data (*i.e.*, count of leakers, annual average operating time, CO<sub>2</sub> emissions and CH<sub>4</sub> emissions) on a per component basis (*e.g.*, valve, connector), consistent with the component-level screening surveys and component-level default emission factors. In addition to continuing to collect the existing activity data, we are seeking comment on including a requirement to report the major equipment type (*e.g.*, wellhead, compressor, dehydrator) at which the component-level leak is found. The collection of the major equipment type associated with leakers could facilitate future development of major equipment-based leaker factors and/or be combined with the population of major equipment at facilities to facilitate future development of the major equipment population emission factors. Since the leak surveys are ground-level, the major equipment type is expected to be known and this additional requirement would appear to result in minimal increased burden. We are seeking comment on whether it is appropriate to require the reporting of the type of major equipment type in addition to the component type and specifically if there are concerns regarding burden or data collection that should be considered.

## 2. Addition of Undetected Leak Factor for Leaker Emission Estimation Methods

Subpart W currently provides various screening methods for detecting leaking components in 40 CFR 98.234(a). Each method includes a unique instrument and associated procedure by which leaks are detected. Variability inherently exists in each method's ability to detect leaks and can be attributed to reasons associated with the instrument, leak detection procedures, the operator or site conditions. For example, some components may be inaccessible to be surveyed with handheld devices that require close proximity to the leak to detect it (*e.g.*, Method 21 flame ionization detectors (FID)), while the same leak could be visualized using an OGI camera that is less dependent on proximity to the leak. Operators with varying levels of training or expertise deploy the screening devices, resulting in operator variability. Site-level conditions such as wind speed can also impact the detection of leaks. We have reviewed recent study data from Pacsi *et*

*al.* (2019) in which multiple leak detection methods, including OGI and Method 21, were deployed alongside one another at the same sites. This study demonstrates that there are undetected leaks for each method. Based on the Pacsi *et al.* (2019) study data, OGI observes 80 percent of emissions from measured leaks, Method 21 at a leak definition of 10,000 ppm observes 65 percent of emissions from measured leaks, and Method 21 at leak definition of 500 ppm observes 79 percent of emissions from measured leaks. In order to account for the quantity of emissions that remain undetected by each screening method, we are proposing to provide a method specific adjustment factor, *k*, for the calculation methods used to quantify emissions from equipment leaks using the leaker method in 40 CFR 98.233(q). The proposed addition of a method specific adjustment factor would be expected to improve the accuracy of emissions data, consistent with section II.B of this preamble. Further detail on the development of the adjustment factor for each of these screening methods is provided in the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

As noted in section III.P.2 of this preamble, very few onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities use infrared laser beam illuminated instruments or acoustic leak detection devices to conduct equipment leak surveys, so there are no data available to develop a method-specific adjustment factor, *k*, for these detection methods. Based on our understanding of these alternative methods, we expect that their leak detection thresholds would be most similar to OGI, so that the average emissions per leak identified by these alternative methods would be similar to the emissions estimated using OGI. Therefore, we are proposing that, if these alternative methods are used to conduct leak surveys, the proposed OGI adjustment factor, *k*, would be used in the calculation to quantify the emissions from the leaks identified using these other monitoring methods. We are seeking comment on the performance of infrared laser beam illuminated instruments and acoustic leak detection devices, including data that may support a separate detection method specific adjustment factor, *k*.

We are proposing the survey method-specific *k* value in equation W-30 of 40 CFR 98.233(q)(2) such that the factor would be applied to the emissions quantified using either the default or the

proposed site-specific emission factors, as discussed in section III.P.4 of this preamble, to estimate equipment leak emissions. We are also proposing the application of the *k* value to the emissions quantified using the proposed direct measurement method discussed in section III.P.3 of this preamble and in proposed 40 CFR 98.233(q)(3). The application of the *k* factor is intended to account for undetected emissions such that the reported emissions represent the actual site-level total, not limited to the fraction of detected leaks. We are seeking comment on the application of this factor to scale detected leak emissions. Specifically, we are seeking additional data that either support the application of this factor and the appropriate method-specific value for this factor or support why the proposed factor should not be applied to equipment leak emission estimates.

## 3. Addition of Method To Quantify Emissions Using Direct Measurement

As an alternative to the proposed revised default leaker emission factors, we are also proposing in 40 CFR 98.233(q)(1) to provide an option (provided in proposed 40 CFR 98.233(q)(3)) that would allow reporters to quantify emissions from equipment leak components in 40 CFR 98.233(q) by performing direct measurement of equipment leaks and calculating emissions using those measurement results, consistent with section II.B of this preamble. The proposed amendments would provide that facilities with components subject to 40 CFR 98.233(q) can elect to perform direct measurement of leaks using one of the existing subpart W measurement methods in 40 CFR 98.234(b) through (d), such as calibrated bagging or a high volume sampler. To use this proposed option, all leaks identified during a "complete leak detection survey" must be quantified; in other words, reporters could not use leaker emission factors for some leaks and quantify other leaks identified during the same leak detection survey. For the Onshore Petroleum and Natural Gas Production industry segment, proposed 40 CFR 98.233(q)(1) specifies that a complete leak detection survey would be the fugitive emissions monitoring of a well site using a method in 40 CFR 98.234(a) which is conducted to comply with NSPS OOOOa, NSPS OOOOb, or the applicable EPA-approved state plan or the applicable Federal plan in 40 CFR part 62 or, if the reporter elected to conduct the leak detection survey, a complete survey of all equipment on a single well-pad. For the Onshore Petroleum and Natural Gas Gathering

and Boosting industry segment, proposed 40 CFR 98.233(q)(1) specifies that a complete leak detection survey would be the fugitive emissions monitoring of a compressor station using a method in 40 CFR 98.234(a) which is conducted to comply with NSPS OOOOa, NSPS OOOOb, or the applicable EPA-approved state plan or the applicable Federal plan in 40 CFR part 62 or, if the reporter elected to conduct the leak detection survey, a complete survey of all equipment at a “gathering and boosting site” (and we are proposing to define this term in 40 CFR 98.238, as described in section III.D of this preamble). For downstream industry segments (e.g., Onshore Natural Gas Transmission Compression), a complete leak detection survey is facility-wide, and therefore, the election to perform direct measurement of leaks would also be facility-wide. In other words, this option would allow the use of measurement data directly when all leaks identified are quantitatively measured.

The proposed amendments rely specifically on quantitative measurement methods already provided in the rule. We are seeking comment on alternative methods for quantifying leaks for use for these equipment leak measurements (and for “as found” compressor measurements) along with supporting information and data. The supporting information should include description of the method, limitations on the applicability of the method, and calibration requirements. Supporting data should include accuracy assessments (e.g., controlled release assessments) relative to other quantitative measurement methods provided in the rule.

#### 4. Addition of a Method To Develop Site-Specific Component-Level Leaker Emission Factors

As noted in section III.P of this preamble, facilities are currently required to perform leak surveys to determine the number of leaking components. The results of these surveys (i.e., the count of leakers) are used with default emission factors to estimate the quantity of resulting emissions. As noted in the previous section, the EPA is proposing an additional option for facilities to conduct leak surveys and perform direct measurement to quantify the emissions from equipment leak components.

The EPA recognizes that while direct measurement is the most accurate method for determining equipment leak emissions, it may also be time consuming and costly. In consideration of both the advantages of and potential

burdens associated with direct measurement, the EPA is also proposing to provide facilities with a method to use direct measurement from leak surveys to develop component level emission factors based on site-specific leak measurement data. The site-specific emission factors would provide increased accuracy over the use of default emission factors, consistent with section II.B of this preamble, while lessening a portion of the burden of directly measuring every leak.

We are proposing that facilities that elect to follow the direct measurement provisions in proposed 40 CFR 98.233(q)(3)(i) must track the individual measurements of natural gas flow rate by specific component type (valve, connector, etcetera, as applicable for the industry segment) and leak detection method. We are proposing three different bins for the leak detection methods: Method 21 using a leak definition of 500 ppm as specified in 40 CFR 98.234(a)(2)(i); Method 21 using a leak definition of 10,000 ppm as specified in 40 CFR 98.234(a)(2)(ii); and OGI and other leak detection methods as specified in 40 CFR 98.234(a)(1), (3), or (5). We are proposing that reporters would have to compile at least 50 individual measurements of natural gas flow rate for a specific component type and leak detection method (e.g., gas service valves detected by OGI) before they can develop and use the site-specific emission factors for the component types at the facility. We are proposing that these flow rate measurements would be required to be converted to standard conditions following the procedures in 40 CFR 98.233(t). We are proposing that the volumetric measurements comprised of at least 50 measured leakers must then be summed and divided by the total number of leaks measurements for that component type and leak detection method combination. The resulting value would be an emission factor in units of standard cubic feet per hour-component (scf/hr-component). The site-specific emission factor is proposed to be used, when available, to calculate equipment leak emissions following the procedures in 40 CFR 98.233(q)(2). Because some equipment component types are more prevalent and more likely to reach 50 leak measurements than other components, application of the calculation methodology in 40 CFR 98.233(q)(2) may include a default leaker factors for some components and site-specific leaker factors for other components.

For example, a hypothetical onshore petroleum and natural gas production facility has 30 single well-pad sites, at

which during a reporting year they perform complete leak surveys of all components and direct measurements of all components found leaking at 20 of the single well-pad sites and they perform leak detection surveys only (i.e., no measurement) at the remaining 10 single well-pad sites. In this example, during the leak detection surveys at the 20 sites where measurements were also performed, the facility obtained sufficient measurements from valves (i.e., more than 50 measurements) to develop a site-specific emission factor in accordance with proposed 40 CFR 98.233(q)(4). They did not measure enough components, however, of any other type (e.g., connector, open-ended line, pressure relief valve) to develop site-specific emission factors for these components. For this example, under the proposed provisions the facility must use the methods in 40 CFR 98.233(q)(1) and (3) to quantify emissions for that reporting year. The facility would be required to quantify emissions from the 20 monitored and directly measured single well-pad sites in accordance with proposed 40 CFR 98.233(q)(3). Beginning in the reporting year the measurements were made, the facility must develop and apply the site-specific emission factor for valves to any valve found leaking which was not directly measured (i.e., valves at the 10 sites where only leak surveys and no measurements were performed) rather than applying the default emission factor. This facility would quantify emissions from the 10 single well sites where no measurement was performed using the count of components found leaking and the default leaker emission factors for all components in accordance with 40 CFR 98.233(q)(1) except valves, where the site-specific emission factor must be used. If in subsequent reporting years, the facility is required to perform additional surveys or elects to continue to survey and perform direct measurement, the facility will accumulate additional measurements which may be of a sufficient number to develop other component type site-specific emission factors. We also note that in accordance with proposed 40 CFR 98.233(q)(4), any additional measurements of a component for which a facility has developed a site-specific emissions factor (e.g., valves in the described example) would be required to be used to update the site-specific emission factor annually.

We are proposing to require the use of a minimum of 50 measurements to ensure a statistically representative dataset. We have found that equipment

leak measurements are highly variable and it is imperative to ensure a robust sample size. We have performed statistical analyses with measurements from compressors and determined that a minimum of 50 measurements is required to reduce uncertainty to factor of 3 of the true value.<sup>99</sup> We are seeking comment on the required number of measurements by component type and leak detection method, specifically on whether the number is or is not appropriate, whether a different number is appropriate, and the supporting rationale.

We are also proposing in 40 CFR 98.236(q) to require that the emissions be reported at the aggregation of calculated or measured values for the combination of component type and leak detection method. As discussed in more detail in section III.P.1 of this preamble, numerous studies have shown that different leak detection methods identify different populations of leaking components; therefore, consistent with the delineation of the default emission factors by leak detection method, site-specific emission factors are proposed to be delineated in the same way.

#### 5. Removal of Additional Method 21 Screening Survey for Other Screening Survey Methods

We are proposing to remove the additional Method 21 screening when a survey is conducted using a method other than Method 21. Currently, facilities using survey methods other than Method 21 to detect equipment leaks may then screen the equipment identified as leaking using Method 21 to determine if the leak measures greater than 10,000 parts per million by volume (ppmv) (see, e.g., 40 CFR 98.234(a)(1)). If the Method 21 screening of the leaking equipment is less than 10,000 ppmv, then reporters may consider that equipment as not leaking. In the 2016 subpart W revisions, we added a leak detection methodology at 40 CFR 98.234(a)(6) (proposed 40 CFR 98.234(a)(1)(ii) in this proposal) for using OGI in accordance with NSPS OOOOa, which does not include an option for additional Method 21 screening. As noted in response to comments on the subpart W proposal regarding the absence of this optional additional Method 21 screening when

using OGI in accordance with NSPS OOOOa, the additional screening of OGI-identified leaking equipment using Method 21 requires additional effort from reporters (81 FR 86500, November 30, 2016). Furthermore, as noted previously in this section, the average emissions of leakers identified by OGI are greater than leaks identified by Method 21. Directly applying the number of OGI-identified leaks to the subpart W leaker emission factor specific to that survey method would provide the most accurate estimate of emissions, while selectively screening OGI-identified leaks using Method 21 to reduce the number of reportable leakers would yield a low bias in the reported emissions. Additionally, this would be incongruous with the proposed application and supporting rationale of the proposed monitoring method-specific adjustment factor, k (where the k value for Method 21 with a leak definition of 10,000 ppm would need to be applied) if OGI-identified leaks could be considered non-leaks based on subsequent Method 21 monitoring. Therefore, we are proposing to require reporters to directly use the leak survey results for the monitoring method used to conduct the complete leak survey and are proposing to eliminate this additional Method 21 screening provision. These proposed amendments are expected to provide more accurate emissions data, consistent with section II.B of this preamble.

#### 6. Amendments Related to Oil and Natural Gas Standards and Emissions Guidelines in 40 CFR Part 60

As noted in the introduction to section II. of this preamble, the EPA recently proposed NSPS OOOOb and EG OOOOc for certain oil and natural gas new and existing affected sources, respectively. Under the proposed standards in NSPS OOOOb and the proposed presumptive standards in EG OOOOc, owners and operators would be required to implement a fugitive emissions monitoring and repair program for the collection of fugitive emissions components at well site, centralized production facility and compressor station affected sources. In addition, the proposed NSPS OOOOb and EG OOOOc include a proposed appendix K to 40 CFR part 60, specifying an OGI-based method for detecting leaks and fugitive emissions from all components that is not currently provided in subpart W. The EPA also proposed provisions in NSPS OOOOb and EG OOOOc for equipment leak detection and repair at onshore natural gas processing facilities. Similar to the 2016 amendments to subpart W

(81 FR 4987, January 29, 2016), the EPA is proposing to revise the calculation methodology for equipment leaks in subpart W so that data derived from equipment leak and fugitive emissions monitoring using one of the methods in 40 CFR 98.234(a) which is conducted under NSPS OOOOb or the applicable approved state plan or applicable Federal plan in 40 CFR part 62 would be used to calculate emissions, consistent with section II.B of this preamble.

First, under these proposed amendments, facilities with certain fugitive emissions components at a well site, centralized production facility or compressor station subject to NSPS OOOOb or an applicable approved state plan or applicable Federal plan in 40 CFR part 62 would use the data derived from the NSPS OOOOb or applicable 40 CFR part 62 fugitive emissions requirements along with the subpart W equipment leak survey calculation methodology and leaker emission factors to calculate and report their GHG emissions to the GHGRP. Specifically, the proposed amendments would expand the existing cross-reference to 40 CFR 60.5397a to also include the analogous requirements in NSPS OOOOb or 40 CFR part 62. Facilities with fugitive emissions components not subject to the standards in the proposed NSPS OOOOb or addressed by standards in a state or Federal plan following finalization of the proposed EG OOOOc would continue to be able to elect to calculate subpart W equipment leak emissions using the leak survey calculation methodology and leaker emission factors (as is currently provided in 40 CFR 98.233(q)). Therefore, reporters with other fugitive emission sources at subpart W facilities not covered by NSPS OOOOb or a state or Federal plan in 40 CFR part 62 (e.g., sources subject to other state regulations and sources participating in the Methane Challenge Program or other voluntarily implemented programs) would continue to have the opportunity to voluntarily use the proposed leak detection methods to calculate and report their GHG emissions to the GHGRP. To facilitate this proposed requirement, we are also proposing to clarify in proposed 40 CFR 98.233(q)(1)(vi)(B) and (C) that fugitive emissions monitoring conducted using one of the methods in 40 CFR 98.234(a) to comply with NSPS OOOOb or an applicable approved state plan or applicable Federal plan in 40 CFR part 62, respectively, is considered a “complete leak detection survey,” so that onshore petroleum and natural gas

<sup>99</sup> *Greenhouse Gas Reporting Rule: Technical Support for Leak Detection Methodology Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems Final Rule*. November 2016. Docket Item No. EPA-HQ-OAR-2015-0764-0066; also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

production and onshore petroleum and natural gas gathering and boosting facilities would be able to comply with the proposed requirement to use NSPS OOOOb or 40 CFR part 62 fugitive emission surveys directly for their subpart W reports. We are also proposing to move the specification that fugitive emissions monitoring conducted to comply with NSPS OOOOa is considered a “complete leak detection survey” from existing 40 CFR 98.233(q)(2)(i) to proposed 40 CFR 98.233(q)(1)(vi)(A) so that all the provisions regarding what constitutes a “complete leak detection survey” are together. In a corresponding amendment, we are also proposing to expand the current reporting requirement in existing 40 CFR 98.236(q)(1)(iii) (proposed 40 CFR 98.236(q)(1)(iv)) to require reporters to indicate if any of the surveys of well sites, centralized production facilities or compressor stations used in calculating emissions under 40 CFR 98.233(q) were conducted to comply with the fugitive emissions standards in NSPS OOOOb or an applicable approved state plan or applicable Federal plan in 40 CFR part 62.<sup>100</sup> We request comment on these proposed amendments and whether there are other provisions or reporting requirements relative to NSPS OOOOb or EG OOOOc that we should consider for revisions to requirements under subpart W.

Second, we are proposing to revise 40 CFR 98.234(a) to clarify and consolidate the requirements for OGI and Method 21 in 40 CFR 98.234(a)(1) and (2), respectively. In the 2016 amendments to subpart W (81 FR 4987, January 29, 2016), the EPA added 40 CFR 98.234(a)(6) and (7) to provide OGI and Method 21 as specified in NSPS OOOOa as leak detection survey methods. In part, structuring the amendment this way allowed the EPA to provide the NSPS OOOOa leak detection methods as allowable methods under subpart W without affecting the requirements for facilities and industry segments not subject to NSPS OOOOa. However, as the EPA continues to propose additional standards with slightly different variations on OGI and Method 21, it would be unnecessarily convoluted organizationally to continue to add

those methods and cross-references to each standard to the end of 40 CFR 98.234(a). Therefore, the EPA is proposing to move 40 CFR 98.234(a)(1) and 40 CFR 98.234(a)(6) to 40 CFR 98.234(a)(1)(i) and 40 CFR 98.234(a)(1)(ii), respectively, which would consolidate the OGI-based methods in 40 CFR 98.234(a)(1). Similarly, the EPA is proposing to revise 40 CFR 98.234(a)(2) such that 40 CFR 98.234(a)(2)(i) is Method 21 with a leak definition of 10,000 ppm and 40 CFR 98.234(a)(2)(ii) is Method 21 with a leak definition of 500 ppm. This proposed amendment would effectively move 40 CFR 98.234(a)(7) to 40 CFR 98.234(a)(2)(ii). We are also proposing that the references to “components listed in § 98.232” would be replaced with a more specific reference to 40 CFR 98.233(q)(1). The references to specific provisions in 40 CFR 60.5397a in 40 CFR 98.234(a)(6) and (7) would be moved to 40 CFR 98.234(a)(1)(ii) and 40 CFR 98.234(a)(2), as applicable.

In December 2022, the EPA proposed in NSPS OOOOb and EG OOOOc that owners and operators of natural gas processing facilities would detect leaks using an OGI-based monitoring method following the concurrently proposed appendix K to 40 CFR part 60. We are proposing to include that same method in subpart W at 40 CFR 98.234(a)(1)(iii) to ensure that reporters of those facilities would be able to comply with the proposed subpart W requirement to use data derived from the NSPS OOOOb or 40 CFR part 62 fugitive emissions requirements for purposes of calculating emissions from equipment leaks. In addition, as part of the December 2022 proposal of NSPS OOOOb and EG OOOOc, the EPA proposed an alternative screening approach for fugitive emissions from well sites, centralized production facilities and compressor stations that would allow the use of advanced measurement technologies to detect large equipment leaks. Under the NSPS OOOOb and EG OOOOc proposal, if emissions are detected using one of these advanced technologies, facilities would be required to conduct monitoring using OGI or Method 21 to identify and repair specific leaking equipment. Additionally, under the NSPS OOOOb and EG OOOOc proposal, even if no emissions are identified during a screening survey, some facilities using these advanced technologies would still be required to conduct annual fugitive emissions monitoring using OGI. The EPA’s intent in this proposed rule for subpart W is that the results of those NSPS OOOOb and 40 CFR part 62 OGI

or Method 21 surveys would be used for purposes of calculating emissions for subpart W, as OGI and Method 21 are capable of identifying leaks from individual components and they are leak detection methods provided in subpart W. The EPA also requests comment on additional methods or advanced technologies that can identify individual leaking components. Based on the information received, the EPA would need to review the specific method and leak detection data collected using that method to determine what default leaker emission factors would apply for that method and whether any adjustments might be needed to the subpart W equipment leak survey calculation methodology when using that method. Following that review, the EPA may undertake a future rulemaking process to include the additional leak detection method(s) in 40 CFR 98.234(a).

Third, we are proposing subpart W requirements for onshore natural gas processing facilities consistent with certain requirements for equipment leaks in the proposed NSPS OOOOb or EG OOOOc. Currently, onshore natural gas processing facilities must conduct at least one complete survey of all the components listed in 40 CFR 98.232(d)(7) each year, and each complete survey must be considered when calculating emissions according to 40 CFR 98.233(q)(2). Under the equipment leak detection and repair program included in proposed NSPS OOOOb and the EG OOOOc presumptive standards, different component types may be monitored on different frequencies, so all equipment at the facility is not always monitored at the same time. According to the current requirements in 40 CFR 98.233(q), surveys that do not include all of the applicable equipment at the facility are not considered complete surveys and are not used for purposes of calculating emissions. Therefore, we are proposing in 40 CFR 98.233(q)(1)(vi)(F) that onshore natural gas processing facilities subject to NSPS OOOOb or an applicable approved state plan or the applicable Federal plan in 40 CFR part 62 would use the data derived from each equipment leak survey conducted as required by NSPS OOOOb or the relevant subpart of 40 CFR part 62 along with the subpart W equipment leak survey calculation methodology and leaker emission factors to calculate and report GHG emissions to the GHGRP, even if a survey required for compliance with NSPS OOOOb or 40 CFR part 62 does

<sup>100</sup> We are similarly proposing to revise the existing reporting requirement in subpart W related to NSPS OOOOa, such that reporters would report whether any of the surveys of well sites or compressor stations used in calculating emissions under 40 CFR 98.233(q) were conducted to comply with the fugitive emissions standards in NSPS OOOOa (rather than simply reporting whether the facility has well sites or compressor stations subject to the fugitive emissions standards in NSPS OOOOa).

not include all the component types listed in 40 CFR 98.232(d)(7).

Under this proposed amendment, reporters would still have to meet the subpart W requirement to conduct at least one complete survey of all applicable equipment at the facility per year, so if there were components listed in 40 CFR 98.232(d)(7) not included in any NSPS OOOOb or 40 CFR part 62-required surveys conducted during the year (e.g., connectors that are monitored only once every 4 years), reporters subject to NSPS OOOOb or 40 CFR part 62 would need to either add those components to one of their required surveys, making that a complete survey for purposes of subpart W, or conduct a separate complete survey for purposes of subpart W. We expect that reporters with onshore natural gas processing plants implementing traditional leak detection and repair programs are already making similar decisions regarding how to meet the requirement to conduct a complete survey for subpart W, and our intention with this proposed amendment is not to change those decisions. Rather, this amendment would specify that surveys conducted pursuant to NSPS OOOOb or 40 CFR part 62 that do not include all component types listed in 40 CFR 98.232(d)(7) would be used for calculating emissions along with each complete survey.

We are also proposing to add leaker emission factors for all survey methods for “other” components that would be required to be monitored under NSPS OOOOb or an approved state plan or applicable Federal plan in 40 CFR part 62 or that reporters elect to survey that are not currently included in subpart W. These proposed THC leaker emission factors for the “other” component type are of the same value as the THC leaker emission factors for the “other” component type for the Onshore Natural Gas Transmission Compression and the Underground Natural Gas Storage industry segments (existing Table W-3A and Table W-4A, respectively, proposed Table W-4). For more information on the derivation of the original emission factors, see the 2010 subpart W TSD,<sup>101</sup> and for more information on the derivation of the “other” component type emission factor proposed to be applied to these types of leaks at facilities in the Onshore Natural Gas Processing industry segment, see the TSD for the 2016 amendments to

subpart W.<sup>102</sup> In a corresponding amendment, we are also proposing to expand the reporting requirement in existing 40 CFR 98.236(q)(1)(iii) (proposed 40 CFR 98.236(q)(1)(iv)) to require onshore natural gas processing reporters to indicate if any of the surveys used in calculating emissions under 40 CFR 98.233(q) were conducted to comply with the equipment leak standards in NSPS OOOOb or an applicable approved state plan or the applicable Federal plan in 40 CFR part 62. We request comment on the proposed amendments to subpart W for onshore natural gas processing facilities subject to the equipment leak provisions of NSPS OOOOb or 40 CFR part 62, as well as whether there are other provisions or reporting requirements for these facilities that we should consider.

Finally, in our review of subpart W equipment leak requirements for onshore natural gas processing facilities, we found that the leak definition for the Method 21-based requirements for processing plants in NSPS OOOOb (as well as proposed NSPS OOOOb and EG OOOOc presumptive standards) is not consistent with the leak definition in the Method 21 option in current 40 CFR 98.234(a)(2), which is the only Method 21-based method available to onshore natural gas processing facilities under subpart W. Based on this review, and to complement the proposed addition of default leaker emission factors for survey methods other than Method 21 (as described previously in this preamble), we are proposing several additions to the equipment leak survey requirements for the Onshore Natural Gas Processing industry segment, beyond those amendments already described related to the proposed NSPS OOOOb and EG OOOOc presumptive standards. First, we are proposing default leaker emission factors for Method 21 at a leak definition of 500 ppm in proposed Table W-4. As with the proposed “other” component type leaker emission factors, these proposed leaker emission factors (i.e., valve, connector, open-ended line, pressure relief valve and meter) are of the same value as the THC leaker emission factors for the Onshore Natural Gas Transmission Compression and the Underground Natural Gas Storage industry segments (existing Table W-3A and Table W-4A, respectively). For more information on the derivation of

those emission factors, see the TSD for the 2016 amendments to subpart W.<sup>103</sup> In addition, we are proposing to add 40 CFR 98.233(q)(1)(v) to indicate that onshore natural gas processing facilities not subject to NSPS OOOOb or an approved state plan or the applicable Federal plan in 40 CFR part 62 may use any method specified in 40 CFR 98.234(a), including Method 21 with a leak definition of 500 ppm and OGI following the provisions of appendix K to 40 CFR part 60. This proposed amendment would ensure that equipment leak surveys conducted using any of the approved methods in subpart W would be available for purposes of calculating emissions, not just those surveys conducted using one of the methods currently provided in 40 CFR 98.234(a)(1) through (5).

#### 7. Exemption for Components in Vacuum Service

Through correspondence with the EPA via e-GGRT, some reporters have stated that certain equipment leak components at their facility are in vacuum service. These reporters indicated that there are no fugitive emissions expected from components in vacuum service. After consideration of these comments and in order to be consistent with other EPA equipment leak regulatory programs (e.g., 40 CFR part 60, subpart VVa), we have determined that we agree with commenters. Therefore, we are proposing an exemption in the introductory paragraphs of 40 CFR 98.233(q) and (r) for leak components in vacuum service from the requirement to estimate and report emissions from these components. We are also proposing a definition in 40 CFR 98.238 for the term “in vacuum service.” We are proposing to require the reporting of the count of equipment in vacuum service to enable verification of the reported data (i.e., ability to confirm that all equipment for which emissions are expected has been accounted for and an indication that other equipment has been confirmed to meet the proposed definition of “in vacuum service”).

#### Q. Equipment Leaks by Population Count

As noted in section III.P of this preamble, subpart W reporters are currently required to quantify emissions from equipment leaks using the

<sup>101</sup> *Greenhouse Gas Emissions Reporting from the Petroleum and Natural Gas Systems Industry: Background Technical Support*, November 2010. Docket Id. No. EPA-HQ-OAR-2009-0923-3610; also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>102</sup> *Greenhouse Gas Reporting Rule: Technical Support for Leak Detection Methodology Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems*, November 1, 2016. Docket Id. No. EPA-HQ-OAR-2015-0764-0066; also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>103</sup> *Greenhouse Gas Reporting Rule: Technical Support for Leak Detection Methodology Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems*, November 1, 2016. Docket Id. No. EPA-HQ-OAR-2015-0764-0066; also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

calculation methods in 40 CFR 98.233(q) (equipment leak surveys) and/or 40 CFR 98.233(r) (equipment leaks by population count), depending upon the industry segment. The equipment leaks by population count method uses the count of equipment components, subpart W emission factors (e.g., existing Table W-1A for the Onshore Petroleum and Natural Gas Production industry segment), and operating time to estimate emissions from equipment leaks. For the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments, the count of equipment components currently may be determined by counting each component individually for each facility (Component Count Method 2) or the count of equipment components may be estimated using the count of major equipment and subpart W default average component counts for major equipment (Component Count Method 1) in existing Tables W-1B and W-1C, as applicable. Reporters in other industry segments currently must count each applicable component at the facility. We are proposing several amendments to the calculation methodology provisions of 40 CFR 98.233(r) and the reporting requirements in 40 CFR 98.236(r) to improve the quality of the data collected, consistent with sections II.B and II.C of this preamble.

1. Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting Population Count Method

The current population emission factors for the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments are found in existing Table W-1A of subpart W. The gas service population emission factors are based on the 1996 GRI/EPA study *Methane Emissions from the Natural Gas Industry, Volume 8: Equipment Leaks* (available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234). The oil service population emission factors are based on the American Petroleum Institute's (API) Emission Factors for Oil and Gas Production Operations, Publication 4615, published in 1995.

As noted previously in this section, when estimating emissions using the population count method, onshore petroleum and natural gas production facilities and onshore petroleum and natural gas gathering and boosting facilities currently have the option to use actual component counts (i.e., Component Count Method 2) or to

estimate their component counts using the count of major equipment (e.g., wellhead) and default component counts per major equipment (e.g., valves per wellhead) included in existing Tables W-1B and W-1C of subpart W (i.e., Component Count Method 1). In reviewing subpart W data, we find that the vast majority (greater than 95 percent) of onshore production and natural gas gathering and boosting facilities use Component Count Method 1 to estimate the count of components.

It is important to note that both the population count emission factors and the default component counts per major equipment currently included in Tables W-1A, W-1B and W-1C are service-specific (i.e., gas or oil) as well as region-specific (i.e., eastern or western U.S.). The regional designations are provided by U.S. state in existing Table W-1D of subpart W such that a facility would determine the facility's region and select the appropriate region- and service-specific factors.

In the years that have followed the adoption of these emission factors into subpart W, there have been numerous studies regarding emissions from equipment leaks at onshore production and gathering and boosting facilities. Two recent field studies, Pacsi *et al.* (2019)<sup>104</sup> and Zimmerle *et al.* (2020),<sup>105</sup> have performed an equipment and component inventory alongside equipment leak screening and measurement results. Another recent study, Rutherford *et al.* (2021),<sup>106</sup> included synthesis and analysis of measurements from component-level field studies. These studies' data allow development of study-estimated population emission factors as well as study-estimated default component counts per major equipment and comparison of them to those in subpart W. Comparison of the study-estimated default component counts per major equipment found that the subpart W values underestimate the count of

components found on major equipment in the field (Zimmerle *et al.*, 2020; Pacsi *et al.*, 2019). Regarding a comparison of the population emission factors and component counts per major equipment between the subpart W eastern and western values, Zimmerle *et al.* (2020) was the only field study to include both eastern and western facilities, and the study values showed "no statistically significant differences between eastern and western U.S. regions." Rutherford *et al.* (2021) also found their study-estimated population emission factors to be higher than those in subpart W, noting that one of the contributing factors to this difference was the use of the eastern factors in subpart W, which appear to significantly undercount emissions. Rutherford *et al.* (2021) noted that the impact of the use of the eastern factors has grown over time as the production in the eastern region of the U.S. has increased from less than 5 percent of gas produced to nearly 30 percent of the gas produced.

In the 2022 Proposed Rule, we proposed to revise the current population emission factors to use major equipment-based emission factors developed using a combination of data from Zimmerle *et al.*, 2020 and Pacsi *et al.*, 2019. As described in more detail below, consistent with the 2022 Proposed Rule, we are again proposing revised emission factors on a per major equipment basis rather than on a per component basis. However, in this proposed rulemaking, we are proposing to use the data from Rutherford *et al.* (2021), which is comprised of several published studies including Pacsi *et al.* 2019, to inform the emission factor values. As described in more detail below, the Rutherford *et al.* (2021) study represents the largest dataset set available and thus, more accurately accounts for the variability observed in equipment leak measurement data in terms of the size and frequency of leaks.

Based on our review of these studies, our assessment is that they support revision of the population count method and corresponding emission factors for onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities and we are proposing to amend this population count method and corresponding emission factors after consideration of these more recent study data, consistent with section II.B of this preamble. These proposed amendments include new population emission factors that are on a per major equipment basis rather than a per component basis. As mentioned previously, the vast majority of reporters estimate the component counts using

<sup>104</sup> Pacsi, A.P. *et al.* Equipment leak detection and quantification at 67 oil and gas sites in the Western United States. *Elementa* (2019). <https://doi.org/10.1525/elementa.368>. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>105</sup> Zimmerle, D., *et al.* *Methane Emissions from Gathering Compressor Stations in the U.S.* *Environmental Science & Technology* 54 (12), 7552-7561 (2020). <https://doi.org/10.1021/acs.est.0c00516>. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>106</sup> Rutherford, J.S., Sherwin, E.D., Ravikumar, A.P. *et al.* *Closing the methane gap in US oil and natural gas production inventories.* *Nat Commun* 12, 4715 (2021). <https://doi.org/10.1038/s41467-021-25017-4>. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

Component Count Method 1. By providing emission factors on a major equipment basis instead of by component, we would eliminate the step to estimate the number of components. All facilities would be able to count the actual number of major equipment and consistently apply the same emission factor to calculate emissions. This would reduce reporter burden and reduce the number of errors in the calculation of emissions, as we find that numerous facilities incorrectly estimate the number of components using Component Count Method 1 while providing consistently estimated emission results.

In comparing the recent study data for this proposal, our assessment is that the Rutherford *et al.* (2021) study represents the most robust sample size of approximately 3,700 measurements for developing population emission factors by major equipment. The larger sample size is likely more representative of varying degrees of leak detection and repair programs (*i.e.*, not only facilities conducting frequent surveys), which can impact the number of leaks found during surveys (*i.e.*, if more frequent surveys are being conducted and leaks are being repaired in a timely manner, then each survey likely finds less leaks). The Rutherford *et al.* (2021) study also employs a bootstrap resampling statistical approach<sup>107</sup> that allows for the inclusion of infrequent large emitters (*i.e.*, “super-emitters”) in the development of the emission factors, improving the representation of the inherent variability of equipment leaks in the developed emission factors. Therefore, we are proposing major equipment emission factors developed using Rutherford *et al.* (2021) to provide population emission factors by major equipment and site type (*i.e.*, natural gas system or petroleum system). The proposed emission factors were taken from Supplementary Tables 3 and 4 of Rutherford *et al.* (2021). The average emission factors presented in these study tables were converted from units of kilograms per day to standard cubic feet of whole gas per hour for cumulative equipment component leaks from different types of major equipment including wellheads, separator, heater, meter including headers, compressor, dehydrator and tanks. The major equipment indicating venting emissions (*e.g.*, tanks—unintentional vents) or emissions from other sources also covered by subpart W (*e.g.*, liquids unloading, flaring, pumps) are not

included in the proposed equipment leak population emission factors. Specific to meters/piping and consistent with current requirements related to meters/piping at existing 40 CFR 98.233(r)(2)(i)(A), we are proposing in 40 CFR 98.233(r)(2) to specify that one meters/piping equipment should be included per well-pad for onshore petroleum and natural gas production operations and the count of meters in the facility should be used for this equipment category at onshore petroleum and natural gas gathering and boosting facilities. As a consequence of the broader scope of equipment surveyed in the study data that inform Rutherford *et al.* (2021), the proposed emission factors in proposed Table W–1 include more pieces of major equipment than are currently included in Table W–1B and W–1C of subpart W. A complete description of the derivation of the proposed emission factors is discussed in more detail in the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234. The proposed major equipment emission factors would replace the current component-based emission factors in the existing Table W–1A. We are also proposing to remove Tables W–1B, W–1C, and W–1D since they would no longer be needed for the population count method for these industry segments. We are proposing amendments to the reporting requirements for the use of the population count method to align with the reporting of major equipment counts consistent with the proposed emission factors in 40 CFR 98.236(r). We are seeking comment on the development of population count emission factors based on major equipment. We are also seeking comment on the proposed use of the Rutherford *et al.* (2021) study data instead of using study data from Zimmerle *et al.* (2020) and/or Pacsi *et al.* (2019) to provide the population count emission factors by major equipment, and the rationale supporting the use of the respective study data.

## 2. Natural Gas Distribution Emission Factors

Natural gas distribution companies currently quantify the emissions from equipment leaks from pipeline mains and services, below grade transmission distribution transfer stations, and below grade metering-regulating stations following the procedures in 40 CFR 98.233(r). This method uses the count of equipment, subpart W population emission factors in existing Table W–7 (proposed Table W–5 in this proposal), and operating time to estimate emissions. The population emission

factors for distribution mains and services in existing Table W–7 (proposed Table W–5) are based on information from the 1996 GRI/EPA study.<sup>108</sup> Specifically for plastic mains, additional data are sourced from a 2005 ICF analysis.<sup>109</sup> The population emission factors for distribution mains are published per mile of main by pipeline material and emission factors for distribution services are published per service by pipeline material. The population emission factors for below grade stations in existing Table W–7 (proposed Table W–5) are based on information from the 1996 GRI/EPA study.<sup>110</sup> The population emission factors for below grade transmission-distribution transfer stations and below grade metering-regulating stations are currently specified in the existing Table W–7 per station by three inlet pressure categories ( $\leq 300$  pounds per square inch gauge (psig), 100–300 psig, < 100 psig).

In this rulemaking, the EPA is proposing to update the population emission factors in existing Table W–7 (proposed Table W–5) to subpart W using the results of studies and information that were not available when the rule was finalized in 2010. Notably, the EPA reviewed recent studies and updated the emission factors for several natural gas distribution sources, including pipeline mains and services and below grade stations, for the 2016 U.S. GHG Inventory.<sup>111</sup> The majority of the U.S. GHG Inventory updates were based on

<sup>108</sup> GRI/EPA. *Methane Emissions from the Natural Gas Industry, Volume 9: Underground Pipelines*. Prepared for Gas Research Institute and U.S. Environmental Protection Agency National Risk Management Research Laboratory by L.M. Campbell, M.V. Campbell, and D.L. Epperson, Radian International LLC. GRI–94/0257.2b, EPA–600/R–96–080i. June 1996. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>109</sup> ICF. *Fugitive Emissions from Plastic Pipe*. Memorandum from H. Mallya and Z. Schaffer, ICF Consulting to L. Hanle and E. Scheehle, EPA. June 30, 2005. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>110</sup> GRI/EPA. *Methane Emissions from the Natural Gas Industry, Volume 10: Metering and Pressure Regulating Stations in Natural Gas Transmission and Distribution*. Prepared for Gas Research Institute and U.S. Environmental Protection Agency National Risk Management Research Laboratory by L.M. Campbell and B.E. Stapper, Radian International LLC. GRI–94/0257.27, EPA–600/R–96–080j. June 1996. Available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>111</sup> U.S. EPA. *Inventory of U.S. Greenhouse Gas Emissions and Sinks 1990–2014: Revisions to Natural Gas Distribution Emissions*. April 2016. Available at [https://www.epa.gov/sites/production/files/2016-08/documents/final\\_revision\\_ng\\_distribution\\_emissions\\_2016-04-14.pdf](https://www.epa.gov/sites/production/files/2016-08/documents/final_revision_ng_distribution_emissions_2016-04-14.pdf) and in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>107</sup> Bootstrapping is a type of resampling where a known dataset is repeatedly drawn from, with replacement, to generate a sample distribution.

data published by Lamb *et al.* in 2015.<sup>112</sup> Since the time that the 2016 U.S. GHG Inventory updates were made, additional studies for pipeline distribution mains have been published and reviewed by the EPA, notably Weller *et al.* in 2020.<sup>113</sup> Our assessment of the studies published since subpart W was finalized supports revising the emission factors for pipelines in the Natural Gas Distribution industry segment of subpart W.

The population emission factors for distribution mains and services are a function of the average measured leak rate (in standard cubic feet per hour) and the frequency of annual leaks observed (leaks/mile-year or leaks/service-year) by pipeline material (*e.g.*, protected steel, plastic). The Lamb *et al.* and Weller *et al.* studies utilized different approaches for quantifying leak rates and determining the pipeline material-specific frequency of annual leaks. The Lamb *et al.* study quantified leaks from distribution mains and services using a high volume sampling method and some downwind tracer measurements and estimated the frequency of leaks by pipeline material using company records and Department of Transportation (DOT) repaired leak records from six local distribution companies (LDCs). This methodology was consistent with the 1996 GRI/EPA study. The Weller *et al.* study quantified leaks from only distribution mains using the AMLD technique, which involves mobile surveying using high sensitivity instruments and algorithms that predict the leak location and size, attributed leaks to the pipeline material using geographic information system (GIS) data, and estimated the frequency of leaks using modeling.

In the 2022 Proposed Rule, we proposed to revise the pipeline main equipment leak emission factors using a combination of data from Lamb *et al.* (2015) and Weller *et al.* (2020). We sought comment on the approach of combining data from these two studies. We received numerous comments regarding the classification of pipeline materials and respective quantified leaks in the Weller *et al.* (2020) study. In response to these comments and as

discussed in more detail below, we agree with commenters that the categorization of pipeline leaks by material type likely resulted in inaccuracies specifically for the unprotected and protected steel pipeline material types. In this rulemaking, we are continuing to propose revisions of the equipment leak pipeline main emission factors using more recent study data, but instead of combining data from Lamb *et al.* (2015) and Weller *et al.* (2020), we are proposing to rely only on the Lamb *et al.* (2015) study.

In subpart W, there are currently four categories of pipeline mains: unprotected steel, protected steel, plastic, and cast iron. The steel categories are differentiated by the presence of cathodic protection, and, as evidenced by the 1996 GRI/EPA study and Lamb *et al.* study data, unprotected steel pipelines are considered to be more leak prone than cathodically protected steel pipelines. In the Weller *et al.* study, the categories of pipeline mains include bare (unprotected) steel, coated (protected) steel, cast iron, and plastic. We note that steel pipelines can be protected by cathodic protection and/or coating, and in the Weller *et al.* study, cathodically unprotected yet coated steel pipeline mains appear to have been grouped with cathodically protected steel pipeline mains. Using the unprotected and protected steel classifications in the Weller *et al.* study would thus result in emission factors for protected steel that are higher than for unprotected steel, which would conflict with other study data (*e.g.*, 1996 GRI/EPA, Lamb *et al.*) as well as voluntary emissions reductions programs (*e.g.*, EPA Natural Gas STAR). The pipeline categories in the Weller *et al.* study do not provide the necessary differentiation to properly update the emission factors for unprotected (*i.e.*, not cathodically protected) steel and cathodically protected steel pipeline mains. For more information on the review and analysis of the Lamb *et al.* and Weller *et al.* studies, see the subpart W TSD, available in the docket for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234).

In consideration of our review and analysis of recent study data relative to natural gas pipeline mains and services, and consistent with the emission factors used in the 2016 U.S. GHG Inventory, we are proposing to provide emission factors for distribution pipeline mains and services based on the Lamb *et al.* study leak rates and the 1996 GRI/EPA study leak incidence data. For more information on the derivation of the proposed emission factors, see the subpart W TSD, available in the docket

for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234).

We are also seeking comments on alternative methods for quantifying and reporting emissions from distribution mains and services. For distribution mains and services, we are seeking comments on the use of direct measurement as well as application of a leaker emission factor approach. For the use of direct measurement, we are seeking comment on whether facilities should be permitted to develop facility-specific distribution main and service emission factors for each type of pipeline material based on direct measurements and if so, what the appropriate number of measurements should be for determining a representative emission factor for each pipeline material including supporting rationale. For facility-specific emission factors based on direct measurement, we are seeking comment on the development of both leaker emission factors and population emission factors. We are seeking comment on what quantification techniques are best suited for measuring emissions from distribution pipeline leaks and whether these techniques require digging down to the pipeline in order to quantify emissions and also verify pipeline characteristics. For a leaker emission factor approach, we are specifically interested in what survey techniques are appropriate and why, including supporting information on specific instruments and their detection capabilities and whether certain methods are more suitable for the survey of distribution pipeline leaks than others. We are seeking comment on the scope and frequency of leak detection surveys for distribution pipelines and whether annual surveys of the entire pipeline system or a reduced frequency of survey (*i.e.*, partial surveys over a multi-year survey cycle in which the entire system is surveyed during the survey cycle and approximately equal portions of the system are surveyed each year of the multi-year survey cycle) is more appropriate and why. Finally, we are seeking comment on application of a leaker emission factor approach using default factors (*i.e.*, not facility specific based on direct measurement) and available data that could be used in the development of default leaker emission factors for distribution mains and services.

For below grade stations, the 2016 U.S. GHG Inventory also began applying a new emission factor from the data published by Lamb *et al.* to the count of stations to estimate emissions from these sources. In order to assess the

<sup>112</sup> Lamb, B.K. *et al.* "Direct Measurements Show Decreasing Methane Emissions from Natural Gas Local Distribution Systems in the United States." *Environ. Sci. Technol.* 2015, 49, 5161–5169. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>113</sup> Weller, Z.D.; Hamburg, S.P.; and Von Fischer, J.C. 2020. "A National Estimate of Methane Leakage from Pipeline Mains in Natural Gas Local Distribution Systems." *Environ. Sci. Technol.* 2020, 54(1), 8958. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

appropriateness of incorporating this revision into the subpart W requirements for below grade stations (*i.e.*, replacing the set of below grade emission factors by station type and inlet pressure with one single emission factor), the EPA performed an analysis of the reported subpart W data for below grade stations compared to data from the recent studies (see the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234). We found that the subpart W reported station count combined with the current subpart W emission factors yields an average emission factor similar to the U.S. GHG Inventory emission factor; as such, using either set of emission factors would yield approximately the same emissions results for the GHGRP.

Therefore, we are proposing to amend the emission factors for below grade transmission-distribution transfer stations and below grade metering-regulating stations in existing Table W-7 (proposed Table W-5) to a single emission factor without regard to inlet pressure. We are also proposing to amend the corresponding section header in existing Table W-7 (proposed Table W-5) for below grade station emission factors and the references to existing Table W-7 (proposed Table W-5) in 40 CFR 98.233(r)(6)(i) to clarify the emission factor that should be applied to both types of below grade stations (*i.e.*, transmission-distribution transfer and metering-regulating). This proposed amendment would impact the reporting requirements in 40 CFR 98.236(r) as well, as it would consolidate six emission source types to two emission source types (below grade transmission-distribution transfer stations and below grade metering-regulating stations, without differentiating between inlet pressures) for purposes of reporting under 40 CFR 98.236(r)(1). This proposed amendment would improve the data quality through use of more recent emission factors and would be consistent with changes made to the U.S. GHG Inventory. It would also result in reporting of fewer data elements, consistent with section II.C of this preamble.

### 3. Gathering Pipeline Emission Factors

Facilities in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment currently quantify the emissions from equipment leaks from gathering pipelines following the procedures in 40 CFR 98.233(r). This method uses the count of equipment, subpart W population emission factors in existing Table W-1A, and operating time to estimate emissions. The

population emission factors for gathering pipeline mains in existing Table W-1A are based on leak rates from natural gas distribution companies and gathering pipeline-specific activity data as provided in the 1996 GRI/EPA study.<sup>114</sup> The population emission factors for gathering pipelines are published per mile by pipeline material.

The EPA is aware of a recent study that characterized emissions from gathering pipelines and could potentially be used to develop population emission factors, Yu *et al.* (2022).<sup>115</sup> The Yu *et al.* (2022) study used measurements acquired over four aerial campaigns of the Midland and Delaware sub-basins in the Permian basin. The resulting emission rate provides a basin-level population emission factor (megagrams CH<sub>4</sub> per kilometer-year). The EPA is not proposing to use this data in subpart W for the development of gathering pipeline emission factors because it does not specify the pipeline material type, as the current subpart W and proposed subpart W emission factors do. The material-specific emission factors more readily allow operators to track and quantify emission reductions from pipeline replacement projects (*e.g.*, replacing more leak prone pipeline materials such as cast iron with less leak prone materials such as plastic). The resulting emission factors from Yu *et al.* rely on emission estimation techniques that have a lower degree of sensitivity than ground-based measurements. In order to overcome this limitation, the study authors performed sensitivity analyses to account for below detection limit leaks. The major finding of this study is that gathering pipelines have highly skewed emissions data distribution with very large leaks that only occur every few hundred miles. Finally, our assessment is that this study is geographically limited and are concerned that an emission factor derived with these study data may not be nationally representative. Additional discussion of the Yu *et al.* study, including population emission factors developed using study data as they

compare to subpart W, is included in the subpart W TSD, available in the docket for this rulemaking (Docket Id. No. v). We are seeking comment on the EPA's decision not to use the Yu *et al.* study data in developing proposed population emission factors, including rationale supporting the EPA's decision or rationale for why this study should be used in developing proposed population emission factors.

Additionally, we are seeking comments on whether there are other published studies the EPA should evaluate for potential use in developing revised emission factors for gathering pipelines.

As noted previously in this section, the EPA is proposing to update the natural gas distribution population emission factors in existing Table W-7 (proposed Table W-5) to subpart W using the results of studies and information that were not available when the rule was originally finalized. In particular, the EPA is proposing to update the leak rate portion of the emission factor based on data published by Lamb *et al.* in 2015.<sup>116</sup>

The EPA has reviewed the recent studies published for Onshore petroleum and natural gas gathering and boosting facilities including the previously discussed Yu *et al.* study, as well as the additional studies for pipeline distribution mains, and concluded none of the studies provide new emissions data or activity data specific to gathering pipelines suitable to update the existing emission factors. Therefore, consistent with the updates to the emission factors for distribution mains, and consistent with section II.B of this preamble, we are proposing to revise the gathering pipeline population emission factors in proposed Table W-1 to use the leak rates from Lamb *et al.* (2015). We are not proposing to update the activity data (leaks per mile of pipeline) portion of the emission factors, as the information in the 1996 GRI/EPA study continues to be the best available data specific to gathering pipelines. For more information on the proposed updates to the gathering pipeline population emission factors, see the subpart W TSD, available in the docket for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234).

We are also seeking comments on alternative methods for quantifying and reporting emissions from gathering pipelines. We are seeking comments on the use of direct measurement as well as

<sup>114</sup> GRI/EPA. *Methane Emissions from the Natural Gas Industry, Volume 9: Underground Pipelines*. Prepared for Gas Research Institute and U.S. Environmental Protection Agency National Risk Management Research Laboratory by L.M. Campbell, M.V. Campbell, and D.L. Epperson, Radian International LLC. GRI-94/0257.2b, EPA-600/R-96-080i. June 1996. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>115</sup> Yu, J. et al. "Methane Emissions from Natural Gas Gathering Pipelines in the Permian Basin." *Environ. Sci. Technol. Lett.* 2022, 9, 969-974. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>116</sup> Lamb, B.K. *et al.* "Direct Measurements Show Decreasing Methane Emissions from Natural Gas Local Distribution Systems in the United States." *Environ. Sci. Technol.* 2015, 49, 5161-5169. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

application of a leaker emission factor approach. For the use of direct measurement, we are seeking comment on whether facilities should be permitted to develop facility-specific emission factors for each type of pipeline material based on direct measurements and if so, what the appropriate number of measurements should be for determining a representative emission factor for each pipeline material including supporting rationale. For facility-specific emission factors based on direct measurement, we are seeking comment on the development of both leaker emission factors and population emission factors. We are seeking comment on what quantification techniques are best suited for measuring emissions from gathering pipeline leaks and whether these techniques require digging down to the pipeline in order to quantify emissions and also verify pipeline characteristics. For a leaker emission factor approach, we are specifically interested in what survey techniques are appropriate and why, including supporting information on specific instruments and their detection capabilities and whether certain methods are more suitable for the survey of gathering pipeline leaks than others. We are seeking comment on the scope and frequency of leak detection surveys for gathering pipelines and whether annual surveys of the entire pipeline system or a reduced frequency of survey (*i.e.*, partial surveys over a multi-year survey cycle in which the entire system is surveyed during the survey cycle and approximately equal portions of the system are surveyed each year of the multi-year survey cycle) is more appropriate and why. Finally, we are seeking comment on application of a leaker emission factor approach using default factors (*i.e.*, not facility specific based on direct measurement) and available data that could be used in the development of default leaker emission factors for gathering pipelines.

#### R. Offshore Production

Currently, subpart W requires offshore production facilities to report emissions consistent with the methods published by the U.S. Department of Interior, Bureau of Ocean Energy Management (BOEM). Since subpart W was first promulgated, there have been a number of updates to the BOEM requirements and how BOEM implements the requirements (*e.g.*, the development of their Outer Continental Shelf Air Quality System (OCS AQS)<sup>117</sup>), and the

EPA is proposing to amend subpart W to reflect those changes. Specifically, the EPA is proposing to update outdated acronym “BOEMRE” to the current acronym “BOEM” in 40 CFR 98.232(b), 40 CFR 98.233(s), and 40 CFR 98.236(s); to update the cross references to the BOEM requirements from “30 CFR 250.302 through 304” to “30 CFR 550.302 through 304” in 40 CFR 98.232(b), 40 CFR 98.233(s), and the introductory paragraph of 40 CFR 98.234; and to remove the outdated references to “GOADS” from 40 CFR 98.233(s). The EPA is also proposing to adjust some of the language in 40 CFR 98.232(b) and 40 CFR 98.233(s) to more accurately reflect the current BOEM program and requirements (*e.g.*, adjusting the number of years between BOEM data collection efforts from 4 to 3 years, referring to published data and data submitted to BOEM rather than an emissions study).

Emissions data are collected by BOEM every few years. In years that coincide with a year in which BOEM collects data, offshore production facilities that report emissions inventory data to BOEM report the same annual emissions to subpart W as calculated and reported to BOEM (existing 40 CFR 98.233(s)(1)) and facilities that do not report emissions inventory data to BOEM must use the most recent monitoring and calculation methods published by BOEM (existing 40 CFR 98.233(s)(2)). In the intervening years, reporters currently are required to adjust emissions based on the operating time for the facility in the current reporting year relative to the operating time in the most recent BOEM data submission or BOEM emissions study publication year. The EPA is proposing two revisions for these intervening years. First the EPA is proposing to require reporters to report two new data elements in these years, the facility’s operating hours in the current year and the facility’s operating hours from the BOEM emission study publication year that is the basis for the reported emissions. This information would improve verification, consistent with section II.C of this preamble. Second, as an alternative to the current adjustment using operating hours in years that do not overlap with the most recent BOEM data submission or BOEM emissions study publication year, as applicable, the EPA is also proposing to allow reporters to calculate emissions using the most recent monitoring and calculation methods published by BOEM referenced in 30 CFR 550.302

through 304 (implemented through the OCS AQS). This alternative is expected to improve data quality through the use of more empirical data, consistent with section II.B of this preamble.

Finally, to better align the emissions reported by offshore production facilities between BOEM’s Outer Continental Shelf Emissions Inventory and the GHGRP, the EPA is proposing that offshore production facilities report the BOEM Facility IDs that constitute the GHGRP facility. Having a definitive point of reference between the two datasets would allow the EPA to better verify the emissions reported to the GHGRP.

#### S. Combustion Equipment

##### 1. Clarifications of Calculation Methodology Applicability

All facilities reporting under subpart W except those in the Onshore Natural Gas Transmission Pipeline industry segment must include combustion emissions in their annual report. Facilities in the Onshore Petroleum and Natural Gas Production, Onshore Petroleum and Natural Gas Gathering and Boosting, and Natural Gas Distribution industry segments calculate emissions in accordance with the provisions in 40 CFR 98.233(z) and report combustion emissions per 40 CFR 98.236(z). Reporters in the other industry segments calculate and report combustion emissions under subpart C (General Stationary Fuel Combustion Sources). Subpart W refers reporters in these segments to the calculation methodologies in subpart C to determine combustion emissions for certain fuels. Specifically, 40 CFR 98.233(z)(1) specifies that reporters may use any tier of subpart C if the fuel combusted is listed in Table C–1; the paragraph further specifies that the subpart C methodologies may only be used for fuel meeting the definition of “natural gas” in 40 CFR 98.238 if it is also of pipeline quality specification and has a minimum HHV of 950 British thermal units per standard cubic foot (Btu/scf). If the fuel is natural gas that does not meet these criteria, field gas, process vent gas, or a blend containing field gas or process vent gas, 40 CFR 98.233(z)(1) specifies that the procedures in 40 CFR 98.233(z)(2) should be used to calculate combustion emissions.

Certain stakeholders have identified several concerns with these requirements. In general, these stakeholders have stated that the ability to use subpart C calculation methodologies is too restrictive, and some of their feedback also indicates

<sup>117</sup> For more information on this system and the emissions inventories collected by the system, see

<https://www.boem.gov/environment/environmental-studies/ocs-emissions-inventories>.

they may have been misinterpreting some of the provisions. We are proposing several amendments to these provisions to address these concerns, which would improve the accuracy of the emissions calculated and therefore the quality of data collected, consistent with section II.B of this preamble.

First, a stakeholder indicated that some member companies have been interpreting the existing provisions of 40 CFR 98.233(z)(1)(ii) that require emissions to be reported according to 40 CFR 98.236(z) and not subpart C to mean that reporters with combustion sources at onshore petroleum and natural gas production facilities, at onshore petroleum and natural gas gathering and boosting facilities, and at natural gas distribution facilities must use the calculation methodologies in subpart W for all fuel types rather than subpart C (even given the provisions in 40 CFR 98.233(z)(1) that reference subpart C for certain fuels).<sup>118</sup> The existing provisions of 40 CFR 98.233(z)(1)(ii) are intended to refer only to the reporting requirements and are not intended to define which calculation methodologies can be used. In the existing rule, the provisions in the 40 CFR 98.233(z)(1) introductory text define which calculation methodologies can be used, and 40 CFR 98.233(z)(1)(ii) simply indicates that all reporters with combustion sources at onshore petroleum and natural gas production facilities, at onshore petroleum and natural gas gathering and boosting facilities, and at natural gas distribution facilities must report those emissions in the e-GGRT system under subpart W rather than under subpart C. As part of the amendments described in this section, consistent with section II.D of this preamble, 40 CFR 98.233(z)(1)(ii) is proposed to be moved to 40 CFR 98.233(z)(5), and we are proposing wording changes to highlight that this paragraph refers only to the requirement to report combustion emissions under subpart W and does not preclude reporters from using subpart C methods to calculate emissions if they qualify to do so under proposed 40 CFR 98.233(z)(1) (and proposed 40 CFR 98.233(z)(2), as described later in this section. We are also proposing to add a reference to this new proposed paragraph 40 CFR 98.233(z)(5) in both proposed 40 CFR 98.233(z)(1)(ii) and proposed 98.233(z)(2)(ii).

<sup>118</sup> Letter from GPA Midstream Association to Mark de Figueiredo, U.S. EPA, providing information in response to EPA questions during the meeting on March 23, 2016. May 18, 2016. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

Second, a stakeholder has asked for EPA guidance regarding whether field gas that is of pipeline quality meets the criteria to use the subpart C methodologies under the existing 40 CFR 98.233(z)(1),<sup>119</sup> and the stakeholder noted that “field gas” is not defined within existing subpart W or subpart A (General Provisions). The terms “field gas” and “field quality” are frequently used interchangeably by the industry, but the EPA also recognizes that some streams in the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment that industry would generally call “field gas” can be natural gas (as defined in 40 CFR 98.238) of pipeline quality with a minimum HHV of 950 Btu/scf. After consideration of these concerns, the EPA is proposing to revise 40 CFR 98.233(z)(1) to remove the references to field gas and process vent gas and include only the characteristics for the fuels that can use subpart C methodologies. The EPA’s intent is to indicate that a stream colloquially referred to as “field gas” that otherwise meets the three criteria to use the subpart C methodologies for combustion emissions (i.e., (1) meets the definition of “natural gas” in 40 CFR 98.238; (2) is of pipeline quality specification; and (3) has a minimum HHV of 950 Btu/scf) may use subpart C methodologies. The EPA is also proposing conforming edits to existing 40 CFR 98.233(z)(2) (proposed 40 CFR 98.233(z)(3) in this proposed rule) for consistency.

Third, certain reporters have indicated in questions submitted to the GHGRP Help Desk that the term “pipeline quality” is used in existing 40 CFR 98.233(z)(1) but it is not defined in subpart W. In addition, a stakeholder has opined that the emissions calculated using subpart C and subpart W calculation methodologies are similar for many fuel streams that are not natural gas of pipeline quality specification with a minimum HHV of 950 Btu/scf. Therefore, the stakeholder suggested that the EPA should allow subpart C calculation methodologies to be used for a wider variety of fuels (if not all fuels in the segments that report combustion emissions under subpart W).<sup>120</sup>

<sup>119</sup> Letter from GPA Midstream Association to Mark de Figueiredo, U.S. EPA, providing information in response to EPA questions during the meeting on March 23, 2016. May 18, 2016. Available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>120</sup> See Letter from GPA Midstream Association to Mark de Figueiredo, U.S. EPA, providing information in response to EPA questions during the meeting on March 23, 2016. May 18, 2016. See also Letter from Matt Hite, GPA Midstream Association, to Mark de Figueiredo, U.S. EPA, Re: Additional Information on Suggested Part 98,

We have reviewed this stakeholder’s analysis and conducted our own analysis of additional hypothetical fuel compositions. In general, we observed that the agreement of emissions as calculated using subpart C calculation methodologies for natural gas and using subpart W calculation methodologies varies based on the composition, with the largest differences resulting for fuel streams with high CO<sub>2</sub> content. We also observed that for these fuels, emissions calculated using subpart W calculation methodologies generally showed better agreement with emissions calculated using the subpart C calculation methodology for natural gas when using a site-specific HHV (Tier 2) than with emissions calculated using the subpart C calculation methodology that uses a default HHV (Tier 1). For more information on our fuel composition analysis and the comparison of emissions using various composition thresholds, see the subpart W TSD, available in the docket for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234).

Based on our analysis, we are proposing to add numeric composition thresholds for natural gas to a new proposed paragraph in 40 CFR 98.233(z)(2) that define the fuels for which an owner or operator may use subpart C methodologies. In particular, we are proposing that subpart C methodologies Tier 2 or higher may be used for fuel meeting the definition of “natural gas” in 40 CFR 98.238 if it has a minimum HHV of 950 Btu/scf, a maximum CO<sub>2</sub> content of 1 percent by volume, and a minimum CH<sub>4</sub> content of 85 percent by volume. We are not proposing to amend the existing provisions in 40 CFR 98.233(z)(1) that allow the use of any subpart C calculation methodology for natural gas of pipeline quality specification with a minimum HHV of 950 Btu/scf (other than the proposed clarifications noted earlier in this section). We are also proposing to move the existing provisions for fuels that do not meet the specifications to use subpart C methodologies from 40 CFR 98.233(z)(2) to a new proposed paragraph 40 CFR 98.233(z)(3). This proposed amendment would allow reporters to use subpart C methodologies for a wider variety of fuel streams while still ensuring data quality. We request comment on the natural gas specifications included in proposed 40 CFR 98.233(z)(2), including the values proposed for the maximum

Subpart W Rule Revisions to Reduce Burden. September 13, 2019. Both letters are available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

CO<sub>2</sub> content and minimum CH<sub>4</sub> content, as well as whether additional specification criteria should be included (e.g., a maximum HHV).

## 2. Methane Slip from Internal Combustion Equipment

The authors of several recent studies have examined combustion emissions at Onshore Petroleum and Natural Gas Gathering and Boosting facilities and have demonstrated that a significant portion of emissions can result from unburned CH<sub>4</sub> entrained in the exhaust of natural gas compressor engines (also referred to as “combustion slip” or “methane slip”). These studies contend that emissions from natural gas compressor engines included in the GHGRP are significantly underestimated because they do not account for combustion slip.<sup>121</sup> The EPA performed a review of each of these studies and the U.S. GHG Inventory to determine whether and how combustion slip emissions have been incorporated into published data and how the incorporation of combustion slip would affect the emissions from the petroleum and natural gas system sector reported to the GHGRP (see the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234).

In the 2022 Proposed Rule, we proposed methods to quantify and report combustion slip in subpart C and subpart W from compressor drivers for all subpart W industry segments that currently report combustion emissions in subpart C or subpart W. The emission estimation methods provided in the 2022 Proposed Rule were the use of default emission factors or default combustion efficiencies for compressor drivers based on recent study data. We received comments on the 2022 Proposed Rule requesting methods to quantify combustion slip using original equipment manufacturer (OEM) data and direct measurement. We also received comments that while compressor drivers likely represent the largest number of reciprocating engines in service at petroleum and natural gas facilities, there are reciprocating engines that do not drive compressors and other engine types (e.g., GT) that emit CH<sub>4</sub> from combustion slip. We have performed additional review of the

combustion slip emission source type as detailed below. In this rulemaking, we are continuing to propose the quantification and reporting of combustion slip from subpart W facilities that currently report combustion emissions in subpart C or subpart W. However, in consideration of the comments received on the 2022 Proposed Rule and the directives under CAA 136(h), we are broadening the applicability of the combustion slip quantification and reporting methods to all RICE and GT and additionally providing three methods for quantifying slip including default emission factors or combustion efficiencies, OEM data, or direct measurement. We are also proposing some revisions to the 2022 Proposed Rule for the reporting of combustion emissions for RICE and GT for subpart W facilities that report their combustion emissions to subpart C after performing a more detailed review of the subpart C e-GGRT combined unit reporting configurations.

Based on the EPA’s review and analysis, there appears to be combustion slip for RICE and GT, which are used primarily to drive compressors, at oil and gas facilities. In addition, while the recent studies are focused on the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment, the EPA’s literature review found the presence of combustion slip in different industry segments, so it appears that combustion slip is dependent on the type of internal combustion equipment and not the application (*i.e.*, we expect combustion slip from RICE or GT regardless of the industry segment). We also considered that other EPA programs such as AP–42: Compilation of Air Pollutant Emissions Factors; 40 CFR part 60, subpart JJJJ; and 40 CFR part 63, subpart ZZZZ consider emissions from internal combustion equipment (*i.e.*, RICE or GT) irrespective of their use to drive a compressor or the industry segment in which the engine operates.

Therefore, consistent with section II.A of this preamble, we are proposing to revise the methodologies for determining combustion emissions from RICE and GT, including those that drive compressors, to account for combustion slip. For the three subpart W industry segments reporting combustion emissions to subpart W (Onshore Petroleum and Natural Gas Production, Onshore Petroleum and Natural Gas Gathering and Boosting, and Natural Gas Distribution), we are proposing that RICE and GT combusting natural gas that qualify to determine emissions using the subpart C calculation methodologies per 40 CFR 98.233(z)(1)

and proposed new 98.233(z)(2),<sup>122</sup> would have three options in proposed 40 CFR 98.233(z)(4) to quantify emissions from combustion slip, including direct measurement using a performance test, the use of OEM data, or the use of default emission factors. For facilities that conduct a performance test to calculate combustion slip, we are proposing in 40 CFR 98.233(z)(4)(i) that the performance test would be required one time, in accordance with one of the test methods in proposed 40 CFR 98.234(i), which include EPA Methods 18 and 320 as well as an alternate method, ASTM D6348–12. If a facility is required to or elects to conduct a performance test for any reason, we are proposing that they must use the results of the test for estimating emissions. The results of the performance test would be used to develop an emission factor for use in the emissions calculations for CH<sub>4</sub>. For facilities electing to use OEM data, which may include manufacturer specification sheets, emissions certification data, or other manufacturer data providing expected emission rates from the RICE or GT, we are proposing that the reporter would use the OEM data to develop an emission factor for use in their emissions calculations for CH<sub>4</sub>. Concerning OEM data, we are seeking comment on whether OEM data is expected to be representative of field conditions. Further, we are considering proposing requirements for the OEM supplied data including defining a standardized testing program for engine families similar to those that underly the emissions certification process for the engine NSPS in 40 CFR part 60 subparts IIII and JJJJ (*e.g.*, Parts 1054 and 1065). These programs define the number of engines in a family that are required to be tested as a number (*e.g.*, 30) or a percentage of engines produced in a year. The programs also define the methods for testing the engines (including engine load, test duration, etc.) as well as deterioration factors for adjusting for the degradation of performance that is expected over time. Alternatively, we are considering that manufacturers perform the same type of testing incorporated in proposed 40 CFR 98.234(i) for a certain number of engines in an engine family. We are seeking comments on these considerations including how the manufacturer testing program should be structured and more specifically: how many engines should be tested in an engine family; under

<sup>121</sup> Zimmerle *et al.*, *Characterization of Methane Emissions from Gathering Compressor Stations: Final Report* (October 2019 Revision) and Vaughn *et al.*, “Methane Exhaust Measurements at Gathering Compressor Stations in the United States,” *Environmental Science & Technology*. 2021, 55 (2), 1190–1196, both available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

<sup>122</sup> See section III.S.1 of this preamble for information on the proposed amendments to 40 CFR 98.233(z) to increase the flexibility for reporters to use the subpart C calculation methodologies.

what load(s) should the engines be tested; what testing methods should be used; what is the appropriate duration of the test; and whether a deterioration factor be included to account for degradation of performance over time. We are also considering whether to add reporting requirements for the results of performance tests conducted by manufacturers. Finally, for facilities electing to the use the default emission factors, which were developed using data from Zimmerle et al. (2019), we are proposing that the reporter would be required to select the appropriate emission factor by equipment type (e.g., 2-stroke lean-burn, 4-stroke lean-burn, 4-stroke rich-burn, or GT) in proposed new Table W-7 rather than the emission factors in Table C-2 for use in their emissions calculations for CH<sub>4</sub>. The precise derivation of the proposed emission factors is discussed in more detail in the subpart W TSD, available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

For the three subpart W industry segments reporting combustion emissions to subpart W (Onshore Petroleum and Natural Gas Production, Onshore Petroleum and Natural Gas Gathering and Boosting, and Natural Gas Distribution), we are proposing a default equipment specific combustion efficiency (proposed to be provided in equations W-39A and W-39B) for RICE and GT that must be used to determine emissions using the subpart W calculation methodologies per existing 40 CFR 98.233(z)(2) (proposed 40 CFR 98.233(z)(3)). The default combustion efficiency would account for methane slip, and be combined with fuel composition to calculate emissions. We are not proposing to provide options for reporters to conduct performance tests or use OEM data for such RICE and GT. The fuel types covered by the methods in existing 40 CFR 98.233(z)(2) (proposed 40 CFR 98.233(z)(3)) are expected to be highly variable in composition over the course of the year, such that a one-time performance test or OEM data are not expected to be representative of the annual emissions.

We expect that the records necessary to confirm the value for the development of an emission factor based on the results of a performance test or OEM data are already required to be maintained by the facility per 40 CFR 98.237; thus, no new recordkeeping provisions relative to the combustion slip amendments are being proposed. We are proposing to add new reporting requirements to 40 CFR 98.236(z)(2) specifically for internal combustion engines that combust natural gas that

meets the criteria of proposed 40 CFR 98.233(z)(1) or (2) to specify the equipment type of reported internal combustion units, the method used to estimate the CH<sub>4</sub> emission factor, and the value of the emission factor to facilitate verification of the reported emissions. Under the existing reporting structure, facilities can group internal combustion engines by the unit type and the fuel type. The proposed amendments would require further disaggregation of the reporting of natural gas-fired internal combustion engine and GT CH<sub>4</sub> emissions as units grouped for reporting must share the same equipment type (e.g., 4-stroke rich burn), fuel type, and method for determining the CH<sub>4</sub> emission factor, which will allow the EPA to adequately verify the data.

For the subpart W industry segments that estimate and report their combustion emissions to subpart C, we are proposing amendments in subpart C analogous to the proposed amendments described in this section for the three industry segments that estimate and report their combustion emissions to subpart W (i.e., Onshore Petroleum and Natural Gas Production, Onshore Petroleum and Natural Gas Gathering and Boosting, and Natural Gas Distribution). Specifically, the facilities that report their combustion emissions to subpart C and currently use either equation C-8, C-8a, C-8b, C-9, C-9a, or C-10 in 40 CFR 98.33(c), as it corresponds to the Tier methodology selected to estimate their CO<sub>2</sub> emissions, to estimate CH<sub>4</sub> emissions. These equations rely on the use of a default CH<sub>4</sub> emission factor from Table C-2 to estimate emissions. We are proposing to require that natural gas-fired RICE or GT located at these facilities would be required to use one of the options in proposed 40 CFR 98.233(z)(4) to estimate CH<sub>4</sub> emissions. Specifically, we are proposing to revise the "EF" term in each of the equations in 40 CFR 98.33(c) (i.e., equations C-8, C-8a, C-8b, C-9a, C-9b, and C-10) to reference the options for developing a CH<sub>4</sub> emission factor in proposed 40 CFR 98.233(z)(4) for natural gas-fired RICE or GT. We are also proposing to add a footnote to Table C-2 that specifies that for reporters subject to subpart W, the default CH<sub>4</sub> emission factor in Table C-2 for natural gas may only be used for natural gas-fired combustion units that are not RICE or GT. Finally, we are proposing to amend 40 CFR 98.36(b), (c)(1), and (c)(3) specifically for RICE or GT at facilities that are subject to subpart W. These provisions currently provide the requirements for reporting

by emission unit, by aggregation of units or by common pipe configurations. Under the proposed amendments, we are requiring reporters which report emissions in accordance with 40 CFR 98.36(b), (c)(1), or (c)(3) to provide the equipment type (e.g., two stroke lean burn RICE), the method used to determine the CH<sub>4</sub> emission factor and the average value of the CH<sub>4</sub> emission factor. This proposed change would ensure that sufficient data in the overall aggregation of units or common pipe (i.e., multiple units combusting natural gas) is reported such that we can perform review of the supplied emission factor data and perform verification on the corresponding emissions. Overall, these proposed amendments to the subpart C reporting requirements are analogous to and consistent with what is being required for RICE or GT for facilities that report combustion emissions to subpart W.

### 3. Higher Heating Value for Calculating N<sub>2</sub>O

As noted previously, there are subpart W specific methods for quantifying combustion equipment emissions for facilities that report their combustion emissions to subpart W in existing 40 CFR 98.233(z)(2) (proposed (z)(3) in this proposed rule). For quantifying emissions from N<sub>2</sub>O specifically, the existing rule specifies the use of equation W-40. This equation requires the fuel throughput, the HHV of the fuel, and the use of a default emission factor. For field gas or process vent gas, the variable definition for the HHV provides that either a site-specific or default value may be used. We are proposing, consistent with section II.B of this preamble, to amend the definition of the variable for the HHV to require the use of a site-specific value because we believe the site-specific value more accurately accounts for the more variable fuel compositions that exist in field or process gas. Our assessment is that the methods for calculating CO<sub>2</sub> and CH<sub>4</sub> in 40 CFR 98.233(z)(2)(ii) (proposed (z)(3)(ii) in this proposed rule) already require the use of site-specific values for the hydrocarbon streams going to the combustion unit; therefore, we expect that a site-specific HHV is known (or can be calculated using the compositional data) without incurring additional burden, while increasing the accuracy of the emissions estimate.

### 4. Other Calculation Methodology Clarifications Applicability

To determine the concentrations of hydrocarbon constituents in the flow of gas to the combustion unit, existing 40

CFR 98.233(z)(2)(ii) specifies that reporters must either use a continuous gas composition analyzer (if one is present) or the procedures specified in 40 CFR 98.233(u)(2). For onshore petroleum and natural gas gathering and boosting facilities, 40 CFR 98.233(u)(2) specifies use of the annual average gas composition based on the most recent available analysis of the gas received at the facility. However, one stakeholder has indicated that for fuels using the existing provisions of 40 CFR 98.233(z)(2) to calculate emissions, the requirements for determining the gas composition could result in inaccurate calculations of emissions for some facilities because onshore petroleum and natural gas gathering and boosting facilities do not necessarily use the gas received at their facility for combustion.<sup>123</sup> For example, if the gas received at the facility is not suitable for combustion, they may mix the gas with purchased natural gas. In that case, the annual average composition of gas received at the facility would not be representative of the gas sent to the combustion unit (as required by existing 40 CFR 98.233(z)(2)), which could result in inaccurate emissions. Therefore, the EPA is proposing to revise the language in 40 CFR 98.233(z)(2)(ii) (proposed 40 CFR 98.233(z)(3)(ii)(B) in this proposed rule) to allow the use of engineering estimates based on best available data to determine the concentration of gas hydrocarbon constituent in the flow of gas to the unit. This proposed amendment would allow reporters to use the best information available to determine the gas composition while maintaining the option for reporters to use 40 CFR 98.233(u)(2) if they do not have other stream-specific information. This proposed amendment is expected to improve the accuracy of the emissions calculated and therefore the quality of data collected, consistent with section II.B of this preamble.

We are also proposing amendments to clarify that emissions may be calculated for groups of combustion units. The existing provisions of 40 CFR 98.233(z)(2) (proposed 40 CFR 98.233(z)(3)(ii)) could be interpreted to specify that emissions must be calculated for each individual combustion unit. However, because

combustion emissions and activity data are reported as combined totals for each type of combustion device, fuel type, and method for determining the CH<sub>4</sub> emission factor (for RICE and GT), it is generally not necessary to calculate emissions for each individual unit before aggregating the total emissions. For example, if the volume of fuel combusted is determined at a single location upstream of several combustion units, emissions may be determined for that combined volume of fuel (*i.e.*, for that group of combustion units). In other words, it would not be necessary in this example case to apportion a volume of fuel to each unit, calculate emissions separately, and then combine them again. If the combustion units downstream of this shared measurement point are a mix of combustion device types, the emissions and the volume of fuel would still need to be apportioned between those combustion device types for reporting purposes; however, reporters may elect to perform that apportioning either before or after emissions are calculated, as appropriate, as long as the group of combustion units does not include any natural gas internal combustion equipment including RICE or GT. If any of the combustion units downstream of this shared measurement point are natural gas-driven internal combustion equipment including RICE or GT, the volumes of fuel for those units would have to be separated from the total before emissions are calculated to account for the differences in combustion efficiency, as described in section III.S.2 of this preamble. Some of the tiers in subpart C similarly allow for calculation of emissions by groups of units combusting the same fuel, so we are proposing to include analogous language to that in subpart C in 40 CFR 98.233(z)(1)(ii) and 40 CFR 98.233(z)(2)(ii) to provide for these clarifications in how to calculate.

#### 5. Location of Reporting Requirements for Combustion Equipment

Section 136(h) of the CAA specifies the following concerning reporting: “Not later than 2 years after the date of enactment of this section, the Administrator shall revise the requirements of subpart W of part 98 of title 40, Code of Federal Regulations, to ensure the reporting under such subpart, and calculation of charges under subsections (e) and (f) of this section, are based on empirical data, including data collected pursuant to subsection (a)(4), accurately reflect the total CH<sub>4</sub> emissions and waste emissions from the applicable facilities, and allow owners and operators of

applicable facilities to submit empirical emissions data, in a manner to be prescribed by the Administrator, to demonstrate the extent to which a charge under subsection (c) is owed.” As noted in this excerpt, the IRA directs the Administrator to ensure reporting under subpart W accurately reflects total CH<sub>4</sub> emissions from applicable facilities.

Apart from onshore natural gas transmission pipeline facilities, all facilities subject to subpart W must include combustion emissions in their annual report. As noted in section III.S.1 of this preamble, facilities in the Onshore Petroleum and Natural Gas Production, Onshore Petroleum and Natural Gas Gathering and Boosting, and Natural Gas Distribution industry segments must calculate combustion emissions in accordance with 40 CFR 98.233(z) and report emissions under subpart W. Facilities in the remaining industry segments (*i.e.*, Offshore Petroleum and Natural Gas Production, Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, Underground Natural Gas Storage, LNG Storage, and LNG Import and Export Equipment) are required to calculate combustion emissions in accordance with the provisions of 40 CFR 98.33 and report emissions under subpart C.

The EPA is seeking comment on amending subpart W to specify that all industry segments would be required to report their combustion emissions, including CH<sub>4</sub>, under subpart W to more accurately reflect the total CH<sub>4</sub> emissions from such facilities within the emissions reported under subpart W. Using RY2021 data for combustion sources, we determined that requiring combustion emissions from all oil and gas operations to be reported to subpart W rather than subpart C would increase total subpart W CH<sub>4</sub> emissions by less than 1 percent. If the amendments to combustion slip discussed in section III.S.2 of this preamble are finalized, the reported CH<sub>4</sub> emissions from combustion are expected to increase, but we estimate the increase in total CH<sub>4</sub> emissions from combustion devices at facilities subject to subpart W would be less than 5 percent. Under this approach, we would consider continuing to allow all the industry segments that currently report combustion emissions under subpart C (*i.e.*, Offshore Petroleum and Natural Gas Production, Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, Underground Natural Gas Storage, LNG Storage, and LNG Import and Export Equipment) to use the same subpart C calculation methodologies as they

<sup>123</sup> See Letter from GPA Midstream Association to Mark de Figueiredo, U.S. EPA, providing information in response to EPA questions during the meeting on March 23, 2016. May 18, 2016. See also Letter from Matt Hite, GPA Midstream Association, to Mark de Figueiredo, U.S. EPA, Re: Additional Information on Suggested Part 98, Subpart W Rule Revisions to Reduce Burden. September 13, 2019. Both letters are available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

currently use in order to minimize the burden on affected facilities. This amendment, however, would result in changes to their reporting structure, as subpart W does not currently contain the same methods to report via a common pipe for fuel streams or by aggregation of units as provided in subpart C. Instead, for subpart W, combustion emissions are aggregated by fuel type, combustion equipment type, and if finalized, by the method used for estimating combustion slip, when applicable. There are also exclusions for reporting combustion emissions in 40 CFR 98.233(z)(5) and (6), specifically for external combustion equipment with a rated heat capacity of less than 5 million British thermal units per hour (MMBtu/hr) and internal combustion equipment with a rated heat capacity of less than 1 MMBtu/hr. Under this approach, we expect that these exemptions would apply to the facilities newly subject to subpart W. Similarly, under this approach, we expect that the exemptions in subpart C would no longer apply to these facilities. The exemptions that we expect may impact facilities under this approach are the subpart C exclusions of reporting emissions from portable and emergency equipment in 40 CFR 98.30(a) and (b).

#### T. Leak Detection and Measurement Methods

##### 1. Acoustic Leak Detection

For emission source types for which measurements are required, subpart W specifies the methods that may be used to make those measurements in 40 CFR 98.234(a). To improve the quality of the data when an acoustic leak detection device is used, consistent with section II.B of this preamble, we are proposing two revisions to the acoustic measurement requirements in 40 CFR 98.234(a)(5). First, for stethoscope type acoustic leak detection devices (*i.e.*, those designed to detect through-valve leakage when put in contact with the valve body and that provide an audible leak signal but do not calculate a leak rate), we are proposing that a leak is detected if an audible leak signal is observed or registered by the device. Second, we are proposing that if a leak is detected using a stethoscope type device, then that leak must be measured using one of the quantification methods specified in 40 CFR 98.234(b) through (d) and that leak measurement must be reported regardless of the volumetric flow rate measured. These proposed revisions would improve the accuracy of emissions reported for compressors and transmission tanks when an acoustic leak detection device is used.

##### 2. High Volume Samplers

We are proposing two revisions to the high volume sampler methods to improve the quality of the data when high volume samplers are used for flow measurements, consistent with section II.B of this preamble. First, we are proposing to add detail to 40 CFR 98.234(d)(3) to clarify the calculation methods associated with high volume sampler measurements. Generally, high volume samplers measure CH<sub>4</sub> flow, not whole gas flow. However, the current calculation methods in 40 CFR 98.234(d)(3) treat the measurement as a whole gas measurement. Therefore, we are proposing to clarify the calculation methods needed if the high volume sampler outputs CH<sub>4</sub> flow in either a mass flow or volumetric flow basis. Specifically, we are proposing methods to determine natural gas (whole gas) flows based on measured CH<sub>4</sub> flows.

Second, we are proposing to add a paragraph at 40 CFR 98.234(d)(5) to clarify how to assess the capacity limits of a high volume sampler. Currently, 40 CFR 98.234(d) simply states to “Use a high volume sampler to measure emissions within the capacity of the instrument”; there is no other information provided to clarify what “within the capacity of the instrument” means or how it is determined. We understand that there are different manufacturers, but most common high volume samplers report maximum sampling rates of 10 to 11 cubic feet per minute (cfm) and maximum CH<sub>4</sub> flow quantitation limits of 6 to 8 cfm. Based on our review of reported high volume sampler measurements, we found that 2 to 5 percent of high volume sampler measurements for all types of compressor sources (for both centrifugal and reciprocating compressors) are likely at or beyond the expected capacity limits of the high volume sampler instrument. Considering actual sampling rates, gas collection efficiencies near the sampling rates, and reported CH<sub>4</sub> quantitation limits relative to maximum sampling rates, we determined that whole gas flow rates exceeding 70 percent of the device’s maximum rated sampling rate is an indication that the device will not accurately quantify the volumetric emissions, which we deem to exceed the capacity of the device. Therefore, we are proposing to specify that CH<sub>4</sub> flows above the manufacturer’s CH<sub>4</sub> flow quantitation limit or total volumetric flows exceeding 70 percent of the manufacturer’s maximum sampling rate indicate that the flow is beyond the capacity of the instrument and that flow meters or calibrated bags must be used

to quantify the flow rate. For more information on our review, see the subpart W TSD, available in the docket for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234).

#### U. Industry Segment-Specific Throughput Quantity Reporting

##### 1. Throughput Information for the Future Implementation of the Waste Emissions Charge

As noted in section I.E of this preamble, the waste emissions charge specifies segment-specific thresholds (Waste Emissions Threshold) for segments subject to the waste emissions charge. For the Onshore Petroleum and Natural Gas Production and Offshore Petroleum and Natural Gas Production industry segments, the Waste Emissions Threshold is specified in CAA section 136(f)(1) as, “(A) 0.20 percent of the natural gas sent to sale from such facility;” or “(B) 10 metric tons of methane per million barrels of oil sent to sale from such facility, if such facility sent no natural gas to sale.” For the Onshore Petroleum And Natural Gas Gathering And Boosting, Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression, LNG Storage, LNG Import and Export Equipment, and Onshore Natural Gas Transmission Pipeline industry segments, the Waste Emissions Threshold is defined in CAA section 136(f)(2) and (3) as a percentage of “natural gas sent to sale from or through such facility,” with the percentages specified varying by segment.

To align the subpart W reporting elements with text used in CAA section 136 and enable verification of throughput-related reporting elements, consistent with section II.C of this preamble, we are proposing a combination of new reporting elements and amendments to existing segment-specific throughput reporting requirements in 40 CFR 98.236(aa).

We are proposing to add the word “natural” in front of “gas” at each occurrence where it is used in the throughput reporting elements in subpart W that are being revised to align with CAA section 136. We note that the CAA section 136 text uses the term “oil” and we are clarifying in this preamble that for the purposes of subpart W the term “oil” has the same meaning as “crude oil,” which is used in the throughput reporting elements in subpart W and defined in subpart A of part 98.

We are also generally proposing revisions to ensure that the verbiage of “sent to sales” or “through the facility” is reflected in the reporting elements, as

applicable. We are also proposing in 40 CFR 98.236(aa) that the quantities sent to sales or through the facility be measured, as it is reasonable to expect that the quantities of these products are closely tracked. We request comment on situations in which a reporter may not be measuring the quantity “sent to sales” or “through the facility.”

Aside from these overarching proposed amendments, there are industry segment-specific proposed amendments for the Onshore Petroleum and Natural Gas Production, Offshore Petroleum and Natural Gas Production, Onshore Petroleum and Natural Gas Gathering and Boosting, and Onshore Natural Gas Processing industry segments as described in the remainder of this section.

**a. Onshore Petroleum and Natural Gas Production and Offshore Petroleum and Natural Gas Production**

For the Onshore Petroleum and Natural Gas Production and Offshore Petroleum and Natural Gas Production industry segments, the current requirements for reporting throughputs of crude oil are combined with volumes of condensate. These volumes will need to be reported separately in order to align with the CAA section 136(f) oil threshold for production facilities, when applicable. Therefore, we are proposing the separation of these reporting elements into two distinct reporting elements in both 40 CFR 98.236(aa)(1)(i) and 98.236(aa)(2).

For consistency with CAA section 136, we are proposing to use the phrase “sent to sale” in 40 CFR 98.236(aa)(1)(i)(B) through (D), 40 CFR 98.236(aa)(1)(iii)(C) through (E), and 40 CFR 98.236(aa)(2)(i) through (vi) instead of “for sale,” the phrase used in the existing data elements. This proposed amendment is for consistency in language rather than any expected difference in the volumes to be reported or the interpretation of the terms, as the existing term was intended to have the same meaning. As described in section III.D of this preamble, we are also proposing additional throughput data elements to provide separate, well-level reporting of throughputs associated with wells in the Onshore Petroleum and Natural Gas Production and Offshore Petroleum and Natural Gas Production industry segments that are permanently shut-in and plugged. These proposed data elements, if finalized, are anticipated to be useful in the future evaluation of the associated exemptions in CAA section 136(f)(7).

Specifically for the Offshore Petroleum and Natural Gas Production industry segment, the existing

throughput requirements are for “gas handled” at the platform, which includes production volumes as well as volumes transferred via pipeline from another location. We note that the term “gas handled” is not used by other reporting programs to which offshore production facilities also report, such as the BOEM or the U.S. Energy Information Administration (EIA). We have also recently received a question through the GHGRP Help Desk asking about differences in throughput between the published BOEM data for the parameter, lease production reporting, and throughput volumes published in the subpart W data, so there are potentially differences in the ways reporters are interpreting and reporting the “gas handled” data element as compared to production volumes reported to other programs. In order to provide consistency with the language in CAA section 136 across both production industry segments and help the EPA implement CAA section 136, we are proposing to revise the reporting elements in 40 CFR 98.236(aa)(2) for the Offshore Petroleum and Natural Gas Production industry segment so they are analogous to those in Onshore Petroleum and Natural Gas Production. We are seeking comment on whether we should add the proposed throughputs as new data elements and continue to retain the existing reporting elements in 40 CFR 98.236(aa)(2)(i) and (ii), including the rationale for maintaining the existing reporting elements.

**b. Onshore Petroleum and Natural Gas Gathering and Boosting**

Through our verification efforts, it has become apparent that the reporting of some of the throughput volumes for the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment are incomplete in the sense that they do not include all the quantities of natural gas (and hydrocarbon liquids) transported from the facility (*i.e.*, leaving the facility). In some cases, this appears to be due to the specific wording of the reporting elements in existing 40 CFR 98.236(aa)(10)(ii) and (iv) that appear to limit the quantities to the quantities transported to four specific downstream endpoints (*e.g.*, processing plants). However, the EPA indicated in the preamble to the final rule that added the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment that the throughputs transported from the facility were intended to be the total quantities transported downstream (80 FR 64280, October 22, 2015). Therefore, be consistent with the EPA’s original intent

for these data elements, we are proposing to amend 40 CFR 98.236(aa)(10)(ii) and (iv) to clarify that the downstream endpoints listed in the current reporting elements are examples of potential destinations and to specify that the reported quantities should be the natural gas or hydrocarbon liquids, respectively, transported to downstream operations such as one of those endpoints. We are also proposing to add storage facilities to the list of downstream operations to make the list of examples more comprehensive. Finally, for consistency with the text in CAA section 136 and to help the EPA implement CAA section 136 in the future, we are proposing to amend 40 CFR 98.236(aa)(10)(ii) to specify that the natural gas is transported “through the facility” and then to a downstream operation. As a result of these proposed amendments, the reported quantities should include all natural gas and hydrocarbon liquids transported downstream from the facility (*i.e.*, leaving the basin or leaving the gathering system owner or operator).

In addition to reviewing the reported throughputs, we also reviewed the definitions in subpart W associated with the industry segment and the facility. For the Onshore Petroleum and Natural Gas Gathering and Boosting industry segment, we found that the definitions for “Gathering and boosting system” and “Gathering and boosting system owner or operator” in 40 CFR 98.238 specified that an onshore petroleum and natural gas gathering and boosting system or owner or operator must receive natural gas or petroleum from an onshore petroleum and natural gas production facility. Those definitions would exclude facilities that receive natural gas or petroleum from other onshore petroleum and natural gas gathering and boosting facilities and do not receive any natural gas or petroleum from onshore petroleum and natural gas production facilities. Therefore, there are potentially entire onshore petroleum and natural gas gathering and boosting facilities or volumes of gas through onshore petroleum and natural gas gathering and boosting facilities that are unaccounted for under the existing rule. We are proposing to amend the definition of “Gathering and boosting system” and “Gathering and boosting system owner or operator” in 40 CFR 98.238 to specify that these systems may receive natural gas and/or petroleum from one or more other onshore petroleum and natural gas gathering and boosting systems in addition to production facilities.

### c. Onshore Natural Gas Processing

Subpart W currently requires onshore natural gas processing facilities to report the quantity of natural gas received at the gas processing plant in existing 40 CFR 98.236(aa)(3)(i), however, the rule does not currently specify whether the volume is all natural gas that enters the facility—including natural gas that passes through the facility without being processed further (*i.e.*, “pass-through volumes”)—or just natural gas received for processing. As discussed in section III.U.1 of this preamble, to maintain consistency with subpart NN and reduce burden for fractionators, the EPA is proposing to revise 40 CFR 98.236(aa)(3)(i) to specify that the subpart W quantity of gas received is the gas received for processing and is also proposing that fractionators do not have to report a quantity under 40 CFR 98.236(aa)(3)(i) if they report under subpart NN. Subpart NN does not require reporting of the gas leaving the facility, but to maintain consistency in the interpretation of the throughputs, to date, the EPA has provided guidance to facilities that the volume reported in accordance with 40 CFR 98.236(aa)(3)(ii) is that which has been processed at the facility and should exclude volumes of gas that are of pipeline specification and only passed through the facility.

However, to be consistent with CAA section 136(f)(2), the throughput should include all volumes of natural gas which pass through the facility or are sent to sales. Therefore, considering the proposed amendments to 40 CFR 98.236(aa)(3)(i) and guidance that has been historically provided for 40 CFR 98.236(aa)(3)(ii), a new reporting element for natural gas processing throughput is needed to fully capture all volumes through the facility (*i.e.*, those that are processed and those that pass through the facility which are not processed). As such, we are proposing to add a new reporting element for the Onshore Natural Gas Processing industry segment in 40 CFR 98.236(aa)(3)(ix) to capture all natural gas that is processed and/or passed through the facility consistent with the text in CAA section 136 (*i.e.*, “natural gas sent to sale from or through facilities”).

### 2. Onshore Natural Gas Processing and Natural Gas Distribution Throughputs Also Reported Under Subpart NN

Onshore Natural Gas Processing plants are required to report seven facility-level throughput-related items under subpart W, as specified in existing 40 CFR 98.236(aa)(3). These

seven data reporting elements include: quantities of natural gas received and processed gas leaving the gas processing plant, cumulative quantities of NGLs received and leaving the gas processing plant, the average mole fractions of CH<sub>4</sub> and CO<sub>2</sub> in the natural gas received, and an indication of whether the facility fractionates NGLs. Natural Gas Distribution companies are also required to report seven throughput volumes under subpart W, as specified in existing 40 CFR 98.236(aa)(9). These seven data reporting elements include: the quantity of gas received at all custody transfer stations; the quantity of natural gas withdrawn from in-system storage; the quantity of gas added to in-system storage; the quantity of gas delivered to end users; the quantity of gas transferred to third parties; the quantity of gas consumed by the LDC for operational purposes; and the quantity of gas stolen.

The EPA has received stakeholder comments related to some of these reporting elements.<sup>124</sup> These stakeholders have commented that the reporting elements included in subpart W are redundant with data reported elsewhere within the GHGRP, specifically under subpart NN (Suppliers of Natural Gas and Natural Gas Liquids). Subpart NN requires NGL fractionators and LDCs to report the quantities of natural gas and natural gas liquid products supplied downstream and their associated emissions. For example, for natural gas processing plants, commenters stated that both subparts require reporting of the volume of natural gas received and the volume of NGLs received. Subpart W also requires reporting of total NGLs leaving the processing plant, while subpart NN requires reporting of the volume of each individual NGL product supplied. For LDCs, these commenters have stated that some duplicative reporting is required as well. For example, commenters stated that both subparts require reporting of the volume of natural gas received, volume placed into and out of storage each year, and volume transferred to other LDCs or to a pipeline as well as some other duplicative data. In addition, commenters stated that the reporting elements included in subparts W and

NN for LDCs are redundant with data reported to the EIA on Form EIA-176, the Annual Report of Natural and Supplemental Gas Supply and Disposition.<sup>125</sup> The commenters explained that subpart W and subpart NN collect nearly the same data, and stated that discrepancies between the data sets are due to the use of inconsistent terminology. Commenters also suggested that due to the redundancy and availability of data reported to the EIA for LDCs, the EPA should remove the throughput-related reporting requirements for the Natural Gas Distribution industry segment from the GHGRP altogether. Commenters added that if the requirements are maintained, the EPA should reconcile the terminology used within the GHGRP and clarify the reporting elements.

The EIA report is submitted in the spring of each year and covers the previous calendar year. After completing internal audits of the reports, EIA publishes the data for each LDC on its website in the fall. The EIA data provides detailed information on the volume of gas received, gas stored, gas removed from storage, gas deliveries by sector, and HHV data. The EPA previously reviewed the possibility of obtaining data by accessing existing Federal Government reporting and provided the following response in the subpart NN response to public comments document accompanying the 2009 Final Rule:<sup>126</sup>

- The EPA “decided not to modify the final rule because collecting data directly in a central system will enable the EPA to electronically verify all data reported under this rule quickly and consistently, to use the information for non-statistical purposes, and to handle confidential business information in accordance with the Clean Air Act.”

- In the specific case of subpart NN, the EPA also “determined that it could not rely on EIA data to collect facility-level data from fractionators and company-level data from LDCs.”

- Additionally, the EPA “seeks data that is beyond what EIA collects, such as quality assurance information, verification data, and information on odorized propane” and “data on site-specific HHV and carbon content from those sites that choose to sample and

<sup>124</sup> See Docket Id. Nos. EPA-HQ-OA-2017-0190-46726, EPA-HQ-OA-2017-0190-1958, EPA-HQ-OA-2017-0190-2066 available in *Compilation of Comments Related to the Greenhouse Gas Reporting Program submitted to the Department of Commerce under Docket ID No. DOC-2017-0001 and the Environmental Protection Agency under Docket ID No. EPA-HQ-OA-2017-0190* and in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

<sup>125</sup> Form EIA-176 is available at the U.S. EIA website at [https://www.eia.gov/survey/form/eia\\_176/form.pdf](https://www.eia.gov/survey/form/eia_176/form.pdf); the Form EIA-176 Instructions are available at [https://www.eia.gov/survey/form/eia\\_176/instructions.pdf](https://www.eia.gov/survey/form/eia_176/instructions.pdf).

<sup>126</sup> See page 7 of *EPA Response to Public Comment Vol. 39 Subpart NN* at <https://www.epa.gov/ghgreporting/ghgrp-2009-final-rule-response-comments-documents>, also available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234.

test products rather than use default emission factors.”

After further review of the data available through EIA, the stakeholder comments described earlier in this section, and the reporting requirements in subpart W and subpart NN, the EPA is proposing to eliminate duplicative elements from subpart W for facilities that report to subpart NN, consistent with section II.C of this preamble. The EPA is proposing to amend the reporting requirements in 40 CFR 98.236(aa)(3) for Onshore Natural Gas Processing plants that both fractionate NGLs (approximately 100 of the 450 subpart W natural gas processing plants) and also report as a supplier under subpart NN. For this subset of facilities, the EPA reviewed the data from subpart W and subpart NN and determined that there are no gas processing plants that report as fractionators under subpart W that do not also report under subpart NN without supplying a valid explanation.<sup>127</sup> During this review, the EPA found that some of the data elements included in subpart W overlap with data elements in subpart NN. Specifically, the data elements in 40 CFR 98.236(aa)(3)(i), (iii) and (iv) of subpart W overlap with data elements in subpart NN as specified in 40 CFR 98.406(a)(3), 98.406(a)(1) and (2), 98.406(a)(4)(i) and (ii), respectively.<sup>128</sup>

To eliminate reporting redundancies, the EPA is proposing several

amendments to 40 CFR 98.236(aa)(3). First, to clarify which facilities have data overlap between subparts W and NN, the EPA is proposing to add a reporting element for natural gas processing plants at 40 CFR 98.236(aa)(3)(viii) to indicate whether they report as a supplier under subpart NN. Next, the EPA is proposing that facilities that indicate that they both fractionate NGLs and report as a supplier under subpart NN would no longer be required to report the quantities of natural gas received or NGLs received or leaving the gas processing plant as specified in 40 CFR 98.236(aa)(3)(i), (iii) and (iv); this data would continue to be reported under subpart NN as specified in 40 CFR 98.406(a)(3), 98.406(a)(1) and (2), 98.406(a)(4)(i) and (ii), respectively, thus, maintaining the ability to verify associated emissions reported under subpart W. See Table 3 of this preamble for more information.

These facilities would, however, be required to continue reporting the data elements specified in 40 CFR 98.236(aa)(3)(ii) and (v) through (viii), as these reporting elements do not overlap with subpart NN reporting elements. Natural gas processing plants that do not fractionate or that fractionate but do not report as a supplier under subpart NN would continue to report all of the reporting elements for natural gas

processing plants as specified in 40 CFR 98.236(aa)(3).

The EPA is also proposing to remove the reporting elements for throughput for LDCs in 40 CFR 98.236(aa)(9). The EPA reviewed the data from subpart W and subpart NN and determined that there are no LDCs that report under subpart W that do not also report under subpart NN. In fact, an average of 385 LDCs report under subpart NN, while 170 LDCs report under subpart W. Subpart NN therefore provides more comprehensive coverage of the Natural Gas Distribution industry segment. Additionally, subpart NN has been in effect for LDCs since RY2011 while subpart W throughput information has only been collected since RY2015; thus, subpart NN has a more robust historical data set. During this review, the EPA determined that the data elements found in 40 CFR 98.236(aa)(9)(i) through (v) of subpart W overlap with data elements in subpart NN as specified in 40 CFR 98.406(b)(1) through (3), 98.406(b)(5) and (6), and 98.406(b)(13). To eliminate reporting redundancies, the EPA is proposing to remove these reporting elements from subpart W.

Table 3 of this preamble shows all the duplicative data elements that the EPA is proposing to remove from subpart W for facilities that also report to subpart NN.

TABLE 3—LIST OF PROPOSED SUBPART W DATA ELEMENTS TO BE REMOVED WHERE ANALOGOUS SUBPART NN DATA ELEMENTS ARE REPORTED

Subpart W data elements proposed to be eliminated		Analogous Subpart NN data elements	
Citation	Description	Citation	Description
<b>Local Distribution Companies</b>			
§ 98.236(aa)(9)(i) .....	Quantity of natural gas received at all custody transfer stations.	§ 98.406(b)(1) § 98.406(b)(5).	Annual volume of natural gas received by the LDC at its city gate stations and Annual volume natural gas that bypassed the city gate(s).
§ 98.236(aa)(9)(ii) .....	Quantity of natural gas withdrawn from in-system storage.	§ 98.406(b)(3) .....	Annual volume natural gas withdrawn from on-system storage and annual volume of vaporized LNG withdrawn from storage.
§ 98.236(aa)(9)(iii) .....	Quantity of natural gas added to in-system storage.	§ 98.406(b)(2) .....	Annual volume of natural gas placed into storage or liquefied and stored.
§ 98.236(aa)(9)(iv) .....	Quantity of natural gas delivered to end users.	§ 98.406(b)(13)(i) through (iv).	Annual volume of natural gas delivered by the LDC to residential consumers, commercial consumers, industrial consumers, electricity generating facilities.

<sup>127</sup> One such explanation is that the gas processing plant fractionates NGLs to supply fuel for use entirely on-site (*i.e.*, the fuel is not supplied downstream). Due to definitional differences between the two subparts, this facility is defined as a fractionator for purposes of subpart W but is not a supplier that must report under subpart NN.

<sup>128</sup> While it is the EPA’s intention that the reported quantity of natural gas received at the

facility in existing 40 CFR 98.236(aa)(3)(i) should be the quantity of natural gas received for processing, consistent with the requirement to report the annual volume of natural gas received for processing in existing 40 CFR 98.406(a)(3), some reporters have indicated in correspondence with the EPA via e-GGRT that they are including gas that is received at but not processed by the onshore natural gas processing facility (*i.e.*, gas that was

processed elsewhere and passes through the onshore natural gas processing facility). Therefore, to clarify the EPA’s intention and reinforce the consistency of the subpart W and subpart NN quantities, the EPA is proposing to revise 40 CFR 98.236(aa)(3)(i) to indicate that that reported quantity should be natural gas received at the gas processing plant for processing in the calendar year.

TABLE 3—LIST OF PROPOSED SUBPART W DATA ELEMENTS TO BE REMOVED WHERE ANALOGOUS SUBPART NN DATA ELEMENTS ARE REPORTED—Continued

Subpart W data elements proposed to be eliminated		Analogous Subpart NN data elements	
Citation	Description	Citation	Description
§ 98.236(aa)(9)(v) .....	Quantity of natural gas transferred to third parties.	§ 98.406(b)(6) .....	Annual volume of natural gas delivered to downstream gas transmission pipelines and other LDCs.
<b>Natural Gas Processing Plants That Fractionate NGLs</b>			
§ 98.236(aa)(3)(i) .....	Quantity of natural gas received .....	§ 98.406(a)(3) .....	Annual volume of natural gas received for processing.
§ 98.236(aa)(3)(iii) .....	Cumulative quantity of all NGLs (bulk and fractionated) received.	§ 98.406(a)(2) § 98.406(a)(4)(i).	Annual quantity of each NGL product received and annual quantities of y-grade, o-grade and other bulk NGLs received.
§ 98.236(aa)(3)(iv) .....	Cumulative quantity of all NGLs (bulk and fractionated) leaving.	§ 98.406(a)(1) § 98.406(a)(4)(ii).	Annual quantity of each NGL product supplied and annual quantities of y-grade, o-grade and other bulk NGLs supplied.

The EPA is also proposing to remove the reporting elements for the volume of natural gas used for operational purposes and natural gas stolen specified in 40 CFR 98.236(aa)(9)(vi) and (vii). These reporting elements are unique to subpart W, require additional burden to estimate, and have not been used for the EPA’s analyses of the subpart W data. As a result of proposing to remove all of the 40 CFR 98.236(aa)(9) data elements for the reasons explained in this section of this preamble, the EPA proposes to reserve paragraph 40 CFR 98.236(aa)(9).

3. Onshore Natural Gas Transmission Pipeline Storage Throughputs

Similar to Natural Gas Distribution facilities, Onshore Natural Gas Transmission Pipeline facilities are currently required to report five throughput volumes under subpart W, as specified in existing 40 CFR 98.236(aa)(11). These five data reporting elements include: the quantity of

natural gas received at all custody transfer stations; the quantity of natural gas withdrawn from in-system storage; the quantity of gas added to in-system storage; the quantity of gas transferred to third parties; and the quantity of gas consumed by the transmission pipeline facility for operational purposes. As noted in section III.U.1 of this preamble, the EPA has received stakeholder feedback on the reporting elements for Natural Gas Distribution facilities, including questions submitted to the GHGRP Help Desk, regarding the term “in-system storage.” Although the questions were specific to Natural Gas Distribution facilities, the term “in-system storage” is also included in the throughput reporting elements for Onshore Natural Gas Transmission Pipeline facilities at existing 40 CFR 98.236(aa)(11)(ii) and (iii). After consideration of the stakeholder feedback, the EPA is proposing to revise these provisions to better characterize

the existing term “in-system.” Specifically, we are proposing to amend 40 CFR 98.236(aa)(11)(ii) and (iii) to replace the term “in-system” with clarifying language that specifies withdrawals/additions of natural gas from storage are referring to Underground Natural Gas Storage and LNG Storage facilities that are owned and operated by the onshore natural gas transmission pipeline owner or operator that do not report under subpart W as direct emitters themselves. These amendments are expected to improve data quality consistent with section II.D of this preamble.

V. Other Proposed Minor Revisions or Clarifications

See Table 4 of this preamble for the miscellaneous minor technical corrections not previously described in this preamble that we are proposing throughout subpart W, consistent with section II.D of this preamble.

TABLE 4—PROPOSED TECHNICAL CORRECTIONS TO SUBPART W

Section (40 CFR)	Description of proposed amendment
98.230(a)(2) .....	Revise the instance of “well pad” to read “well-pad” to correct inconsistency in the term.
98.230(a)(9) .....	Remove the “)” after “GOR” to correct a typographical error.
98.232 introductory text .....	Add reference to paragraph (I) of this section to clarify that annual reports must include the information specified in paragraph (I) if applicable.
98.232(c)(17), (d)(5) and (j)(3) .....	Revise the instances of “acid gas removal vents” to read “acid gas removal unit vents” for consistency with the defined term “Acid gas removal unit (AGR)” in 40 CFR 98.238.
98.233(d) .....	Revise the instances of “AGR unit” to read “AGR” for consistency with the defined term “Acid gas removal unit (AGR)” in 40 CFR 98.238.
98.233(e)(1)(x), 98.236(e)(1)(xi) and (xii) .....	Add “at the absorber inlet” to the end of the paragraph to clarify the location for the wet natural gas temperature and pressure to be used for modeling.
98.233(j), 98.236(j) .....	Revise the instances of “oil,” “oil/condensate,” and “liquid” to read “hydrocarbon liquids” for consistency with the requirement in 40 CFR 98.233(j) to calculate emissions from “atmospheric pressure fixed roof storage tanks receiving hydrocarbon produced liquids,” as noted in the 2015 amendments to subpart W (80 FR 64272, October 22, 2015).
98.233(k) .....	Revise the introductory sentence in this section to specify that 40 CFR 98.233(k) does not apply to condensate storage tanks that route emissions to flares or other controls for consistency with proposed amendment that would move procedures for calculating flared emissions from 40 CFR 98.233(k) to 40 CFR 98.233(n).

TABLE 4—PROPOSED TECHNICAL CORRECTIONS TO SUBPART W—Continued

Section (40 CFR)	Description of proposed amendment
98.233(n)(5) .....	Correct the cross reference in the definition of the equation variable “Y <sub>j</sub> ” from paragraph (n)(1) to (n)(2).
98.233(o) introductory text and (p) introductory text.	Move the last sentence in each paragraph to be the second sentence to clarify that the calculation methodology for compressors routed to flares, combustion, or vapor recovery systems apply to all industry segments.
98.233(o) introductory text and (p) introductory text, 236(o)(2)(ii) and (p)(2)(ii).	Revise the instances of “vapor recovery” to read “vapor recovery system” to correct inconsistency in the term.
98.233(p)(1)(i) .....	Correct the internal cross reference from paragraph (o) to paragraph (p).
98.233(p)(4)(ii)(C) .....	Add missing “in” to read “according to methods set forth in § 98.234(d).”
98.233(r) introductory text .....	Revise the instance of “CH” in the third sentence to read “CH <sub>4</sub> ” to correct a typographical error.
98.233(r), equations W–32A and W–32B .....	Correct the cross reference in the definition of the equation variable “E <sub>s,MR,i</sub> ” and the equation variable “CountMR” from paragraph (q)(9) to (q)(2)(xi) or (q)(3)(vii)(B).
98.233(r)(6)(ii) .....	Add reference to components listed in 40 CFR 98.232(i)(3), for consistency with proposed amendments to 40 CFR 98.233(r)(6)(i).
98.233(t)(2) .....	Revise the definition of equation variable “Z <sub>a</sub> ” to include the sentence following the definition of that variable to correct a typographical error.
98.233(u)(2)(ii) .....	Format the heading to be in italicized text.
98.233(z) .....	Revise the instances of “high heat value” to read “higher heating value” to correct inconsistency in the term.
98.233(z), equations W–39A and W–39B .....	Remove unnecessary “constituent” from “CO <sub>2</sub> constituent” and “methane constituent” and remove “gas” from “gas hydrocarbon constituent.” Add missing “the” to read “to the combustion unit” in several variable definitions.
98.234(e) .....	Renummer the Peng Robinson equation of state from equation W–41 to equation W–46 to provide space for five new equations related to new source types in proposed 40 CFR 98.233(dd) and (ee).
98.234(f) .....	Remove and reserve paragraph for provisions for best available monitoring methods for RY2015, as reports for that reporting year can no longer be submitted to the EPA.
98.234(g) .....	Remove and reserve paragraph for provisions for best available monitoring methods for RY2016, as reports for that reporting year can no longer be submitted to the EPA.
98.236 introductory text .....	Add missing “than” to read “report gas volumes at standard conditions rather than the gas volumes at actual conditions”
98.236(c)(5)(i) through (iii) .....	Edits to explicitly state that the reporting requirements in this section apply to pneumatic pumps that are vented direct to atmosphere and for which emissions are calculated using the default emission factor (Calculation Method 3).
98.236(d)(2)(iii)(B) .....	Revise “operational” to “pumping liquid” in the description of the reported time element in 98.236(c)(5)(i) to be consistent with the proposed change described in section III.E.3 of this preamble for Calculation Method 2.
98.236(d)(2)(iii)(B) .....	Revise “natural gas flow rate” to read “natural gas feed flow rate” for consistency with the parameters listed in 40 CFR 98.233(d)(4)(i).
98.236(e)(1) and (2) .....	Revise the instances of “vented to” a control device, vapor recovery, or a flare to read “routed to” to correct inconsistency in the phrases “vented to” and “routed to.”
98.236(j)(2) .....	Revise the instances of “vapor recovery device” to read “vapor recovery system” to correct inconsistency in the term.
98.236(j)(2) .....	Clarify that the reported information in paragraphs (j)(1)(i) through (xvi) should only include those atmospheric storage tanks with emissions calculated using Calculation Method 3.
98.236(k)(1)(iii) .....	Correct the internal cross reference from “§ 98.233(k)(2)” to “§ 98.233(k)(1).”
98.236(k)(2) .....	Add a cross reference to § 98.233(k)(2) and revise sentence to specify that the reported method used to measure leak rates should be one provided in that section.
98.236(l)(1), (2), (3), and (4) introductory text ...	Revise the instances of “vented to a flare” to read “routed to a flare” to correct inconsistency in the phrases “vented to” and “routed to.”
98.236(p)(3)(ii) .....	Add a missing period at the end of the sentence.
98.236(bb) .....	Clarify that reporting for missing data procedures includes the procedures used to substitute an unavailable value of a parameter (per 40 CFR 98.235(h)).
98.236(cc) .....	Correct the cross references from paragraph (l)(1)(iv), (l)(2)(iv), (l)(3)(iii), and (l)(4)(iii) to (l)(1)(v), (l)(2)(v), (l)(3)(iv), and (l)(4)(iv), respectively.
98.238 .....	Remove the second definition of “Facility with respect to natural gas distribution for purposes of reporting under this subpart and for the corresponding subpart A requirements” to eliminate an inadvertent identical duplicative definition.
Tables W–1 through W–7 to subpart W of part 98.	Replace Tables W–1 through W–7 with new Tables W–1 through W–6 to reorganize and consolidate the emission factor tables so that there are separate tables by pollutant (whole gas, THC, and CH <sub>4</sub> ) and by type of factor (population and leaker emission factors). Update cross references to these tables accordingly throughout subpart W.

**IV. Schedule for the Proposed Amendments**

The EPA is planning to consider the comments on these proposed changes, and, if any of the proposed amendments

are finalized, to respond to the comments and promulgate any

amendments by August 16, 2024.<sup>129</sup> We

<sup>129</sup> Section 136(h) of the CAA requires subpart W to be revised as specified in that provision “not later than 2 years after the date of enactment of this

are proposing that these amendments would become effective on January 1, 2025, and that reporters would implement the majority of the changes beginning with reports prepared for RY2025 and submitted March 31, 2026. The exception is the proposed reporting of the quantities of natural gas, crude oil, and condensate produced that is sent to sale in the calendar year for each well permanently shut-in and plugged (proposed 40 CFR 98.236(aa)(1)(iii)(C) through (E) and proposed 40 CFR 98.236(aa)(2)(iv) through (vi)); those provisions would become effective on January 1, 2025 and reporters would include that information in their reports prepared for RY2024 and submitted March 31, 2025. The submission date for RY2025 reports is over a year after we expect a final rule based on this proposal to be finalized, if finalized, thus providing a reasonable period for reporters to adjust to any finalized amendments. The proposed effective date would also allow ample time for the EPA to implement the changes into e-GGRT.

We are likewise proposing that the proposed CBI determinations discussed in section VI of this preamble would become effective on January 1, 2025. The majority of the determinations are for new or revised data elements that would be included in annual GHG reports prepared for RY2025 and submitted March 31, 2026. The determinations related to the reporting of the quantities of natural gas, crude oil, and condensate produced that is sent to sale in the calendar year for each well permanently shut-in and plugged would apply the first year that data is collected (*i.e.*, RY2024 data submitted on or before March 31, 2025). Finally, there is one circumstance, discussed in detail in section V of this preamble, where the proposed determination covers data included in annual GHG reports submitted for prior years. In all cases, the proposed determinations for the data that the EPA has already received for these prior years or receives going forward for any reporting year would become effective on January 1, 2025.

section.” The section was enacted via Public Law No: 117–169 on August 16, 2022.

## V. Proposed Confidentiality and Reporting Determinations for Certain Data Reporting Elements

### A. Overview and Background

In this action we are proposing confidentiality determinations for new or substantially revised data elements that would be collected under the proposed rule amendments.

#### 1. Background on EPA’s Treatment of Data Collected Under Part 98

Following proposal of part 98 (74 FR 16448, April 10, 2009), the EPA received comments addressing the issue of whether certain data could be entitled to confidential treatment. In response to these comments, the EPA stated in the preamble to the 2009 Final Rule (74 FR 56387, October 30, 2009) that through a notice and comment process, we would establish those data elements that are entitled to confidential treatment. This proposal is one of a series of rules dealing with confidentiality determinations for data reported under part 98, including subpart C (General Stationary Fuel Combustion) and W (Petroleum and Natural Gas Systems).

- 75 FR 39094, July 7, 2010. Describes the data categories and category-based determinations the EPA developed for the part 98 data elements.

- 76 FR 30782, May 26, 2011; hereafter referred to as the “2011 Final CBI Rule.” Assigned data elements to data categories and published the final CBI determinations for the data elements in 34 part 98 subparts, except for those data elements that were assigned to the “Inputs to Emission Equations” data category.

- 77 FR 48072, August 13, 2012. Finalized confidentiality determinations for data elements reported under nine subparts, including subpart W, except for those data elements that are “inputs to emission equations”.

- 78 FR 69337, November 29, 2013. Finalized determinations for new and revised data elements in 15 subparts, including subpart C, except for those data elements that are “inputs to emission equations”.

- 79 FR 63750, October 24, 2014. Revised recordkeeping and reporting requirements for “inputs to emission equations” for 23 subparts and finalized confidentiality determinations for new data elements in 11 subparts, including subpart W.

- 79 FR 70352, November 25, 2014. Finalized confidentiality determinations for new and substantially revised data elements in subpart W.

- 80 FR 64262, October 22, 2015. Finalized confidentiality determinations for new data elements in subpart W.

- 81 FR 86490, November 30, 2016. Finalized confidentiality determinations for new or substantially revised data elements in subpart W.

- 81 FR 89188, December 9, 2016. Finalized confidentiality determinations for new or substantially revised data elements in 18 subparts, including subpart C.

- 87 FR 36920, June 21, 2022. Describes the EPA’s revised approach to assessing data in response to *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019) (hereafter referred to as *Argus Leader*).<sup>130</sup>

To support the proposed amendments to part 98 described in section III of this preamble, we are proposing confidentiality determinations or “emission data” designations, in keeping with our existing approach (see section V.B.1 of this preamble), for the following:

- New or substantially revised reporting requirements (*i.e.*, the proposed change requires additional or different data to be reported);
- Existing reporting requirements for which the EPA did not previously finalize a confidentiality determination or “emission data” designation.

Further, we propose to designate certain new or substantially revised data elements as “inputs to emission equations” falling within the definition of “emission data.” For each element that we propose would fall in this category, we further propose whether the data element would be directly reported to the EPA or whether it would be entered into e-GGRT’s Inputs Verification Tool (IVT) (see section V.C of this preamble for a discussion of “inputs to emission equations”).

#### 2. Summary of Data Elements Affected by the Proposed Amendments to Part 98

Table 5 of this preamble provides the number of affected data elements and the affected subparts for each of these proposed actions.

<sup>130</sup> See Docket Id. No. EPA–HQ–OAR–2023–0234.

TABLE 5—SUMMARY OF PROPOSED ACTIONS RELATED TO DATA CONFIDENTIALITY

Proposed actions related to data confidentiality	Number of data elements <sup>a</sup>	Subpart(s)
New or substantially revised reporting requirements for which the EPA is proposing a confidentiality determination or “emission data” designation.	522	C, W
Existing reporting requirements for which the EPA is proposing a confidentiality determination or “emission data” designation because the EPA did not previously make a confidentiality determination or “emission data” designation.	1	W
New or substantially revised reporting requirements that the EPA is proposing be designated as “inputs to emission equations” and for which the EPA is proposing reporting determinations.	162	W

<sup>a</sup> These data elements are individually listed in the memoranda: (1) *Proposed Confidentiality Determinations and Emission Data Designations for Data Elements in Proposed Revisions to the Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems* (2) *Proposed Reporting Determinations for Data Elements Assigned to the Inputs to Emission Equations Data Category in Proposed Revisions to the Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems*, available in the docket for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234).

The majority of the proposed determinations would apply at the same time as the proposed schedule described in section IV of this preamble. In the case where the EPA is re-proposing from the June 2022 proposal a determination for an existing data element where one was not previously made, the proposed determination would be effective on January 1, 2025, and would apply to annual reports submitted for RY2025, as well as all prior years that the data were collected. The determination related to the treatment of this prior year data will not change how the data was actually treated by the Agency, it will only conform the text of the determination to the actual confidentiality status the data has had since it was first collected.

### B. Proposed Confidentiality Determinations and Emissions Data Designations

#### 1. Proposed Approach

The EPA is proposing to assess the data elements in this proposed rule, following the same approach as described in the 2022 Proposed Rule (87 FR 36920, June 21, 2022). In that proposal, the EPA described a revised approach to assessing data in response to *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356 (2019) (hereafter referred to as *Argus Leader*).<sup>131</sup>

<sup>131</sup> In the 2022 Proposed Rule (87 FR 36920, June 21, 2022), the EPA proposed that the *Argus Leader* decision does not affect our historical approach to designating data elements as “inputs to emission equations” or our previous approach for designating new and revised reporting requirements as “emission data,” which are described in the July 7, 2010 proposal (75 FR 39094), 2011 Final CBI Rule, and October 24, 2014 final rule (79 FR 63750). For reporting elements that the EPA did not designate as “emission data” or “inputs to emission equations,” the EPA proposed to revise the historical approach to assign data elements to data categories established in the 2011 Final CBI Rule, and instead proposed to assess each individual reporting element according to the *Argus Leader* criteria.

We propose to continue identifying new and revised reporting elements that qualify as “emission data” (i.e., data necessary to determine the identity, amount, frequency, or concentration of the emission emitted by the reporting facilities) by evaluating the data for assignment to one of the four data categories designated by the 2011 Final CBI Rule to meet the CAA definition of “emission data” in 40 CFR 2.301(a)(2)(i)<sup>132</sup> (hereafter referred to as “emission data categories”). Refer to section II.B of the July 7, 2010, proposal for descriptions of each of these data categories and the EPA’s rationale for designating each data category as “emission data.”

For data elements designated as “inputs to emission equations,” the EPA proposes to assign data elements to one of two subcategories, including data elements entered into IVT and those directly reported to the EPA. See section V.C of this preamble for further descriptions of each of these data categories.

For new or revised data elements that the EPA does not propose to designate as “emission data” or “inputs to emission equations,” the EPA proposes to assess each individual reporting element according to the *Argus Leader* standard, established in 2019. Accordingly, we propose to evaluate

<sup>132</sup> See section I.C of the July 7, 2010 proposal (75 FR 39100) for a discussion of the definition of “emission data.” As discussed therein, the relevant paragraphs (to the GHGRP) of the CAA definition of “emission data” include 40 CFR 2.301(a)(2)(i)(A) and (C), as follows: (A) “Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission which has been emitted by the source (or of any pollutant resulting from any emission by the source), or any combination of the foregoing;” and (C) “A general description of the location and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).”

each new or revised data element not designated as “emission data” or “inputs to emission equations” individually to determine whether the information is customarily and actually treated as private by the reporter and are proposing a confidentiality determination based on that evaluation.

Consistent with the 40 CFR part 2 procedures, this rulemaking provides an opportunity for affected stakeholders to justify any confidentiality claim they may have for the data they are required to submit under parts 98 (except for emission data which are not entitled to confidential treatment).

#### 2. Proposed Confidentiality Determinations and “Emission Data” Designations

In this section, we discuss the proposed confidentiality determinations and “emission data” designations for 522 new or substantially revised data elements. We also discuss one existing data element (i.e., not proposed to be substantially revised) for which for no determination has been previously established.

##### a. Proposed Confidentiality Determinations and “Emission Data” Designations for New or Substantially Revised Data Reporting Elements

For the 522 new and substantially revised data elements, the EPA is proposing “emission data” designations for 277 data elements and confidentiality determinations for 245 data elements. The EPA is proposing to designate 277 new or substantially revised data elements as “emission data” by assigning the data elements to three emission data categories (established in the 2011 Final CBI Rule as discussed in section V.B.1 of this preamble), as follows:

- 114 data elements that are proposed to be reported under subpart W are proposed to be assigned to the “Emissions” emission data category;

- 126 data elements that are proposed to be reported under subparts C and W are proposed to be assigned to the “Facility and Unit Identifier Information” emission data category; and

- 37 data elements that are proposed to be reported under subparts C and W are proposed to be assigned to the “Calculation Methodology and Methodological Tier” emission data category.

Refer to Table 1 in the memorandum, Proposed Confidentiality Determinations and Emission Data Designations for Data Elements in Proposed Revisions to the Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems, available in the docket for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234), for a list of these 277 data elements proposed to be designated as “emission data,” the proposed emission data category assignment for each data element, and the EPA’s rationale for each proposed “emission data” category assignment.

The remaining 245 new and substantially revised data elements proposed to be reported under subpart W are not proposed to be designated as “emission data,” or “inputs to emission equations.” Rather, this proposal assesses each individual reporting element according to the Argus Leader criteria as discussed in section V.B.1 of this preamble. Refer to Table 2 in the memorandum, Proposed Confidentiality Determinations and Emission Data Designations for Data Elements in Proposed Revisions to the Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems, to see a list of these 245 specific data elements, the proposed confidentiality determination for each data element, and the EPA’s rationale for each proposed confidentiality determination. These determinations show the data elements that would be entitled to confidential treatment if submitted to the EPA, and those that the EPA would publish.

#### b. Proposed Confidentiality Determinations for Existing Part 98 Data Elements for Which No Determination Has Been Previously Established

We are re-proposing one confidentiality determination for a single data element currently reported under subpart W for which no confidentiality determination or “emission data” designation has been previously finalized under part 98. In the 2022 Proposed Rule, we reviewed previous rulemakings and found 26 data elements where a confidentiality determination or “emission data” designation had not been made under

subpart W. In the 2022 Proposed Rule, we had evaluated these data elements and proposed either confidentiality determinations or “emission data” designations, using the categories established in the 2011 Final CBI Rule. This proposal would revise 25 out of 26 of these data elements. Therefore, these 25 revised data elements are included in the proposed confidentiality determinations and “emission data” designations discussed in section V.B.2.a of this preamble, consistent with our approach for other data elements that we are proposing to revise in this proposed rulemaking. That leaves one existing data element for which no previous determination has been finalized. We assessed the one remaining data element with no existing confidentiality determination according to the Argus Leader criteria and are re-proposing the confidentiality determination from the June 2022 Proposed Rule. Refer to Table 3 in the memorandum, Proposed Confidentiality Determinations and Emission Data Designations for Data Elements in Proposed Revisions to the Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems, available in the docket for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234), for details of the confidentiality determinations.

#### c. Proposed Reporting Determinations for Inputs to Emissions Equations

In this section, we discuss data elements that the EPA proposes to assign to the “Inputs to Emission Equations” data category. This data category includes data elements that are the inputs to the emission equations used by sources that directly emit GHGs to calculate their annual GHG emissions.<sup>133</sup> As discussed in section VI.B.1 of the 2022 Proposed Rule (87 FR 36920, June 21, 2022), the EPA determined that the Argus Leader standard does not apply to our approach for handling data elements assigned to the “Inputs to Emission Equations” data category.

The EPA organizes data assigned to the “Inputs to Emission Equations” data category into two subcategories. The first subcategory includes “inputs to emission equations” that must be

<sup>133</sup> For facilities that directly emit GHGs, part 98 includes equations that facilities use to calculate emission values. The “Inputs to Emission Equations” data category includes the data elements that facilities would be required to enter in the equations to calculate the facility emissions values, e.g., monthly consumption or production data or measured values from required monitoring, such as carbon content. See 75 FR 39094, July 7, 2010 for a full description of the “Inputs to Emission Equations” data category.

directly reported to the EPA. This is done in circumstances where the EPA has determined that the data elements do not meet the criteria necessary for them to be entered into the IVT system. These “inputs to emission equations,” once received by the EPA, are not entitled to confidential treatment. The second subcategory includes “inputs to emission equations” that are entered into IVT. These “inputs to emission equations” are entered into IVT to satisfy the EPA’s verification requirements. These data must be maintained as verification software records by the submitter, but the data are not included in the annual report that is submitted to the EPA. This is done in circumstances where the EPA has determined that the data elements meet the criteria necessary for them to be entered into the IVT system. Refer to the memorandum, Proposed Reporting Determinations for Data Elements Assigned to the Inputs to Emission Equations Data Category in Proposed Revisions to the Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems, available in the docket for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234), for a discussion of the criteria established in 2011 for evaluating whether data assigned to the “Inputs to Emission Equations” data category should be entered into the IVT system.

We are proposing to assign 162 new or substantially revised data elements in subparts C and W to the “Inputs to Emission Equations” data category. We evaluated each of the 162 proposed new or substantially revised data elements assigned to the “Inputs to Emission Equations” data category and determined that none of these 162 data elements meet the criteria necessary for them to be entered into the IVT system; therefore, we propose that these 162 data elements be directly reported to the EPA. As “inputs to emission equations” are emissions data, these 162 data elements would not be eligible for confidential treatment once directly reported to the EPA, and they would be published once received by the EPA. Refer to Table 1 in the memorandum, Proposed Reporting Determinations for Data Elements Assigned to the Inputs to Emission Equations Data Category in Proposed Revisions to the Greenhouse Gas Reporting Rule for Petroleum and Natural Gas Systems, available in the docket for this rulemaking (Docket Id. No. EPA-HQ-OAR-2023-0234), for a list of these 162 data elements proposed to be designated as “inputs to emission equations” that would be directly reported to the EPA and the EPA’s

rationale for the proposed reporting determinations.

*D. Request for Comments on Proposed Amendments to 40 CFR Part 2, Category Assignments, Confidentiality Determinations, or Determinations of Inputs To Be Reported*

We solicit comment on the proposed categories, confidentiality, and reporting determinations in this proposed rule. By proposing confidentiality determinations prior to data reporting through this proposal and rulemaking process, we are providing potential reporters an opportunity to submit comments, particularly comments addressing any data elements not entitled to confidential treatment under this proposal, but which reporters customarily and actually treat as private. Likewise, we provide potential reporters an opportunity to submit comments on whether there are disclosure concerns for data elements proposed to be categorized as “inputs to emission equations” that we propose would be directly reported to the EPA via annual reports and subsequently released by the EPA. This opportunity to submit comments is intended to provide reporters with the opportunity to substantiate their confidentiality claims that would ordinarily be afforded to reporters when the EPA considers claims for confidential treatment of information in case-by-case confidentiality determinations under 40 CFR part 2. In addition, the comment period provides an opportunity to respond to the EPA’s proposed determinations with more information for the Agency to consider prior to finalization. We will evaluate the comments on our proposed determinations, including claims of confidentiality and information substantiating such claims, before finalizing the confidentiality determinations. Please note that this will be reporters’ only opportunity to substantiate a confidentiality claim for data elements included in this proposed rule where a confidentiality determination or reporting determination is being proposed. Upon finalizing the confidentiality determinations and reporting determinations of the data elements identified in this proposed rule, the EPA will release or withhold these data in accordance with 40 CFR 2.301(d), which contains special provisions governing the treatment of part 98 data for which confidentiality determinations have been made through rulemaking pursuant to CAA sections 114 and 307(d).

If members of the public have reason to believe any data elements in this proposed rule that are proposed to be treated as confidential are not customarily and actually treated as private by reporters, please provide comment explaining why the Agency should not provide an assurance of confidential treatment for such data. Likewise, if members of the public have reason to disagree with the EPA’s proposal that “inputs to emission equations” qualify to be entered into IVT and retained as verification software records instead of being directly reported to the EPA, please provide comment explaining why the “inputs to emission equations” do not qualify to be entered into IVT, should be directly reported to the EPA, and subsequently released by the EPA. As described in section III.D, the EPA is proposing revisions to several existing data elements within the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments such that the data would be reported by facilities at the site level. Under the current requirements, facilities report much of this information aggregated across multiple sites. Given that the proposed revisions would require that facilities report more specific information, the EPA is requesting comment on the confidentiality and reporting determinations for this site-level reporting. For any revised data elements that fall into an “emissions data” category, the EPA is proposing that the data would continue to be released regardless of whether it is collected at the site level or aggregated across sites. However, for data elements that do not fall into an “emissions data” category, the EPA is seeking comment regarding whether any of these particular data elements are customarily and actually treated as private together with specific information supporting this position when reported at the site level. The EPA believes that the information in this category that would not already be released as emission data is not information that is customarily and actually treated as confidential by submitters, even at the site level. The EPA is aware of outlets where much of this information is already released publicly, such as State and local records including records from oil and gas permitting authorities, taxing authorities, and environmental agencies, U.S. Securities and Exchange Commission (SEC) forms for publicly traded companies, company websites, data services such as Enverus, S&P

Global/IHS Markit, Rystad Energy and Wood Mackenzie, and publications like Oil & Gas Journal, Petroleum Economist, and Upstream. Upon consideration of comments, the EPA will consider releasing this information directly as proposed, or other options that may take into account confidentiality concerns, but still release as much of this valuable information to the public as possible.

When submitting comments regarding the confidentiality determinations or reporting determinations we are proposing in this action, please identify each individual proposed new, revised, or existing data element you consider to be confidential or do not consider to be “emission data” in your comments. If the data element has been designated as “emission data,” please explain why you do not believe the information should be considered “emission data” as defined in 40 CFR 2.301(a)(2)(i). If the data has not been designated as “emission data” and is proposed to not be entitled to confidential treatment, please explain specifically how the data element is commercial or financial information that is both customarily and actually treated as private. Particularly describe the measures currently taken to keep the data confidential and how that information has been customarily treated by your company and/or business sector in the past. This explanation is based on the requirements for confidential treatment set forth in *Argus Leader*. If the data element has been designated as an “input to an emission equation” (i.e., not entitled to confidential treatment) and proposed to be directly reported to the EPA via annual reports and subsequently released by the EPA, please explain specifically why there are disclosure concerns.

Please also discuss how this data element may be different from or similar to data that are already publicly available, including data already collected and published annually by the GHGRP, as applicable. Please submit information identifying any publicly available sources of information containing the specific data elements in question. Data that are already available through other sources would likely be found not to qualify for confidential treatment. In your comments, please identify the manner and location in which each specific data element you identify is publicly available, including a citation. If the data are physically published, such as in a book, industry trade publication, or Federal agency publication, provide the title, volume number (if applicable), author(s), publisher, publication date, and International Standard Book Number

(ISBN) or other identifier. For data published on a website, provide the address of the website, the date you last visited the website and identify the website publisher and content author. Please avoid conclusory and unsubstantiated statements, or general assertions regarding the confidential nature of the information.

Finally, we are not proposing new confidentiality determinations and reporting determinations for data reporting elements proposed to be unchanged or minimally revised because the final confidentiality determinations and reporting determinations that the EPA made in previous rules for these unchanged or minimally revised data elements are unaffected by this proposed amendment and will continue to apply. The minimally revised data elements are those where we are proposing revisions that would not require additional or different data to be reported. For example, we are proposing to amend 40 CFR 98.236(aa)(5)(ii) to clarify that facilities reporting to the Underground Natural Gas Storage industry segment must report the quantity of natural gas withdrawn from storage and sent to sale in the calendar year. As discussed in section III.U of this preamble, we are proposing several text edits to include “natural” before each instance of “gas” and to use the phrase “sent to sale” for consistency with CAA section 136 language. This proposed change is for consistency in language and would not affect the data collected or the interpretation of the terms, and therefore we are not proposing a new or

revised confidentiality determination. However, we are soliciting comment on any cases where a minor revision would affect the previous confidentiality determination or reporting determination. In your comments, please identify the specific data element, including name and citation, and explain why the minor revision would affect the previous confidentiality determination or reporting determination.

**VI. Impacts of the Proposed Amendments**

The proposed revisions would amend requirements that apply to the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Rule consistent with CAA section 136(h) to ensure that reporting under subpart W is based on empirical data and accurately reflects total CH4 emissions and waste emissions from applicable facilities, and to allow owners and operators of applicable facilities to submit empirical emissions data that appropriately could demonstrate the extent to which a charge is owed in future implementation of CAA section 136. These proposed revisions include improving the existing calculation, recordkeeping, and reporting requirements. The EPA is proposing amendments to part 98 in order to implement improvements to the GHGRP, including revisions to update existing emission factors and emissions estimation methodologies, revisions to require reporting of additional data for new emission sources and address

potential gaps in reporting, and revisions to collect data that would improve the EPA’s understanding of the sector-specific processes or other factors that influence GHG emission rates, verification of collected data, or to complement or inform other EPA programs. The EPA is also proposing revisions that would improve implementation of the program, such as those that would update applicability estimation methodologies, provide flexibility for or simplifying calculation and monitoring methodologies, streamline recordkeeping and reporting, and other minor technical corrections or clarifications identified as a result of working with the affected sources during rule implementation and outreach. The EPA anticipates that the proposed revisions to improve accuracy of reporting would increase costs for reporters. To the extent consideration of costs is relevant to the EPA’s proposal for meeting its obligation under CAA section 136(h), these anticipated costs are reasonable.

As discussed in section V of this preamble, we are proposing to implement these changes beginning in RY2025. Costs have been estimated over the three years following the year of implementation. The incremental implementation costs for each reporting year are summarized in Table 6 of this preamble. The estimated annual average labor burden is \$41.4 million per year and the annual average labor burden per reporter is \$13,500. The incremental burden for subpart W and the incremental costs per reporter are shown in Table 6 of this preamble.

**TABLE 6—TOTAL INCREMENTAL LABOR BURDEN FOR REPORTING YEARS 2025–2027**  
[\$2021/year]

Cost summary	RY2025	RY2026	RY2027	Annual average
Burden by Year .....	\$41.4 million .....	\$41.4 million .....	\$41.4 million .....	\$41.4 million.
Number of Reporters .....	3,077 .....	3,077 .....	3,077 .....	3,077.
Incremental Labor Cost per Reporter .....	\$13,500 .....	\$13,500 .....	\$13,500 .....	\$13,500.

There is an additional annualized incremental burden of \$50.9 million for capital and operation and maintenance (O&M) costs, which reflects changes to

applicability and monitoring. Including capital and O&M costs, the total annual average burden is \$92.3 million over the next 3 years.

The total incremental burden and burden by reporter per subpart W industry segment are shown in Table 7 of this preamble.

TABLE 7—TOTAL INCREMENTAL BURDEN BY INDUSTRY SEGMENT AND BY REPORTER  
[2021/year]<sup>a</sup>

Industry segment	Count of reporters <sup>b</sup>	Labor costs <sup>c</sup>	Capital and O&M (annualized)	Total annual cost	Total annual cost per reporter
Onshore Petroleum and Natural Gas Production .....	777	\$27,957,105	\$36,301,841	\$64,258,946	\$82,701
Offshore Petroleum and Natural Gas Production .....	141	3,793	0	3,793	27
Onshore Petroleum and Natural Gas Gathering and Boosting .....	361	1,490,222	4,013,157	5,503,379	15,245
Onshore Natural Gas Processing .....	515	8,768,994	3,936,094	12,705,088	24,670
Onshore Natural Gas Transmission Compression .....	1,008	2,755,614	6,028,399	8,784,013	8,714
Natural Gas Transmission Pipeline .....	53	87,596	187	87,783	1,656
Underground Natural Gas Storage .....	68	167,324	417,348	584,673	8,598
LNG Import and Export Equipment .....	11	4,605	18,649	23,254	2,114
LNG Storage .....	7	14,714	20,953	35,667	5,095
Natural Gas Distribution .....	164	163,069	161,370	324,439	1,978
Total .....	3,077	41,413,037	50,897,998	92,311,035	30,000

<sup>a</sup> Includes estimated increase in costs following implementation of revisions in RY2025.

<sup>b</sup> Counts are based on GHGRP data reported in RY2020 and 567 new facilities, as detailed in the memorandum, *Assessment of Burden Impacts for Proposed Greenhouse Gas Reporting Rule Revisions for Petroleum and Natural Gas Systems*.

<sup>c</sup> Initial year and subsequent year labor costs are \$41.4 million per year.

A full discussion of the cost and emission impacts may be found in the memorandum, *Assessment of Burden Impacts for Proposed Greenhouse Gas Reporting Rule Revisions for Petroleum and Natural Gas Systems* available in the docket for this rulemaking, Docket Id. No. EPA-HQ-OAR-2023-0234. The EPA is requesting comment on the assumptions and methodology used in this memorandum.

The national costs of the proposed rule reflect the fact that there are a large number of affected entities, but per entity costs are low. To further assess the economic impacts of the proposed rule, the EPA conducted a screening analysis comparing the estimated total annualized compliance costs for the petroleum and natural gas systems industry segments with industry mean cost-to-revenue ratios based on the total facility costs that are applicable to

parent entities in each segment. This analysis shows that the per-entity impacts within each industry segment are low. These low mean cost-to-revenue ratios indicate that the proposed rule is unlikely to result in significant changes in parent entity production decisions or other choices that would result in significant fluctuations in prices or quantities in affected markets.

TABLE 8—MEAN CRRs FOR PARENT ENTITIES BY INDUSTRY SEGMENT, ALL BUSINESS SIZES

Industry segment	Mean CRR (standard error)
Onshore petroleum and natural gas production .....	0.87% (0.81–0.92%)
Offshore petroleum and natural gas production .....	0.06% (0.04–0.09%)
Onshore petroleum and natural gas gathering and boosting .....	0.41% (0.33–0.48%)
Onshore natural gas processing .....	0.50% (0.37–0.63%)
Onshore natural gas transmission compression .....	0.09% (0.06–0.12%)
Onshore natural gas transmission pipeline .....	0.07% (0.05–0.10%)
Underground natural gas storage .....	0.07% (0.05–0.09%)
LNG import and export equipment .....	0.01% (0.00–0.01%)
LNG storage .....	0.00% (0.00–0.00%)
Natural gas distribution .....	0.08% (0.05–0.10%)
All segments .....	0.60% (0.55–0.64%)

CRR = cost-to-revenue ratio.

The EPA also evaluated the mean costs to individual facilities and mean costs to parents (accounting for multiple owned facilities) for reporters (shown in Table 9 of this preamble), which are relatively small given the high revenues

of parent companies within the petroleum and natural gas systems sector. There are currently 2,322 existing facilities reporting to subpart W that are owned by approximately 600 parent entities. Based on a review of

revenue data available for approximately 585 parent entities, the proposed rule costs represent less than one percent of the total annual revenue for entities that would be reporting under subpart W.

TABLE 9—ESTIMATED MEAN COSTS AND REVENUES FOR FACILITY AND PARENT ENTITIES, ALL SEGMENTS

Metric	Estimated values (95% confidence interval)
Mean cost to parent entity per facility (thousands) .....	\$21.7 (\$21.5–\$21.8).
Mean number of facilities owned per parent .....	4.9 (4.4–5.4).
Mean cost to parent for all associated facilities (thousands) .....	\$105.7 (\$100.8–\$110.7).
Mean parent entity revenue (billions) .....	\$5.18 (\$4.59–\$5.77).
Total revenue for all subpart W parents (trillions) .....	\$3.89 (\$3.45–\$4.33).
Mean CRR for parent entities, using all facility costs .....	0.60% (0.55–0.64%).

Note: Because parent revenues are heavily skewed towards higher revenues, the ratio of mean cost to mean revenue (which is approximately 0.002%) differs substantially from the mean cost-to-revenue ratio (which is approximately 0.60%).

The EPA has also considered the potential benefits of the proposed amendments to subpart W. Because this is a proposed reporting rule, the EPA did not quantify estimated emission reductions or monetize the benefits from such reductions that could be associated with this proposed action. The benefits of the proposed amendments are based on their relevance to policy making, transparency, and market efficiency. The proposed amendments to the reporting system for petroleum and natural gas systems would benefit policymakers and the public by increasing the completeness and accuracy of facility emissions data. Public data on emissions allows for accountability of emitters to the public. Improved facility-specific emissions data would aid local, state, and national policymakers as they evaluate and consider future climate change policy decisions and other policy decisions for criteria pollutants, ambient air quality standards, and toxic air emissions. The benefits of improved reporting of petroleum and natural gas systems GHG emissions to government also include enhancing existing programs, such as the Natural Gas STAR Program, that provide significant benefits, such as identifying cost-effective technologies and practices to reduce emissions of CH<sub>4</sub> from operations in all of the major industry sectors—production, gathering and processing, transmission, and distribution. The Natural Gas STAR program leverages GHGRP reporting data to track partner petroleum and natural gas company activities related to their Methane Challenge commitments. The proposed changes to subpart W would increase knowledge of the location and magnitude of significant CH<sub>4</sub> emissions sources in the petroleum and natural gas industry, and associated activities and technologies, which can result in improvements in technologies and the identification of new emissions reducing technologies.

Benefits to industry of improved GHG emissions monitoring and reporting under the proposed amendments

include the value of having verifiable empirical data to present to the public to demonstrate appropriate environmental stewardship, and a better understanding of their emission levels and sources to identify opportunities to reduce emissions. The EPA also anticipates that improvements to monitoring and implementation of empirical measurement methods would result in emissions reductions. Based on activity data used to inform the U.S. GHG Inventory, the EPA estimated approximately 403.4 billion cubic feet of fugitive CH<sub>4</sub> emissions (including fugitive leaks, venting, and flaring) in 2021, representing a potential loss of over \$871 million<sup>134</sup> to industry. To the extent that more frequent monitoring helps to identify and mitigate emissions from leakage, a robust reporting program based on empirical data can help industry and achieve and disseminate their environmental achievements. Businesses and other innovators can use the data to determine and track their GHG footprints, find cost-saving efficiencies that reduce GHG emissions and save product, and foster technologies to protect public health and the environment, to reduce costs associated with fugitive emissions. Such monitoring also allows for inclusion of standardized GHG data into environmental management systems, providing the necessary information to track actual company performance and to achieve and disseminate their environmental achievements. Once facilities invest in the institutional knowledge and systems to monitor and report emissions, the cost of monitoring should fall and the accuracy of the accounting should continue to improve. The proposed amendments would continue to allow for facilities to benchmark themselves against similar facilities to understand better their relative standing within their industry and achieve and disseminate

information about their environmental performance.

In addition, transparent public data on emissions allows for accountability of polluters to the public who bear the cost of the pollution. The GHGRP serves as a powerful data resource and provides a critical tool for communities to identify nearby sources of GHGs and provide information to state and local governments. GHGRP data are easily accessible to the public via the EPA's online data publication tool, also known as FLIGHT (Facility Level Information on Greenhouse gases Tool) at: <https://ghgdata.epa.gov/ghgp/main.do>. FLIGHT is designed for the general public and allows users to view and sort GHG data from over 8,000 entities in a variety of ways including by location, industrial sector, and type of GHG emitted, and includes demographic data. Although the emissions reported to the EPA by reporting facilities are global pollutants, many of these facilities also release pollutants that have a more direct and local impact in the surrounding communities. Citizens, community groups, and labor unions have made use of public pollutant release data to negotiate directly with emitters to lower emissions, avoiding the need for additional regulatory action.

The proposed amendments would improve the quality and transparency of this reported data to affected communities, for example, by providing data on other large release events. The proposed disaggregation of reporting requirements within the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments to at least the well-pad and gathering boosting site-level, respectively, would provide communities with more localized information on GHG emissions from these segments. Therefore, while the EPA has not quantified the benefits of the proposed amendments to subpart W, the agency believes that they would be substantial and justify the estimated costs, if finalized as proposed. In

<sup>134</sup> Based on natural gas prices from EIA (current monthly average, April 2023). See <https://www.eia.gov/dnav/ng/hist/rngwhhdm.htm>.

addition, the focus on empirical data that is the foundation of this proposed rule was mandated by Congress in the IRA.

## VII. Statutory and Executive Order Reviews

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

This action is a “significant regulatory action” as defined in Executive Order 12866, as amended by Executive Order 14094. Accordingly, the EPA submitted this action to the Office of Management and Budget (OMB) for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234. The EPA prepared an analysis of the potential impacts associated with this action. This analysis, *Assessment of Burden Impacts for Proposed Greenhouse Gas Reporting Rule Revisions for Petroleum and Natural Gas Systems*, is also available in the docket to this rulemaking and is briefly summarized in section VI of this preamble.

### B. Paperwork Reduction Act

The information collection activities in this proposed rule have been submitted for approval to the OMB under the PRA. The ICR document that the EPA prepared has been assigned OMB No. 2060–NEW (EPA ICR number 2774.01). You can find a copy of the ICR in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234, and it is briefly summarized here.

The EPA estimates that the proposed amendments would result in an increase in burden. The burden associated with the proposed rule is due to revisions that would expand reporting to include new emission sources or that expand the industry segments covered by existing emissions sources and that may impact the facilities that are required to report to subpart W; revisions to emissions calculation methodologies that would require additional monitoring; and revisions to collect additional data to more accurately reflect and verify total CH<sub>4</sub> emissions in reports submitted to the GHGRP or to provide information for future implementation of the waste emissions charge under CAA section 136. As a result of these proposed revisions, 567 new sources are expected to become subject to subpart W. Labor and O&M costs are included for those new sources to comply with the reporting and

recordkeeping costs detailed in EPA ICR No. 2300.18, as well as costs to comply with these proposed revisions.

The estimated annual average burden is 417,821 hours and \$92.3 million over the 3 years covered by this information collection. Further information on the EPA’s assessment on the impact on burden can be found in the memorandum, *Assessment of Burden Impacts for Proposed Greenhouse Gas Reporting Rule Revisions for Petroleum and Natural Gas Systems*, in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234.

#### *Respondents/affected entities:*

Owners and operators of petroleum and natural gas systems that must report their GHG emissions and other data to the EPA to comply with 40 CFR part 98.

#### *Respondent’s obligation to respond:*

The respondent’s obligation to respond is mandatory under the authority provided in CAA sections 114 and 136.

#### *Estimated number of respondents:*

3,077 (affected by proposed amendments).

#### *Frequency of response:* Annually.

*Total estimated burden:* 417,821 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$92.3 million, includes \$50.9 million annualized capital or operation & maintenance costs.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

Submit your comments on the Agency’s need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rulemaking. You may also send your ICR-related comments to OMB’s Office of Information and Regulatory Affairs using the interface at <https://www.reginfo.gov/public/do/PRAMain>. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” or by using the search function. OMB must receive comments no later than October 2, 2023. The EPA will respond to any ICR-related comments in the final rule.

### C. Regulatory Flexibility Act (RFA)

I certify that this proposed action would not have a significant economic impact on a substantial number of small entities under the RFA. The small entities subject to the requirements of this action are small businesses in the

petroleum and natural gas industry. Small entities include small businesses, small organizations, and small governmental jurisdictions. The EPA has determined that some small entities are affected because their production processes emit GHGs that must be reported.

In the implementation of the GHGRP, the EPA previously determined thresholds that reduced the number of small businesses reporting. The proposed revisions would not revise the threshold for existing subpart W reporters, therefore, we do not expect a significant number of small entities would be newly impacted under the proposed rule revisions.

The proposed rule amendments predominantly apply to existing reporters and are amendments that would expand reporting to include new emission sources; add, remove, or refine emissions estimation methodologies to improve the accuracy and transparency of reported emission data; for the Onshore Natural Gas Production and Onshore Natural Gas Gathering and Boosting segments, revise reporting of emissions from a basin level to a site level; implement requirements to collect new or revised data; clarify or update provisions that have been misinterpreted; or streamline or simplify requirements by increasing flexibility for reporters or removing redundant requirements.

The EPA conducted a small entity analysis that assessed the costs and impacts to small entities, including: (1) Revisions to add new emissions sources and expand the industry segments covered by existing emissions sources, (2) changes to improve existing monitoring or calculation methodologies, and (3) revisions to reporting and recordkeeping requirements for data provided to the program. The Agency anticipates that although a subset of small reporters (108–116) have a cost-to-revenue ratio (CRR) >1%, there are only a limited number (29–30) of very small entities (1–19 employees) that would be likely to have significant impacts with CRR >3%, reflecting only a small proportion of the affected small entities (2.0%–5.2%). The mean CRR for these very small entities (1–19 employees) is estimated to be between 1.55% (1.46–1.64%) and 2.06% (1.77–2.34%) based on the incremental costs for existing reporting entities and between 2.35% (2.16–2.55%) and 3.12% (2.59–3.66%) based on the costs for newly reporting entities.<sup>135</sup> Details of this analysis are

<sup>135</sup> The EPA conducted a multi-level analysis to estimate mean CRRs for multiple scenarios. The

presented in the memorandum, *Assessment of Burden Impacts for Proposed Greenhouse Gas Reporting Rule Revisions for Petroleum and Natural Gas Systems*, available in the docket for this rulemaking, Docket Id. No. EPA–HQ–OAR–2023–0234. Based on the results of this analysis, we have concluded that this proposed action is not likely to have a significant regulatory burden for a substantial number of directly regulated small entities and thus that this proposed action would not have a significant economic impact on a substantial number of small entities. The EPA continues to conduct significant outreach on the GHGRP and maintains an “open door” policy for stakeholders to help inform the EPA’s understanding of key issues for the industries. We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain an unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action in part implements mandate(s) specifically and explicitly set forth in CAA section 136.

This proposed rule does not apply to governmental entities unless the government entity owns a facility in the petroleum and gas industry that directly emits GHG above part 98 applicability threshold levels. It does not impose any implementation responsibilities on state, local, or tribal governments and it is not expected to increase the cost of existing regulatory programs managed by those governments. Thus, the impact on governments affected by the proposed rule is expected to be minimal.

However, consistent with the EPA’s policy to promote communications between the EPA and state and local governments, the EPA sought comments from small governments concerning the regulatory requirements that might significantly or uniquely affect them in the development of this proposed rule. Specifically, the EPA previously published an RFI seeking public comment in a non-regulatory docket to collect responses to a range of questions related to the Methane Emissions

Reduction Program, including subpart W revisions (see Docket Id. No. EPA–HQ–OAR–2022–0875). The EPA received two comments from government entities supporting the use of empirical data and improvements to the accuracy of calculation methods under subpart W; these comments were considered during the development of the proposed rule. The EPA continues to be interested in the potential impacts of the proposed rule amendments on state, local, or tribal governments and welcomes comments on issues related to such impacts.

#### *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. This proposed rule does not apply to governmental entities unless the government entity owns a facility in the petroleum and gas industry (e.g., an LDC) that directly emits GHG above part 98 applicability threshold levels. Therefore, the EPA anticipates relatively few state or local government facilities would be affected. However, consistent with the EPA’s policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comment on this proposed action from state and local officials.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action has tribal implications. However, it will neither impose substantial direct compliance costs on federally recognized Tribal governments, nor preempt tribal law. This regulation will apply directly to petroleum and natural gas facilities that may be owned by tribal governments that emit GHGs. However, it will generally only have tribal implications where the tribal entity owns a facility that directly emits GHGs above threshold levels; therefore, relatively few tribal facilities would be affected. Of the subpart W facilities currently reporting to the GHGRP in RY2021, we identified four facilities currently reporting to part 98 that are owned by one tribal parent company.

In addition to tribes that would be directly impacted by the proposed revisions due to owning a facility subject to the proposed requirements, the EPA anticipates that tribes could be impacted in cases where facilities subject to the proposed revisions are

located on Tribal land. In particular, the EPA reviewed the location of the production wells reported by facilities under the Onshore Petroleum and Natural Gas Production segment and found production wells reported under subpart W on lands associated with approximately 20 tribes. Therefore, although the EPA anticipates that only one tribe would be subject to the rule, the EPA has sought opportunities to provide information to tribal governments and representatives during rule development. On November 4, 2022, the EPA published an RFI seeking public comment on a range of questions related to the Methane Emissions Reduction Program, including subpart W revisions (see Docket Id. No. EPA–HQ–OAR–2022–0875). The EPA received one comment from a tribal entity relevant to subpart W. The commenter supported the use of empirical data and improvements to the accuracy of calculation methods under subpart W, including the use of advanced CH<sub>4</sub> detection technologies for leak surveys at well sites and compressor stations; these comments were considered during the development of the proposed rule. Further, consistent with the EPA Policy on Consultation and Coordination with Indian Tribes, the EPA will engage in consultation with Tribal officials during the development of this action.

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

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

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

This action is not a “significant energy action” because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. The proposed amendments would expand reporting to include new emission sources; add, remove, or refine emissions estimation methodologies improve the accuracy and transparency of reported emission data; for the Onshore Natural Gas Production and Onshore Natural Gas Gathering and Boosting segments, revise reporting of

mean CRR and associated 95-percent confidence intervals provide an estimate of the range of cost-to-sales ratios expected to apply to affected very small entities that would be expected in the total population.

emissions from a basin level to a site level; implement requirements to collect new or revised data; clarify or update provisions that have been misinterpreted; or streamline or simplify requirements by increasing flexibility for reporters or removing redundant requirements. We are also proposing revisions that streamline or simplify requirements or alleviate burden through revision, simplification, or removal of certain calculation, monitoring, recordkeeping, or reporting requirements. In general, these changes would not have a significant, adverse effect on the supply, distribution, or use of energy. In addition, the EPA is proposing confidentiality determinations for new and revised data elements proposed in this rulemaking and for certain existing data elements for which a confidentiality determination has not previously been proposed. These proposed amendments and confidentiality determinations do not make any changes to the existing monitoring, calculation, and reporting requirements under subpart W and are not likely to have a significant adverse effect on the supply, distribution, or use of energy.

#### *I. National Technology Transfer and Advancement Act and 1 CFR Part 51*

This action involves technical standards. For facilities that conduct a performance test to calculate combustion slip, the EPA is proposing that the performance test would be conducted in accordance with one of the test methods in proposed 40 CFR 98.234(i), which include EPA Methods 18 and 320 as well as an alternate method, ASTM D6348–12. The EPA is proposing to allow the use of the alternate method ASTM D6348–12, which is based on the use of a Fourier transform infrared (FTIR) spectrometer for the identification and quantification of multicomponent gaseous compounds, in lieu of EPA Method 320. The EPA currently allows for the use of an earlier version of this method, ASTM D6348–03, under other subparts of part 98, including subparts I (Electronics Manufacturing), V (Nitric Acid Production), and OO (Fluorinated Gas Production), for the quantification of other GHGs. Therefore, the EPA is proposing to allow ASTM D6348–12 to be used in subpart W to quantify CH<sub>4</sub> emissions from combustion slip. Anyone may access the standards on the ASTM website (<https://www.astm.org/>) for additional information. These standards are available to everyone at a cost determined by the ASTM (\$76). The ASTM also offers memberships or subscriptions that allow unlimited

access to their methods. The cost of obtaining these methods is not a significant financial burden, making the methods reasonably available for reporters. The EPA will also make a copy of these documents available in hard copy at the appropriate EPA office (see the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information) for review purposes only.

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

The EPA anticipates that the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations as it does not directly affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

However, the data that would be collected through this action would provide an important data resource for communities and the public to understand GHG emissions. Since facilities would be required to use prescribed calculation and monitoring methods, emissions data can be compared and analyzed, including locations of emissions sources. GHGRP data are easily accessible to the public via the EPA's online data publication tool, also known as FLIGHT at: <https://ghgdata.epa.gov/ghgp/main.do>. FLIGHT is designed for the general public and allows users to view and sort GHG data for every reporting year starting with 2010 from over 8,000 entities in a variety of ways including by location, industrial sector, and type of GHG emitted. This powerful data resource provides a critical tool for communities to identify nearby sources of GHGs and provide information to state and local governments.

The proposed revisions to part 98 include requirements for reporting of GHG data from additional emission sources (other large release events, nitrogen removal units, produced water tanks, crankcase venting, and mud degassing), improvements to emissions calculation methodologies, and collection of data to support verification of GHG emissions and transparency. The proposed disaggregation of reporting requirements within the Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting industry segments to at least the well-

pad and gathering boosting site-level, respectively, and the required reporting of geographical coordinates for other large release events would provide communities with more localized information on GHG emissions from these segments.

Overall, these revisions would improve the quality of the data collected under the program and available to communities, if finalized.

#### *K. Determination Under CAA Section 307(d)*

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to the provisions of CAA section 307(d). Section 307(d)(1)(V) of the CAA provides that the provisions of CAA section 307(d) apply to "such other actions as the Administrator may determine."

#### **List of Subjects in 40 CFR Part 98**

Environmental protection, Greenhouse gases, Incorporation by reference, Reporting and recordkeeping requirements.

**Michael S. Regan,**  
*Administrator.*

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, chapter I, of the Code of Federal Regulations as follows:

#### **PART 98—MANDATORY GREENHOUSE GAS REPORTING**

■ 1. The authority citation for part 98 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

#### **Subpart A—General Provision**

■ 2. Amend § 98.1 by revising paragraph (c) to read as follows:

#### **§ 98.1 Purpose and scope.**

\* \* \* \* \*

(c) For facilities required to report under onshore petroleum and natural gas production under subpart W of this part, the terms *Owner and Operator* used in this subpart have the same definition as *Onshore petroleum and natural gas production owner or operator*, as defined in § 98.238. For facilities required to report under onshore petroleum and natural gas gathering and boosting under subpart W of this part, the terms *Owner and Operator* used in this subpart have the same definition as *Gathering and boosting system owner or operator*, as defined in § 98.238. For facilities required to report under onshore natural gas transmission pipeline under subpart W of this part, the terms *Owner and*

*Operator* used in this subpart have the same definition as *Onshore natural gas transmission pipeline owner or operator*, as defined in § 98.238.

■ 3. Amend § 98.2 by revising paragraph (i)(3) to read as follows:

**§ 98.2 Who must report?**

\* \* \* \* \*

(i) \* \* \*

(3) If the operations of a facility or supplier are changed such that all applicable processes and operations subject to paragraphs (a)(1) through (4) of this section cease to operate, then the owner or operator may discontinue complying with this part for the reporting years following the year in which cessation of such operations occurs, provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting and certifies to the closure of all applicable processes and operations no later than March 31 of the year following such changes. If one or more processes or operations subject to paragraphs (a)(1) through (4) of this section at a facility or supplier cease to operate, but not all applicable processes or operations cease to operate, then the owner or operator is exempt from reporting for any such processes or operations in the reporting years following the reporting year in which cessation of the process or operation occurs, provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting for the process or operation no later than March 31 following the first reporting year in which the process or operation has ceased for an entire reporting year. Cessation of operations in the context of underground coal mines includes, but is not limited to, abandoning and sealing the facility. This paragraph (i)(3) does not apply to seasonal or other temporary cessation of operations. This paragraph (i)(3) does not apply to the municipal solid waste landfills source category (subpart HH of this part), or the industrial waste landfills source category (subpart TT of this part). This paragraph (i)(3) does not apply when there is a change in the owner or operator for facilities in industry segments with a unique definition of facility as defined in § 98.238 of the petroleum and natural gas systems source category (subpart W of this part), unless the changes result in permanent cessation of all applicable processes and operations. The owner or operator must resume reporting for any future calendar year during which any of the GHG-

emitting processes or operations resume operation.

\* \* \* \* \*

■ 4. Amend § 98.4 by revising the first sentence of paragraph (h) and adding paragraph (n) to read as follows:

**§ 98.4 Authorization and responsibilities of the designated representative.**

\* \* \* \* \*

(h) *Changes in owners and operators.* Except as provided in paragraph (n) of this section, in the event an owner or operator of the facility or supplier is not included in the list of owners and operators in the certificate of representation under this section for the facility or supplier, such owner or operator shall be deemed to be subject to and bound by the certificate of representation, the representations, actions, inactions, and submissions of the designated representative and any alternate designated representative of the facility or supplier, as if the owner or operator were included in such list.

\* \* \* \* \*

(n) Alternative provisions for changes in owners and operators for industry segments with a unique definition of facility as defined in § 98.238. When there is a change to the owner or operator of a facility required to report under the onshore petroleum and natural gas production, natural gas distribution, onshore petroleum and natural gas gathering and boosting, or onshore natural gas transmission pipeline industry segments of subpart W of this part, or a change to the owner or operator for some emission sources from the facility in one of these industry segments, the provisions specified in paragraphs (n)(1) through (4) of this section apply for the respective type of change in owner or operator. The provisions specified in paragraph (n)(5) of this section apply to the types of change in owner or operator specified in paragraphs (n)(3) and (4) of this section.

(1) If the entire facility is acquired by an owner or operator that does not already have a reporting facility in the same industry segment and basin (for onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting) or state (for natural gas distribution), then within 90 days after the change in the owner or operator, the designated representative or any alternate designated representative shall submit a certificate of representation that is complete under this section. If the new owner or operator already had emission sources specified in § 98.232(c), (i), (j) or (m), as applicable, prior to the acquisition in the same basin (for

onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting) or state (for natural gas distribution) as the acquired facility but had not previously met the applicability requirements in §§ 98.2(a) and 98.231, then per the applicable definition of facility in § 98.238, the previously owned applicable emission sources must be included in the acquired facility. The new owner or operator and the new designated representative shall be responsible for submitting the annual report for the facility for the entire reporting year beginning with the reporting year in which the acquisition occurred. The new owner or operator and the new designated representative shall also be responsible for submitting any required annual GHG report revisions required by § 98.3(h) for reporting years prior to the reporting year in which the acquisition occurred.

(2) If the entire facility is acquired by an owner or operator that already has a reporting facility in the same industry segment and basin (for onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting) or state (for natural gas distribution), the new owner or operator shall merge the acquired facility with their existing facility for purposes of the annual GHG report. Within 90 days after the change in the owner or operator, the designated representative or any alternate designated representative shall submit a certificate of representation that is complete under this section to reflect the new owner or operator for the acquired facility. The owner or operator shall also follow the provisions of § 98.2(i)(6) to notify EPA that the acquired facility will discontinue reporting and shall provide the e-GGRT identification number of the merged, or reconstituted, facility. The owner or operator of the merged facility shall be responsible for submitting the annual report for the merged facility for the entire reporting year beginning with the reporting year in which the acquisition occurred. The new owner or operator and the new designated representative shall also be responsible for submitting any required annual GHG report revisions required by § 98.3(h) for reporting years prior to the reporting year in which the acquisition occurred.

(3) If only some emission sources from the facility are acquired by one or more new owners or operators, the existing owner or operator (*i.e.*, the owner or operator of the portion of the facility that is not sold) shall continue to report under subpart W of this part for the retained emission sources unless

and until that facility meets one of the criteria in § 98.2(i). Each owner or operator that acquires emission sources from the facility must account for those acquired emission sources according to paragraph (n)(3)(i) or (ii) of this section, as applicable.

(i) If the purchasing owner or operator that acquires only some of the emission sources from the existing facility does not already have a reporting facility in the same industry segment and basin (for onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting) or state (for natural gas distribution), the purchasing owner or operator shall begin reporting as a new facility. The new facility must include the acquired emission sources specified in § 98.232(c), (i), (j), or (m), as applicable, and any emission sources the purchasing owner or operator already owned in the same industry segment and basin (for onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting) or state (for natural gas distribution). The designated representative for the new facility must be selected by the purchasing owner or operator according to the schedule and procedure specified in paragraphs (b) through (d) of this section. The purchasing owner or operator shall be responsible for submitting the annual report for the new facility for the entire reporting year beginning with the reporting year in which the acquisition occurred. The purchasing owner or operator shall continue to report under subpart W of this part for the new facility unless and until that facility meets one of the criteria in § 98.2(i).

(ii) If the purchasing owner or operator that acquires only some of the emission sources from the existing facility already has a reporting facility in the same industry segment and basin (for onshore petroleum and natural gas production or onshore petroleum and natural gas gathering and boosting) or state (for natural gas distribution), then per the applicable definition of facility in § 98.238, the purchasing owner or operator must add the acquired emission sources specified in § 98.232(c), (i), (j), or (m), as applicable, to their existing facility for purposes of reporting under subpart W. The purchasing owner or operator shall be responsible for submitting the annual report for the entire facility, including the acquired emission sources, for the entire reporting year beginning with the reporting year in which the acquisition occurred.

(4) If all the emission sources from a reporting facility are sold to multiple

owners or operators within the same reporting year, such that the current owner or operator of the existing facility does not retain any of the emission sources, then the current owner or operator of the existing facility shall notify EPA within 90 days of the last transaction that all of the facility's emission sources were acquired by multiple purchasers, including the identity of the purchasers. Each owner or operator that acquires emission sources from a facility shall account for those sources according to paragraph (n)(3)(i) or (ii) of this section, as applicable.

(5) Within 90 days of a transaction that results in a change to the owner or operator of a facility as described in paragraph (n)(3) or (4) of this section, the owners or operators involved in that transaction shall select a historic reporting representative who will be responsible for revisions to annual GHG reports under § 98.3(h) for reporting years prior to the reporting year in which the transaction occurred. The historic reporting representative shall be an individual selected by an agreement binding on each of the owners and operators involved in the transaction, following the provisions of paragraph (b) of this section. The provisions of paragraphs (b), (c), (e), and (g) of this section apply to the historic reporting representative by substituting the term "historic reporting representative" for "designated representative." The provisions of paragraph (i) of this section apply to the historic reporting representative by adding the term "historic reporting representative" to instances of "the designated representative and any alternate designated representative."

■ 5. Amend § 98.6 by revising the definitions for "Dehydrator", "Dehydrator vent emissions", "Desiccant", and "Vapor recovery system" to read as follows:

**§ 98.6 Definitions.**

\* \* \* \* \*

*Dehydrator* means a device in which a liquid absorbent (including ethylene glycol, diethylene glycol, or triethylene glycol) or desiccant directly contacts a natural gas stream to remove water vapor.

*Dehydrator vent emissions* means natural gas and CO2 released from a natural gas dehydrator system absorbent (typically glycol) regenerator still vent and, if present, a flash tank separator, to the atmosphere, flare, regenerator fire-box/fire tubes, or vapor recovery system. Emissions include stripping natural gas

and motive natural gas used in absorbent circulation pumps.

\* \* \* \* \*

*Desiccant* means a material used in solid-bed dehydrators to remove water from raw natural gas by adsorption or absorption. Desiccants include, but are not limited to, molecular sieves, activated alumina, pelletized calcium chloride, lithium chloride and granular silica gel material. Wet natural gas is passed through a bed of the granular or pelletized solid adsorbent or absorbent in these dehydrators. As the wet gas contacts the surface of the particles of desiccant material, water is adsorbed on the surface or absorbed and dissolves the surface of these desiccant particles. Passing through the entire desiccant bed, almost all of the water is adsorbed onto or absorbed into the desiccant material, leaving the dry gas to exit the contactor.

\* \* \* \* \*

*Vapor recovery system* means any equipment located at the source of potential gas emissions to the atmosphere or to a flare, that is composed of piping, connections, and, if necessary, flow-inducing devices, and that is used for routing the gas back into the process as a product and/or fuel. For purposes of § 98.233, routing emissions from a dehydrator regenerator still vent or flash tank separator vent to a regenerator fire-box/fire tubes does not meet the definition of vapor recovery system.

\* \* \* \* \*

■ 6. Amend § 98.7 by adding paragraph (e)(53) to read as follows:

**§ 98.7 What standardized methods are incorporated by reference into this part?**

\* \* \* \* \*

(e) \* \* \*

(53) ASTM D6348–12 Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy, IBR approved for § 98.234(j).

\* \* \* \* \*

Subpart C—General Stationary Fuel Combustion Sources

■ 7. Amend § 98.33 by revising parameter "EF" of Equation C–8 in paragraph (c)(1) introductory text, Equation C–8a in paragraph (c)(1)(i), Equation C–8b in paragraph (c)(1)(ii), Equation C–9a in paragraph (c)(2), and Equation C–10 in paragraph (c)(4) introductory text to read as follows:

**§ 98.33 Calculating GHG emissions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

Where: \* \* \*

EF = Fuel-specific default emission factor for CH<sub>4</sub> or N<sub>2</sub>O, from Table C-2 of this subpart (kg CH<sub>4</sub> or N<sub>2</sub>O per mmBtu), except for natural gas-fired reciprocating internal combustion engines and gas turbines at facilities subject to subpart W of this part, which must use a CH<sub>4</sub> emission factor determined in accordance with § 98.233(z)(4).

\* \* \* \* \*

(i) \* \* \*

Where: \* \* \*

EF = Fuel-specific default emission factor for CH<sub>4</sub> or N<sub>2</sub>O, from Table C-2 of this subpart (kg CH<sub>4</sub> or N<sub>2</sub>O per mmBtu), except for natural gas-fired reciprocating internal combustion engines and gas turbines at facilities subject to subpart W of this part, which must use a CH<sub>4</sub> emission factor determined in accordance with § 98.233(z)(4).

\* \* \* \* \*

(ii) \* \* \*

Where: \* \* \*

EF = Fuel-specific default emission factor for CH<sub>4</sub> or N<sub>2</sub>O, from Table C-2 of this subpart (kg CH<sub>4</sub> or N<sub>2</sub>O per mmBtu), except for natural gas-fired reciprocating internal combustion engines and gas turbines at facilities subject to subpart W of this part, which must use a CH<sub>4</sub> emission factor determined in accordance with § 98.233(z)(4).

\* \* \* \* \*

(2) \* \* \*

Where: \* \* \*

EF = Fuel-specific default emission factor for CH<sub>4</sub> or N<sub>2</sub>O, from Table C-2 of this subpart (kg CH<sub>4</sub> or N<sub>2</sub>O per mmBtu), except for natural gas-fired reciprocating internal combustion engines and gas turbines at facilities subject to subpart W of this part, which must use a CH<sub>4</sub> emission factor determined in accordance with § 98.233(z)(4).

\* \* \* \* \*

(4) \* \* \*

Where: \* \* \*

EF = Fuel-specific default emission factor for CH<sub>4</sub> or N<sub>2</sub>O, from Table C-2 of this subpart (kg CH<sub>4</sub> or N<sub>2</sub>O per mmBtu), except for natural gas-fired reciprocating internal combustion engines and gas turbines at facilities subject to subpart W of this part, which must use a CH<sub>4</sub> emission factor determined in accordance with § 98.233(z)(4).

\* \* \* \* \*

■ 8. Amend § 98.36 by adding paragraphs (b)(13), (c)(1)(xiii), and (c)(3)(xiii) to read as follows:

**§ 98.36 Data reporting requirements.**

\* \* \* \* \*

(b) \* \* \*

(13) For natural gas-fired reciprocating internal combustion engines or gas turbines at facilities

subject to subpart W of this part, which must use a CH<sub>4</sub> emission factor determined in accordance with § 98.233(z)(4), you must also report:

(i) Type of equipment: two-stroke lean-burn reciprocating internal combustion engine, four-stroke lean-burn reciprocating internal combustion engine, four-stroke rich-burn reciprocating internal combustion engine, or gas turbine.

(ii) Method by which the CH<sub>4</sub> emission factor was determined: performance test, manufacturer data, or default emission factor.

(iii) Value of the CH<sub>4</sub> emission factor.

(c) \* \* \*

(1) \* \* \*

(xiii) For natural gas-fired reciprocating internal combustion engines or gas turbines at facilities subject to subpart W of this part, which must use a CH<sub>4</sub> emission factor determined in accordance with § 98.233(z)(4), you must report the equipment type (*i.e.*, two-stroke lean-burn reciprocating internal combustion engine, four-stroke lean-burn reciprocating internal combustion engine, four-stroke rich-burn reciprocating internal combustion engine, and gas turbine), the method by which the CH<sub>4</sub> emission factor was determined (*i.e.*, performance test, manufacturer data, or default emission factor), and the average value of the CH<sub>4</sub> emission factor.

\* \* \* \* \*

(3) \* \* \*

(xiii) For natural gas-fired reciprocating internal combustion engines or gas turbines at facilities subject to subpart W of this part, which must use a CH<sub>4</sub> emission factor determined in accordance with § 98.233(z)(4), you must report the equipment type (*i.e.*, two-stroke lean-burn reciprocating internal combustion engine, four-stroke lean-burn reciprocating internal combustion engine, four-stroke rich-burn reciprocating internal combustion engine, and gas turbine) the method by which the CH<sub>4</sub> emission factor was determined (*i.e.*, performance test, manufacturer data, or default emission factor), and the average value of the CH<sub>4</sub> emission factor.

\* \* \* \* \*

■ 9. Amend table C-2 to subpart C of part 98 by revising the entry “Natural Gas” to read as follows:

TABLE C-2 TO SUBPART C OF PART 98—DEFAULT CH<sub>4</sub> AND N<sub>2</sub>O EMISSION FACTORS FOR VARIOUS TYPES OF FUEL

Fuel type	Default CH <sub>4</sub> emission factor (kg CH <sub>4</sub> /mmBtu)	Default N <sub>2</sub> O emission factor (kg N <sub>2</sub> O/mmBtu)
*	*	*
Natural Gas <sup>1</sup>	1.0 × 10 <sup>-03</sup>	1.0 × 10 <sup>-04</sup> .
*	*	*
*	*	*

<sup>1</sup> Reporters subject to subpart W of this part may only use the default CH<sub>4</sub> emission factor for natural gas-fired combustion units that are not reciprocating internal combustion engines or gas turbines. For natural gas-fired reciprocating internal combustion engines or gas turbines, at facilities subject to subpart W of this part, reporters must use a CH<sub>4</sub> emission factor determined in accordance with § 98.233(z)(4).

**Subpart W—Petroleum and Natural Gas Systems**

■ 10. Amend § 98.230 by revising paragraphs (a)(2), (3) and (9) to read as follows:

**§ 98.230 Definition of the source category.**

(a) \* \* \*

(2) *Onshore petroleum and natural gas production.* Onshore petroleum and natural gas production means all equipment on a single well-pad or associated with a single well-pad (including but not limited to compressors, generators, dehydrators, storage vessels, engines, boilers, heaters, flares, separation and processing equipment, and portable non-self-propelled equipment, which includes well drilling and completion equipment, workover equipment, and leased, rented or contracted equipment) used in the production, extraction, recovery, lifting, stabilization, separation or treating of petroleum and/or natural gas (including condensate). This equipment also includes associated storage or measurement vessels, all petroleum and natural gas production equipment located on islands, artificial islands, or structures connected by a causeway to land, an island, or an artificial island. Onshore petroleum and natural gas production also means all equipment on or associated with a single enhanced oil recovery (EOR) well-pad using CO<sub>2</sub> or natural gas injection.

(3) *Onshore natural gas processing.* Onshore natural gas processing means the forced extraction of natural gas

liquids (NGLs) from field gas, fractionation of mixed NGLs to natural gas products, or both. Natural gas processing does not include a Joule-Thomson valve, a dew point depression valve, or an isolated or standalone Joule-Thomson skid. This segment also includes all residue gas compression equipment owned or operated by the natural gas processing plant.

(9) *Onshore petroleum and natural gas gathering and boosting.* Onshore petroleum and natural gas gathering and boosting means gathering pipelines and other equipment used to collect petroleum and/or natural gas from onshore production gas or oil wells and used to compress, dehydrate, sweeten, or transport the petroleum and/or natural gas to a natural gas processing facility, a natural gas transmission pipeline or to a natural gas distribution pipeline. Gathering and boosting equipment includes, but is not limited to gathering pipelines, separators, compressors, acid gas removal units, dehydrators, pneumatic devices/pumps, storage vessels, engines, boilers, heaters, and flares. Gathering and boosting equipment does not include equipment reported under any other industry segment defined in this section. Gathering pipelines operating on a vacuum and gathering pipelines with a GOR less than 300 standard cubic feet per stock tank barrel (scf/STB) are not included in this industry segment (oil here refers to hydrocarbon liquids of all API gravities).

- 11. Amend § 98.232 by:
- a. Revising paragraphs (a), (b) and (c)(2), (10), (17), and (21);
- b. Adding paragraphs (c)(23) through (25);
- c. Revising paragraphs (d)(5) and (7);
- d. Adding paragraphs (d)(8) through (11);
- e. Revising paragraphs (e)(3) and (8);
- f. Adding paragraphs (e)(9) through (11);
- g. Revising paragraphs (f)(6) and (8);
- h. Adding paragraphs (f)(9) through (13);
- i. Revising paragraphs (g)(6) and (7);
- j. Adding paragraphs (g)(8) through (11);
- k. Revising paragraphs (h)(7) and (8);
- l. Adding paragraphs (h)(9) through (11) and (i)(8) through (11);
- m. Revising paragraphs (j)(3), (6), and (10);
- n. Adding paragraphs (j)(13) and (14);
- o. Revising paragraph (m); and
- p. Adding paragraph (n).

The revisions and additions read as follows:

**§ 98.232 GHGs to report.**

(a) You must report CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from each industry segment specified in paragraphs (b) through (j) and (m) of this section, CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from each flare as specified in paragraphs (b) through (j) of this section, and stationary and portable combustion emissions as applicable as specified in paragraph (k) of this section. You must also report the information specified in paragraphs (l) and (n) of this section, as applicable.

(b) For offshore petroleum and natural gas production, report CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from equipment leaks, vented emission, and flare emission source types as identified by Bureau of Ocean Energy Management (BOEM) in compliance with 30 CFR 550.302 through 304 and CO<sub>2</sub> and CH<sub>4</sub> emissions from other large release events. Offshore platforms do not need to report portable emissions.

(c) \* \* \*

(2) Blowdown vent stacks.

\* \* \* \* \*

(10) Hydrocarbon liquids and produced water storage tank emissions.

\* \* \* \* \*

(17) Acid gas removal unit vents and nitrogen removal unit vents.

\* \* \* \* \*

(21) Equipment leaks listed in paragraph (c)(21)(i) or (ii) of this section, as applicable:

(i) Equipment leaks from components including valves, connectors, open ended lines, pressure relief valves, pumps, flanges, and other components (such as instruments, loading arms, stuffing boxes, compressor seals, dump lever arms, and breather caps, but does not include components listed in paragraph (c)(11) or (19) of this section, and it does not include thief hatches or other openings on a storage vessel).

(ii) Equipment leaks from major equipment including wellheads, separators, meters/piping, compressors, dehydrators, heaters, and storage vessels.

\* \* \* \* \*

(23) Other large release events.

(24) Drilling mud degassing.

(25) Crankcase vents.

(d) \* \* \*

(5) Acid gas removal unit vents and nitrogen removal unit vents.

\* \* \* \* \*

(7) Equipment leaks from valves, connectors, open ended lines, pressure relief valves, and meters, and equipment leaks from all other components in gas service (not including thief hatches or other openings on storage vessels) that either are subject to equipment leak standards for onshore natural gas

processing plants in § 60.5400b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter or that you elect to survey using a leak detection method described in § 98.234(a).

(8) Natural gas pneumatic device venting.

(9) Other large release events.

(10) Hydrocarbon liquids and produced water storage tank emissions.

(11) Crankcase vents.

(e) \* \* \*

(3) Condensate storage tanks.

\* \* \* \* \*

(8) Equipment leaks from all other components that are not listed in paragraph (e)(1), (2), or (7) of this section and either are subject to the well site or compressor station fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, or that you elect to survey using a leak detection method described in § 98.234(a). The other components subject to this paragraph (e)(8) also do not include thief hatches or other openings on a storage vessel.

(9) Other large release events.

(10) Dehydrator vents.

(11) Crankcase vents.

(f) \* \* \*

(6) Equipment leaks from all other components that are associated with storage stations, are not listed in paragraph (f)(1), (2), or (5) of this section, and either are subject to the well site or compressor station fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter or that you elect to survey using a leak detection method described in § 98.234(a). The other components subject to this paragraph (f)(6) do not include thief hatches or other openings on a storage vessel.

\* \* \* \* \*

(8) Equipment leaks from all other components that are associated with storage wellheads, are not listed in paragraph (f)(1), (2), or (7) of this section, and either are subject to the well site or compressor station fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or

an applicable approved state plan or applicable Federal plan in part 62 of this chapter or that you elect to survey using a leak detection method described in § 98.234(a).

(9) Other large release events.

(10) Dehydrator vents.

(11) Blowdown vent stacks.

(12) Condensate storage tanks.

(13) Crankcase vents.

(g) \* \* \*

(6) Equipment leaks from all components in gas service that are associated with a vapor recovery compressor, are not listed in paragraph (g)(1) or (2) of this section, and either are subject to the well site or compressor station fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter or that you elect to survey using a leak detection method described in § 98.234(a).

(7) Equipment leaks from all components in gas service that are not associated with a vapor recovery compressor, are not listed in paragraph (g)(1) or (2) of this section, and either are subject to the well site or compressor station fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter or that you elect to survey using a leak detection method described in § 98.234(a).

(8) Other large release events.

(9) Blowdown vent stacks.

(10) Acid gas removal unit vents and nitrogen removal unit vents.

(11) Crankcase vents.

(h) \* \* \*

(7) Equipment leaks from all components in gas service that are associated with a vapor recovery compressor, are not listed in paragraph (h)(1) or (2) of this section, and either are subject to the well site or compressor station fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter or that you elect to survey using a leak detection method described in § 98.234(a).

(8) Equipment leaks from all components in gas service that are not associated with a vapor recovery compressor, are not listed in paragraph

(h)(1) or (2) of this section, and either are subject to the well site or compressor station fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter or that you elect to survey using a leak detection method described in § 98.234(a).

(9) Acid gas removal unit vents and nitrogen removal unit vents.

(10) Other large release events.

(11) Crankcase vents.

(i) \* \* \*

(8) Other large release events.

(9) Blowdown vent stacks.

(10) Natural gas pneumatic device venting.

(11) Crankcase vents.

(j) \* \* \*

(3) Acid gas removal unit vents and nitrogen removal unit vents.

\* \* \* \* \*

(6) Hydrocarbon liquids and produced water storage tank emissions.

\* \* \* \* \*

(10) Equipment leaks listed in paragraph (j)(10)(i) or (ii) of this section, as applicable:

(i) Equipment leaks from components including valves, connectors, open ended lines, pressure relief valves, pumps, flanges, and other components (such as instruments, loading arms, stuffing boxes, compressor seals, dump lever arms, and breather caps, but does not include components in paragraph (j)(8) or (9) of this section, and it does not include thief hatches or other openings on a storage vessel).

(ii) Equipment leaks from major equipment including wellheads, separators, meters/piping, compressors, dehydrators, heaters, and storage vessels.

\* \* \* \* \*

(13) Other large release events.

(14) Crankcase vents.

\* \* \* \* \*

(m) For onshore natural gas transmission pipeline, report CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from the following source types:

(1) Blowdown vent stacks.

(2) Other large release events.

(3) Equipment leaks at transmission company interconnect metering-regulating stations.

(4) Equipment leaks at farm tap and/or direct sale metering-regulating stations.

(5) Transmission pipeline equipment leaks.

(n) For all facilities meeting the applicability provisions under § 98.2

and, if applicable, § 98.231, report the information required under subpart B of this part (Metered, Non-fuel, Purchased Energy Consumption by Stationary Sources).

■ 12. Amend § 98.233 by:

■ a. Revising paragraphs (a), (c), (d), (e) introductory text, (e)(1) introductory text, (e)(1)(i), (ii), (x), and (xi), and (e)(2) introductory text;

■ b. Revising parameter “Count” of Equation W–5 in paragraph (e)(2);

■ c. Revising paragraph (e)(3) introductory text;

■ d. Removing paragraph (e)(4);

■ e. Redesignating paragraphs (e)(5) and (6) as (e)(4) and (5), respectively;

■ f. Revising newly redesignated paragraphs (e)(4) and (5) and paragraphs (f), (g) introductory text, and (g)(1) introductory text;

■ g. Removing and reserving paragraph (g)(1)(ii);

■ h. Revising parameter “FR<sub>s,p</sub>” and “N” of Equation W–12A in paragraph (g)(1)(iii);

■ i. Revising parameters “FR<sub>i,p</sub>” and “N” of Equation W–12B in paragraph (g)(1)(iv);

■ j. Removing paragraph (g)(4);

■ k. Revising paragraph (h) introductory text;

■ l. Removing and reserving paragraph (h)(2);

■ m. Revising paragraph (i)(2) introductory text;

■ n. Revising parameters “T<sub>a</sub>” and “P<sub>a</sub>” of Equation W–14A in paragraph (i)(2)(i);

■ o. Revising parameters “T<sub>a,p</sub>”, “P<sub>a,b,p</sub>”, and “P<sub>a,e,p</sub>” of Equation W–14B in paragraph (i)(2)(i);

■ p. Adding paragraph (i)(2)(iv);

■ q. Revising paragraphs (j) and (k) introductory text,

■ r. Removing paragraph (k)(5);

■ s. Revising paragraphs (l) introductory text and (l)(3);

■ t. Removing paragraph (l)(6);

■ u. Revising paragraphs (m) introductory text and (m)(3);

■ v. Removing paragraph (m)(5);

■ w. Revising paragraphs (n), (o) introductory text, (o)(1)(i) introductory text, (o)(1)(i)(A) through (C), (o)(2) introductory text, (o)(2)(i) introductory text, and (o)(2)(ii);

■ x. Adding paragraph (o)(2)(iii);

■ y. Removing and reserving paragraph (o)(4)(ii)(D);

■ z. Revising paragraphs (o)(4)(ii)(E) and (o)(6)(i) introductory text;

■ aa. Revising parameter “m” of Equation W–21 in paragraph (o)(6)(i);

■ bb. Revising paragraph (o)(6)(ii) introductory text;

■ cc. Revising parameter “m” of Equation W–22 in paragraph (o)(6)(ii);

■ dd. Revising paragraph (o)(6)(iii) introductory text;

- ee. Revising parameter “m” of Equation W–23 in paragraph (o)(6)(iii);
  - ff. Revising parameter “T<sub>g</sub>” of Equation W–24B in paragraph (o)(8);
  - gg. Revising paragraph (o)(10);
  - hh. Removing paragraph (o)(12);
  - ii. Revising paragraphs (p) introductory text, (p)(1)(i), (p)(2) introductory text, (p)(2)(ii)(C), (p)(2)(iii)(A), and (p)(4)(ii)(C);
  - jj. Removing and reserving paragraph (p)(4)(ii)(D);
  - kk. Revising paragraphs (p)(4)(ii)(E), (p)(6)(ii) introductory text, and (p)(6)(iii) introductory text,
  - ll. Revising parameter “T<sub>g</sub>” of Equation W–29B in paragraph (p)(8);
  - mm. Revising paragraph (p)(10);
  - nn. Removing paragraph (p)(12);
  - oo. Revising paragraphs (q) introductory text, (q)(1), (q)(2) introductory text, (q)(2)(i), and (q)(2)(iii) through (xi);
  - pp. Adding paragraphs (q)(3) and (4);
  - qq. Revising paragraphs (r) and (s);
  - rr. In paragraph (t)(2), revising parameter “Z<sub>a</sub>” of Equation W–34, and removing the undesignated paragraph following the parameters of Equation W–34;
  - ss. Revising paragraphs (u)(2)(ii), (y), and (z);
  - tt. Adding and reserving paragraphs (aa) through (cc); and
  - uu. Adding paragraphs (dd) and (ee).
- The revisions and additions read as follows:

#### § 98.233 Calculating GHG emissions.

\* \* \* \* \*

(a) *Natural gas pneumatic device venting.* For all natural gas pneumatic devices at onshore petroleum and natural gas production facilities, onshore petroleum and natural gas gathering and boosting facilities, onshore natural gas processing facilities, onshore natural gas transmission compression facilities, underground natural gas storage facilities, and natural gas distribution facilities, use the applicable provisions as specified in this paragraph (a) of this section to calculate CH<sub>4</sub> and CO<sub>2</sub> emissions from natural gas pneumatic device venting. If you have a flow meter on the natural gas supply line dedicated to any one or combination of natural gas pneumatic devices or natural gas driven pneumatic pumps vented directly to the atmosphere for any portion of the year, you must use the method specified in paragraph (a)(1) of this section to calculate CH<sub>4</sub> and CO<sub>2</sub> emissions from those devices. For natural gas pneumatic devices vented directly to the atmosphere for which the natural gas supply rate is not measured, use the

applicable methods specified in paragraphs (a)(2) through (6) of this section to calculate CH<sub>4</sub> and CO<sub>2</sub> emissions. For natural gas pneumatic devices that are routed to flares, combustion, or vapor recovery systems, use the applicable provisions specified in paragraphs (a)(7) of this section.

(1) *Calculation Method 1.* If you have or elect to install a flow meter on the natural gas supply line dedicated to any one or combination of natural gas pneumatic devices and natural gas driven pneumatic pumps that are vented directly to the atmosphere, you must use the applicable methods specified in paragraph (a)(1)(i) through (iv) of this section to calculate CH<sub>4</sub> and CO<sub>2</sub> emissions from those devices.

(i) For volumetric flow monitors:  
(A) Determine the cumulative annual volumetric flow, in standard cubic feet, as measured by the flow monitor in the reporting year. If all natural gas pneumatic devices supplied by the measured natural gas supply line are routed to the atmosphere for only a portion of the year and are routed to a flare, combustion, or vapor recovery system for the remaining portion of the year, determine the cumulative annual volumetric flow considering only those times when one or more of the natural gas pneumatic devices were vented directly to the atmosphere. If the flow meter was installed during the year, escalate the measured volumetric flow by the ratio of the total hours for which natural gas was supplied to the devices to the number of hours the natural gas supplied to the devices was measured.

(B) Convert the natural gas volumetric flow from paragraph (a)(1)(i)(A) of this section to CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions following the provisions in paragraph (u) of this section.

(C) Convert the CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions from paragraph (a)(1)(i)(B) of this section to CH<sub>4</sub> and CO<sub>2</sub> mass emissions using calculations in paragraph (v) of this section.

(ii) For mass flow monitors:  
(A) Determine the cumulative annual mass flow, in metric tons, as measured by the flow monitor in the reporting year. If all natural gas pneumatic devices supplied by the measured natural gas supply line are vented directly to the atmosphere for only a portion of the year and are routed to a flare, combustion, or vapor recovery system for the remaining portion of the year, determine the cumulative annual mass flow considering only those times when one or more of the natural gas pneumatic devices were vented directly to the atmosphere. If the flow meter was installed during the year, escalate the measured mass flow by the ratio of the

total hours for which natural gas was supplied to the devices to the number of hours the natural gas supplied to the devices was measured.

(B) Convert the cumulative mass flow from paragraph (a)(1)(ii)(A) of this section to CH<sub>4</sub> and CO<sub>2</sub> mass emissions by multiplying by the mass fraction of CH<sub>4</sub> and CO<sub>2</sub> in the supplied natural gas. You must follow the provisions in paragraph (u) of this section for determining the mole fraction of CH<sub>4</sub> and CO<sub>2</sub> and use molecular weights of 16 kg/kg-mol and 44 kg/kg-mol for CH<sub>4</sub> and CO<sub>2</sub>, respectively. You may assume unspecified components have an average molecular weight of 28 kg/kg-mol.

(iii) If the flow meter on the natural gas supply line serves both natural gas pneumatic devices and natural gas driven pneumatic pumps, disaggregate the total measured amount of natural gas to pneumatic devices and natural gas driven pneumatic pumps based on engineering calculations and best available data.

(iv) The flow meter must be operated and calibrated according to the methods set forth in § 98.234(b).

(2) *Calculation Method 2.* Except as provided in paragraphs (a)(1) and (3) of this section, you must measure the volumetric flow rate of each natural gas pneumatic device vent that vents directly to the atmosphere at your facility as specified in paragraphs (a)(2)(i) through (ix) of this section. You must exclude the counts of devices measured according to paragraph (a)(1) of this section from the counts of devices to be measured or for which emissions are calculated according to the requirements in this paragraph (a)(2).

(i) For facilities in the onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting industry segments, you must measure all natural gas pneumatic devices at your facility at least once every 5 years. If you elect to measure your pneumatic devices over multiple years, you must measure approximately the same number of devices each year. When you measure the emissions from natural gas pneumatic devices at a well-pad or gathering and boosting site, you must measure all natural gas pneumatic devices that are vented directly to the atmosphere at the well-pad or gathering and boosting site during the same calendar year.

(ii) For facilities in the onshore natural gas processing, onshore natural gas transmission compression, underground natural gas storage, or natural gas distribution industry

segments, you must either measure all natural gas pneumatic devices vented directly to the atmosphere at your facility each year if your facility has less than 26 pneumatic devices or over multiple years not to exceed the number of years as specified in paragraphs (a)(2)(ii)(A) through (D) of this section. If you elect to measure your pneumatic devices over multiple years, you must measure approximately the same number of devices each year.

(A) If your facility has at least 26 but not more than 50 natural gas pneumatic devices vented directly to the atmosphere, the maximum number of years to measure all devices at your facility is 2 years.

(B) If your facility has at least 51 but not more than 75 natural gas pneumatic devices vented directly to the atmosphere, the maximum number of years to measure all devices at your facility is 3 years.

(C) If your facility has at least 76 but not more than 100 natural gas pneumatic devices vented directly to the atmosphere, the maximum number of years to measure all devices at your facility is 4 years.

(D) If your facility has 101 or more natural gas pneumatic devices vented directly to the atmosphere, the maximum number of years to measure all devices at your facility is 5 years.

(iii) For all industry segments, determine the volumetric flow rate of each natural gas pneumatic device vent (in standard cubic feet per hour) using one of the methods specified in § 98.234(b) through (d), as appropriate, according to the requirements specified in paragraphs (a)(2)(iii)(A) through (D) of this section.

(A) If you use a temporary meter, such as a vane anemometer, according to the methods set forth in § 98.234(b) or a high volume sampler according to methods set forth § 98.234(d), you must measure the emissions from each device for a minimum of 15 minutes while the device is in service (*i.e.*, supplied with natural gas), except for natural gas pneumatic isolation valve actuators. For natural gas pneumatic isolation valve actuators, you must measure the emissions from each device for a minimum of 5 minutes while the device is in service (*i.e.*, supplied with natural gas). If there is no measurable flow from the natural gas pneumatic device after the minimum sampling period, you can discontinue monitoring and follow the applicable methods in paragraph (a)(2)(v) of this section.

(B) If you use calibrated bagging, follow the methods set forth in § 98.234(c) except you need only fill one bag to have a valid measurement. You

must collect sample for a minimum of 5 minutes for natural gas pneumatic isolation valve actuators or 15 minutes for other natural gas pneumatic devices. If no gas is collected in the calibrated bag during the minimum sampling period, you can discontinue monitoring and follow the applicable methods in paragraph (a)(2)(v) of this section. If gas is collected in the bag during the minimum sampling period, you must either continue sampling until you fill the calibrated bag or you may elect to remeasure the vent according to paragraph (a)(2)(iii)(A) of this section.

(C) You do not need to use the same measurement method for each natural gas pneumatic device vent.

(D) If the measurement method selected measures the volumetric flow rate in actual cubic feet, convert the measured flow to standard cubic feet following the methods specified in paragraph (t)(1) of this section.

(iv) For all industry segments, if there is measurable flow from the device vent, calculate the volume of natural gas emitted from each natural gas pneumatic device vent as the product of the natural gas flow rate measured in paragraph (a)(2)(iii) of this section and the number of hours the pneumatic device was in service (*i.e.*, supplied with natural gas) in the calendar year.

(v) For all industry segments, if there is no measurable flow from the device vent, estimate the emissions from the device according to the methods in paragraphs (a)(2)(v)(A) through (C) of this section, as applicable.

(A) For continuous high bleed pneumatic devices:

(1) Confirm that the device is in-service. If not, remeasure the device according to paragraph (a)(2)(iii) of this section at a time the device is in-service.

(2) Confirm that the device is correctly characterized as a continuous high bleed pneumatic device according to the provisions in paragraph (a)(6) of this section. If the device type was mischaracterized, recharacterize the device type and use the appropriate methods in paragraphs (a)(2)(v)(B) or (C) of this section, as applicable.

(3) Upon confirmation of the items in paragraphs (a)(2)(v)(A)(1) and (2) of this section, remeasure the device vent using a different measurement method or longer monitoring duration until the volumetric venting rate can be accurately quantified.

(B) For continuous low bleed pneumatic devices:

(1) Confirm that the device is in-service. If not, remeasure the device according to paragraph (a)(2)(iii) of this section at a time the device is in-service.

(2) Determine natural gas bleed rate (in standard cubic feet per hour) at the supply pressure used for the pneumatic device based on the manufacturer's steady state natural gas bleed rate reported for the device. If the steady state bleed rate is reported in terms of air consumption, multiply the air consumption rate by 1.29 to calculate the steady state natural gas bleed rate. If a steady state bleed rate is not reported, you need to reassess whether the device is correctly characterized as a continuous low bleed pneumatic device according to the provisions in paragraph (a)(6) of this section.

(3) Calculate the volume of natural gas emitted from the natural gas pneumatic device vent as the product of the natural gas steady state bleed rate determined in paragraph (a)(2)(v)(B)(2) of this section and number of hours the pneumatic device was in service (*i.e.*, supplied with natural gas) in the calendar year.

(C) For intermittent bleed pneumatic devices:

(1) Confirm that the device is in-service. If not, remeasure the device according to paragraph (a)(2)(iii) of this section at a time the device is in-service and calculate natural gas emissions according to paragraph (a)(2)(iv) of this section. For devices confirmed to be in-service during the measurement period, calculate natural gas emissions according to paragraph (a)(2)(v)(C)(2) through (5) of this section.

(2) Calculate the volume of the controller, tubing and actuator (in actual cubic feet) based on the device and tubing size.

(3) Sum the volumes in paragraph (a)(2)(v)(C)(2) of this section and convert the volume to standard cubic feet following the methods specified in paragraph (t)(1) of this section based on the natural gas supply pressure.

(4) Estimate the number of actuations during the year based on company records, if available, or best engineering estimates. For isolation valve actuators, you may multiply the number of valve closures during the year by 2 (one actuation to close the valve; one actuation to open the valve).

(5) Calculate the volume of natural gas emitted from the natural gas pneumatic device vent as the product of the per actuation volume in standard cubic feet determined in paragraph (a)(2)(v)(C)(3) of this section, the number of actuations during the year as determined in paragraph (a)(2)(v)(C)(4) of this section, and the relay correction factor. Use 1 for the relay correction factor if there is no relay; use 3 for the relay correction factor if there is a relay.

(6) Calculate the hourly average volume of natural gas emitted from the

natural gas pneumatic device vent by dividing the volume of natural gas emitted as determined in paragraph (a)(2)(v)(C)(5) of this section by the number of hours the pneumatic device was in service (*i.e.*, supplied with natural gas) in the calendar year.

(vi) For each pneumatic device, convert the volumetric emissions of natural gas at standard conditions determined in paragraph (a)(2)(iv) or (v) of this section, as applicable, to CO<sub>2</sub> and CH<sub>4</sub> volumetric emissions at standard conditions using the methods specified in paragraph (u) of this section.

(vii) For each pneumatic device, convert the GHG volumetric emissions at standard conditions determined in paragraph (a)(2)(vi) of this section to

GHG mass emissions using the methods specified in paragraph (v) of this section.

(viii) Sum the CO<sub>2</sub> and CH<sub>4</sub> mass emissions determined in paragraph (a)(2)(vii) of this section separately for each type of natural gas pneumatic device (continuous high bleed, continuous low bleed, and intermittent bleed).

(ix) If you chose to conduct natural gas pneumatic device measurements over multiple years, “n,” according to paragraph (a)(2)(i) or (ii) of this section, then you must calculate the emissions from all pneumatic devices at your facility as specified in paragraph (a)(2)(ix)(A) through (D) of this section.

(A) Use the emissions calculated in (a)(2)(viii) of this section for the devices measured during the reporting year.

(B) Calculate the whole gas emission factor for each type of pneumatic device at the facility using Equation W-1A and all available data from the current year and the previous years in your monitoring cycle (n-1 years) for which natural gas pneumatic device vent measurements were made according to Calculation Method 2 in paragraph (a)(2) of this section (*e.g.*, if your monitoring cycle is 3 years, then use measured data from the current year and the two previous years). This emission factor must be updated annually.

$$EF_t = \frac{\sum_{y=1}^n MT_{s,t,y}}{\sum_{y=1}^n Count_t} \quad (\text{Eq. W-1A})$$

Where:

EF<sub>t</sub> = Whole gas population emission factor for natural gas pneumatic device vents of type “t” (continuous high bleed, continuous low bleed, intermittent bleed), in standard cubic feet per hour per device.

MT<sub>s,t,y</sub> = Volumetric whole gas emissions rate measurement at standard (“s”) conditions from component type “t” during year “y” in standard cubic feet

per hour, as calculated in paragraph (a)(2)(iii) [if there was measurable flow from the device vent], (a)(2)(v)(B)(2), or (a)(2)(v)(C)(6) of this section, as applicable.

Count<sub>t,y</sub> = Count of natural gas pneumatic device vents of type “t” measured according to Calculation Method 2 in year “y.”

n = Number of years of data to include in the emission factor calculation according to

the number of years used to monitor all natural gas pneumatic device vents at the facility.

(C) Calculate CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions from continuous high bleed, continuous low bleed, and intermittent bleed natural gas pneumatic devices that were not measured during the reporting year using Equation W-1B of this section.

$$E_{s,i} = \sum_{i=1}^3 Count_i * EF_t * GHG_i * T_i \quad (\text{Eq. W-1B})$$

Where:

E<sub>s,i</sub> = Annual total volumetric GHG emissions at standard conditions in standard cubic feet per year from natural gas pneumatic device vents, of types “t” (continuous high bleed, continuous low bleed, intermittent bleed), for GHG<sub>i</sub>.

Count<sub>t</sub> = Total number of natural gas pneumatic devices of type “t” (continuous high bleed, continuous low bleed, intermittent bleed) as determined in paragraphs (a)(4) through (6) of this section that vent directly to the atmosphere and that were not directly measured according to the requirements in paragraph (a)(1) or (a)(2)(iii) of this section.

EF<sub>t</sub> = Population emission factors for natural gas pneumatic device vents (in standard cubic feet per hour per device) of each type “t” (continuous high bleed, continuous low bleed, intermittent bleed) as calculated using Equation W-1A of this section.

GHG<sub>i</sub> = For onshore petroleum and natural gas production facilities, onshore petroleum and natural gas gathering and boosting facilities, onshore natural gas processing, onshore natural gas

transmission compression facilities, underground natural gas storage facilities, and natural gas distribution facilities, concentration of GHG<sub>i</sub>, CH<sub>4</sub> or CO<sub>2</sub>, in produced natural gas or processed natural gas for each facility as specified in paragraph (u)(2) of this section.

T<sub>i</sub> = Average estimated number of hours in the operating year the devices, of each type “t”, were in service (*i.e.*, supplied with natural gas) using engineering estimates based on best available data. Default is 8,760 hours.

(D) Convert the volumetric emissions calculated using Equation W-1B to CH<sub>4</sub> and CO<sub>2</sub> mass emissions using the methods specified in paragraph (v) of this section.

(E) Sum the CH<sub>4</sub> and CO<sub>2</sub> mass emissions calculated in paragraphs (a)(2)(ix)(A) and (D) of this section separately for each type of pneumatic device (continuous high bleed, continuous low bleed, intermittent bleed) to calculate the total CH<sub>4</sub> and CO<sub>2</sub>

mass emissions by device type for Calculation Method 2.

(3) *Calculation Method 3.* As an alternative to Calculation Method 2, you may elect to use the applicable methods specified in paragraphs (a)(3)(i) through (v) of this section, as applicable, to calculate CH<sub>4</sub> and CO<sub>2</sub> emissions from your natural gas pneumatic devices that are vented directly to the atmosphere at your facility except those that are measured according to paragraph (a)(1) of this section. You must exclude the counts of devices measured according to paragraph (a)(1) of this section from the counts of devices to be monitored or for which emissions are calculated according to the requirements in this paragraph (a)(3).

(i) For continuous high bleed and continuous low bleed natural gas pneumatic devices vented directly to the atmosphere, you must calculate CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions using either the methods in paragraph (a)(3)(i)(A) or (B) of this section.

(A) Measure all continuous high bleed and continuous low bleed pneumatic devices at your well-pad, gathering and boosting site, or facility, as applicable, according to the provisions in paragraphs (a)(2) of this section.

(B) Use Equation W-1B, except use the appropriate default whole gas population emission factors for natural gas pneumatic device vents (in standard cubic feet per hour per device) of each type “t” (continuous high bleed and continuous low bleed) as listed in table W-1 to this subpart.

(ii) For intermittent bleed pneumatic devices, you must monitor each intermittent bleed pneumatic device at your facility using the methods specified in paragraph (a)(3)(ii)(A) of this section at the frequency specified in paragraph (a)(3)(ii)(B) or (C) of this section, as applicable.

(A) You must use one of the monitoring methods specified in § 98.234(a)(1) through (3) except that the monitoring dwell time for each device vent must be at least 2 minutes or until a malfunction is identified, whichever is shorter. A device is considered malfunctioning if any leak is observed when the device is not actuating or if a leak is observed for more than 5 seconds during a device actuation. If you cannot tell when a device is actuating, any observed leak from the device indicates a malfunctioning device.

(B) For facilities in the onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting industry segments, you must monitor all natural gas intermittent bleed pneumatic devices at your facility at least once every 5 years. If you elect to monitor your pneumatic devices over multiple years, you must monitor approximately the same number of devices each year. When you monitor the emissions from natural gas pneumatic devices at a well-pad or gathering and boosting site, you must monitor all natural gas intermittent bleed pneumatic devices that are vented directly to the atmosphere at the well-pad or gathering and boosting site during the same calendar year.

(C) For facilities in the onshore natural gas processing, onshore natural gas transmission compression, underground natural gas storage, or natural gas distribution industry segments you must either monitor all natural gas intermittent bleed pneumatic devices vented directly to the atmosphere at your facility each year if your facility has less than 101 intermittent bleed pneumatic devices or over multiple years not to exceed the number of years as specified in paragraphs (a)(3)(ii)(C)(1) through (4) of this section. If you elect to monitor your intermittent bleed pneumatic devices

over multiple years, you must monitor approximately the same number of devices each year.

(1) If your facility has at least 101 but not more than 200 natural gas intermittent bleed pneumatic devices vented directly to the atmosphere, the maximum number of years to monitor all devices at your facility is 2 years.

(2) If your facility has at least 201 but not more than 300 natural gas intermittent bleed pneumatic devices vented directly to the atmosphere, the maximum number of years to monitor all devices at your facility is 3 years.

(3) If your facility has at least 301 but not more than 400 natural gas intermittent bleed pneumatic devices vented directly to the atmosphere, the maximum number of years to monitor all devices at your facility is 4 years.

(4) If your facility has 401 or more natural gas intermittent bleed pneumatic devices vented directly to the atmosphere, the maximum number of years to monitor all devices at your facility is 5 years.

(iii) For intermittent bleed pneumatic devices that are monitored according to paragraph (a)(3)(ii)(A) of this section during the reporting year, you must calculate CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions from intermittent bleed natural gas pneumatic devices vented directly to the atmosphere using Equation W-1C of this section.

$$E_i = GHG_i \times \left[ \sum_{z=1}^x \{16.1 \times T_{mal,z} + 2.82 \times (T_{t,z} - T_{mal,z})\} + (2.82 \times Count \times T_{avg}) \right] \text{ (Eq. W-1C)}$$

Where:

$E_i$  = Annual total volumetric emissions of GHG<sub>i</sub> from intermittent bleed natural gas pneumatic devices in standard cubic feet.

GHG<sub>i</sub> = Concentration of GHG<sub>i</sub>, CH<sub>4</sub>, or CO<sub>2</sub>, in natural gas supplied to the intermittent bleed natural gas pneumatic device as defined in paragraph (u)(2) of this section.

$x$  = Total number of intermittent bleed natural gas pneumatic devices detected as malfunctioning in any pneumatic device monitoring survey during the year. A component found as malfunctioning in two or more surveys during the year is counted as one malfunctioning component.

16.1 = Whole gas emission factor for malfunctioning intermittent bleed natural gas pneumatic devices, in standard cubic feet per hour per device.

$T_{mal,z}$  = The total time the surveyed pneumatic device “z” was in service (i.e., supplied with natural gas) and assumed to be malfunctioning, in hours. If one pneumatic device monitoring survey is conducted in the calendar year,

assume the device found malfunctioning was malfunctioning for the entire calendar year. If multiple pneumatic device monitoring surveys are conducted in the calendar year, assume a device found malfunctioning in the first survey was malfunctioning since the beginning of the year until the date of the survey; assume a device found malfunctioning in the last survey of the year was malfunctioning from the preceding survey through the end of the year; assume a device found malfunctioning in a survey between the first and last surveys of the year was malfunctioning since the preceding survey until the date of the survey; and sum times for all malfunctioning periods.

$T_{t,z}$  = The total time the surveyed natural gas pneumatic device “z” was in service (i.e., supplied with natural gas) during the year. Default is 8,760 hours for non-leap years and 8,784 hours for leap years.

2.82 = Whole gas emission factor for properly operating intermittent bleed natural gas pneumatic devices, in standard cubic feet per hour per device.

Count = Total number of intermittent bleed natural gas pneumatic devices that were never observed to be malfunctioning during any monitoring survey during the year.

$T_{avg}$  = The average time the intermittent bleed natural gas pneumatic devices that were never observed to be malfunctioning during any monitoring survey were in service (i.e., supplied with natural gas) using engineering estimates based on best available data. Default is 8,760 hours for non-leap years and 8,784 hours for leap years.

(A) You must conduct at least one complete pneumatic device monitoring survey in a calendar year. If you conduct multiple complete pneumatic device monitoring surveys in a calendar year, you must use the results from each complete pneumatic device monitoring survey when calculating emissions using Equation W-1C.

(B) For the purposes of paragraph (a)(3)(iii)(A) of this section, a complete monitoring survey is a survey of all

intermittent bleed natural gas pneumatic devices vented directly to the atmosphere at a well-pad for onshore petroleum and natural gas production facilities, all intermittent bleed pneumatic devices vented directly to the atmosphere at a gathering and boosting site for onshore petroleum and natural gas gathering and boosting facilities, or all intermittent bleed natural gas pneumatic devices vented directly to the atmosphere at a facility required to be monitored during a given year for other applicable industry segments.

(iv) For intermittent bleed natural gas pneumatic devices that are not monitored according to paragraph (a)(3)(ii)(A) of this section during the reporting year, you must calculate CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions from intermittent bleed natural gas pneumatic devices vented directly to the atmosphere as specified in

paragraphs (a)(3)(iv)(A) through (D) of this section.

(A) Count the number of unique intermittent bleed natural gas pneumatic devices vented directly to the atmosphere that were monitored during the reporting year. If you conducted multiple monitoring surveys, count each device only once; do not count the same device twice if it was monitored two times during the reporting year.

(B) Count the number of unique intermittent bleed natural gas pneumatic devices vented directly to the atmosphere that were monitored during the reporting year that were identified as malfunctioning during the reporting year. If you conducted multiple monitoring surveys, count each device only once; do not count the same device twice if it was monitored and identified as malfunctioning two separate times during the reporting. If a

device was malfunctioning during one monitoring survey and not during a second, count that device as a device that was identified as malfunctioning during the reporting year.

(C) Determine the number of intermittent bleed natural gas pneumatic devices vented directly to the atmosphere at your facility that were not monitored during the reporting year as the difference between the total count of devices at your facility as determined according to paragraphs (a)(4) through (6) of this section and the count of unique devices monitored during the reporting year as determined in paragraph (a)(3)(vi)(A) of this section.

(D) Calculate CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions from intermittent bleed natural gas pneumatic devices vented directly to the atmosphere that were not monitored during the reporting year using Equation W-1D of this section.

$$E_i = GHG_i \times T_{avg} \times Count_C \times \left[ 16.1 \times \left( \frac{Count_B}{Count_A} \right) + 2.82 \times \left( 1 - \frac{Count_B}{Count_A} \right) \right] \quad (\text{Eq. W-1D})$$

Where:

$E_i$  = Annual total volumetric emissions of GHG<sub>i</sub> from intermittent bleed natural gas pneumatic devices in standard cubic feet.

GHG<sub>i</sub> = Concentration of GHG<sub>i</sub>, CH<sub>4</sub> or CO<sub>2</sub>, in natural gas supplied to the intermittent bleed device as defined in paragraph (u)(2) of this section.

$T_{avg}$  = The average time the intermittent bleed natural gas pneumatic devices that were not surveyed during the year were in service (*i.e.*, supplied with natural gas) using engineering estimates based on best available data. Default is 8,760 hours.

Count<sub>C</sub> = Total number of intermittent bleed pneumatic devices that were not surveyed during the year as determined according to paragraph (a)(3)(iv)(C) of this section.

16.1 = Whole gas emission factor for malfunctioning intermittent bleed natural gas pneumatic devices, in standard cubic feet per hour per device.

Count<sub>B</sub> = Total number of unique intermittent bleed natural gas pneumatic devices vented directly to the atmosphere that were monitored during the reporting year that were identified as malfunctioning during the reporting year as determined according to paragraph (a)(3)(iv)(B) of this section.

Count<sub>A</sub> = Total number the number of unique intermittent bleed natural gas pneumatic devices vented directly to the atmosphere that were monitored during the reporting year as determined according to paragraph (a)(3)(iv)(A) of this section.

2.82 = Whole gas emission factor for properly operating intermittent bleed natural gas

pneumatic devices, in standard cubic feet per hour per device.

(v) You must convert the CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions as determined according to paragraphs (a)(3)(i), (iii) and (iv) of this section and calculate both CO<sub>2</sub> and CH<sub>4</sub> mass emissions using calculations in paragraph (v) of this section for each type of natural gas pneumatic device (continuous high bleed, continuous low bleed, and intermittent bleed).

(4) *Counts of natural gas pneumatic devices.* For all industry segments, determine "Count" for Equation W-1A, W-1B, or W-1C of this subpart for each type of natural gas pneumatic device (continuous high bleed, continuous low bleed, and intermittent bleed) by counting the total number of devices at the facility, the number of devices that are vented directly to the atmosphere and the number of those devices that were measured or monitored during the reporting year, as applicable, except as specified in paragraph (a)(5) of this section.

(5) *Counts of onshore petroleum and natural gas production industry segment or the onshore petroleum and natural gas gathering and boosting natural gas pneumatic devices.* For facilities in the onshore petroleum and natural gas production industry segment or the onshore petroleum and natural gas gathering and boosting industry segment, you have the option in the first two consecutive calendar years to

determine the total number of natural gas pneumatic devices at the facility and the number of devices that are vented directly to the atmosphere for each type of natural gas pneumatic device (continuous high bleed, continuous low bleed, and intermittent bleed), as applicable, using engineering estimates based on best available data. Counts of natural gas pneumatic devices measured or monitored during the reporting year must be made based on actual counts.

(6) *Type of natural gas pneumatic devices.* For all industry segments, determine the type of natural gas pneumatic device using engineering estimates based on best available information.

(7) *Routing to flares, combustion, or vapor recovery systems.* Calculate emissions routed to flares, combustion, or vapor recovery systems as specified in paragraph (a)(7)(i) or (ii) of this section, as applicable. If a device was vented directly to the atmosphere for part of the year and routed to a flare, combustion unit, or vapor recovery system during another part of the year, then calculate emissions from the time the device vents directly to the atmosphere as specified in paragraph (a)(1), (2) or (3) of this section, as applicable, and calculate emissions from the time the device was routed to a flare or combustion as specified in paragraph (a)(7)(i) or (ii) of this section, as applicable. During periods when natural

gas pneumatic device emissions are collected in a vapor recovery system that is not routed to combustion, paragraphs (a)(1) through (3) and (a)(7)(i) and (ii) of this section do not apply and no emissions calculations are required.

(i) If any natural gas pneumatic devices were routed to a flare, you must calculate CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O emissions for the flare stack as specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n).

(ii) If emissions from any natural gas pneumatic devices were routed to combustion units, you must calculate and report emissions as specified in subpart C of this part or calculate emissions as specified in paragraph (z) of this section and report emissions from the combustion equipment as specified in § 98.236(z), as applicable.

\* \* \* \* \*

(c) *Natural gas driven pneumatic pump venting.* Calculate emissions from natural gas driven pneumatic pumps venting directly to the atmosphere as specified in paragraph (c)(1), (2), or (3) of this section, as applicable. If you have a flow meter on the natural gas supply line that is dedicated to any one or more natural gas driven pneumatic pumps, each of which only vents directly to the atmosphere, you must use Calculation Method 1 as specified in paragraph (c)(1) of this section to calculate vented CH<sub>4</sub> and CO<sub>2</sub> emissions from those pumps. Use Calculation Method 1 for any portion of a year when all of the pumps on the measured natural gas supply line were vented directly to atmosphere. For natural gas driven pneumatic pumps vented directly to the atmosphere for which the natural gas supply rate is not measured, use either

the method specified in paragraph (c)(2) or (3) of this section to calculate vented CH<sub>4</sub> and CO<sub>2</sub> emissions for all of the natural gas driven pneumatic pumps at your facility that are not subject to Calculation Method 1; you may not use Calculation Method 2 for some vented natural gas driven pneumatic pumps and Calculation Method 3 for other natural gas driven pneumatic pumps. Similarly, if a flow meter is on a natural gas supply line that supplies some pumps that vent directly to the atmosphere and others that route emissions to flares, combustion, or vapor recovery systems, then use either the method specified in paragraph (c)(2) or (3) of this section to calculate vented CH<sub>4</sub> and CO<sub>2</sub> emissions because Calculation Method 1 may not be used for this natural gas supply line. Calculate emissions from natural gas driven pneumatic pumps routed to flares or combustion as specified in paragraph (c)(4) of this section. If a pump vents directly to the atmosphere for part of the year and to a flare or combustion unit for another part of the year, then calculate vented emissions for the portion of the year when venting occurs using the applicable method in paragraph (c)(1), (2), or (3) of this section for the period when venting occurs, and calculate emissions for the portion of the year when the emissions are routed to a flare or combustion unit using the method in paragraph (c)(4) of this section. No emissions calculation is required during periods when emissions from a pump are routed to a vapor recovery system without subsequently being routed to combustion. All references to natural gas driven pneumatic pumps for Calculation Method 1 in this paragraph (c) also

apply to combinations of pneumatic devices and natural gas driven pneumatic pumps that are served by a common natural gas supply line; when the supply line serves both pneumatic devices and natural gas driven pneumatic pumps, disaggregate the total measured amount of natural gas to pneumatic devices and natural gas driven pneumatic pumps based on engineering calculations and best available data. You do not have to calculate emissions from natural gas driven pneumatic pumps covered in paragraph (e) of this section under this paragraph (c).

(1) *Calculation Method 1.* If you have or elect to install a flow meter on a supply line to natural gas driven pneumatic pumps, then for the period of the year when the natural gas supply line is dedicated to any one or more natural gas driven pneumatic pumps, and the pumps are vented directly to the atmosphere, you must use the applicable methods specified in paragraphs (c)(1)(i) or (ii) of this section to calculate vented CH<sub>4</sub> and CO<sub>2</sub> emissions from those pumps.

(i) For volumetric flow monitors:

(A) Determine the cumulative annual volumetric flow, in standard cubic feet, as measured by the flow monitor in the reporting year. If the flow meter was installed during the year, calculate the total annual volume of natural gas used in the pumps that are connected to the measured supply line by escalating the measured volumetric flow by the ratio of the total hours for which natural gas was supplied to the pumps to the number of hours the natural gas supplied to the pumps was measured as specified in Equation W-2A of this section.

$$E_s = E_{sM} \times \frac{T}{T_M} \quad (\text{Eq. W-2A})$$

Where:

$E_s$  = Annual natural gas emissions for pumps connected to natural gas supply line that had a natural gas flow meter installed during the year, in standard cubic feet.

$E_{sM}$  = Measured volume of natural gas in the supply line, from the time that the natural gas flow meter began measuring to the end of the year, in standard cubic feet.

$T$  = Total hours during the year in which at least one of the pumps connected to the supply line was operating, hr/yr.

$T_M$  = Total hours during the year when the natural gas supply flow meter was measuring flow.

(B) Convert the natural gas volumetric flow from paragraph (c)(1)(i)(A) of this section to CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions following the provisions in paragraph (u) of this section.

(C) Convert the CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions from paragraph (c)(1)(i)(B) of this section to CH<sub>4</sub> and CO<sub>2</sub> mass emissions using calculations in paragraph (v) of this section.

(ii) For mass flow monitors:

(A) Determine the cumulative annual mass flow, in metric tons, as measured by the flow monitor in the reporting year. If the flow meter was installed during the year, calculate the total

annual mass of natural gas used in the pumps that are connected to the measured supply line by escalating the measured mass flow by the ratio of the total hours for which natural gas was supplied to the pumps to the number of hours the natural gas supplied to the pumps was measured as specified in Equation W-2A of paragraph (c)(1)(i)(A) of this section, except that  $E_s$  and  $E_{sM}$  are in metric tons per year instead of standard cubic feet per year.

(B) Convert the cumulative mass flow from paragraph (c)(1)(ii)(A) of this section to CH<sub>4</sub> and CO<sub>2</sub> mass emissions

by multiplying by the mass fraction of CH<sub>4</sub> and CO<sub>2</sub> in the supplied natural gas. You must follow the provisions in paragraph (u) of this section for determining the mole fraction of CH<sub>4</sub> and CO<sub>2</sub> and use molecular weights of 16 kg/kg-mol and 44 kg/kg-mol for CH<sub>4</sub> and CO<sub>2</sub>, respectively. You may assume unspecified components have an average molecular weight of 28 kg/kg-mol.

(2) *Calculation Method 2.* Except as provided in paragraph (c)(1) of this section, you may elect to measure the volumetric flow rate of each natural gas driven pneumatic pump at your facility that vents directly to the atmosphere as specified in paragraphs (c)(2)(i) through (vii) of this section. You must exclude the counts of pumps measured according to paragraph (c)(1) of this section from the counts of pumps to be measured and for which emissions are calculated according to the requirements in this paragraph (c)(2).

(i) Measure all natural gas driven pneumatic pumps at your facility at least once every 5 years. If you elect to measure your pneumatic pumps over multiple years, you must measure approximately the same number of pumps each year. When you measure the emissions from natural gas driven pneumatic pumps at a well-pad or gathering and boosting site, you must measure all pneumatic pumps that are vented directly to the atmosphere at the well-pad or gathering and boosting site during the same calendar year.

(ii) Determine the volumetric flow rate of each natural gas driven pneumatic pump (in standard cubic feet per hour) using one of the methods specified in § 98.234(b) through (d), as appropriate, according to the

requirements specified in paragraphs (c)(2)(ii)(A) through (D) of this section.

(A) If you use a temporary meter, such as a vane anemometer, according to the methods set forth in § 98.234(b) or a high volume sampler according to methods set forth § 98.234(d), you must measure the emissions from each pump for a minimum of 5 minutes, during a period when the pump is continuously pumping liquid.

(B) If you use calibrated bagging, follow the methods set forth in § 98.234(c), except under § 98.234(c)(2), only one bag must be filled to have a valid measurement. You must collect sample for a minimum of 5 minutes, or until the bag is full, whichever is shorter, during a period when the pump is continuously pumping liquid. If the bag is not full after 5 minutes, you must either continue sampling until you fill the calibrated bag or you may elect to remeasure the vent according to paragraph (c)(2)(ii)(A) of this section.

(C) You do not need to use the same measurement method for each natural gas driven pneumatic pump vent.

(D) If the measurement method selected measures the volumetric flow rate in actual cubic feet, convert the measured flow to standard cubic feet following the methods specified in paragraph (t)(1) of this section. Convert the measured flow during the test period to standard cubic feet per hour, as appropriate.

(iii) Calculate the volume of natural gas emitted from each natural gas driven pneumatic pump vent as the product of the natural gas emissions flow rate measured in paragraph (c)(2)(ii) of this section and the number of hours that liquid was pumped by the pneumatic pump in the calendar year.

(iv) For each pneumatic pump, convert the volumetric emissions of natural gas at standard conditions determined in paragraph (c)(2)(iii) of this section to CO<sub>2</sub> and CH<sub>4</sub> volumetric emissions at standard conditions using the methods specified in paragraph (u) of this section.

(v) For each pneumatic pump, convert the GHG volumetric emissions at standard conditions determined in paragraph (c)(2)(iv) of this section to GHG mass emissions using the methods specified in paragraph (v) of this section.

(vi) Sum the CO<sub>2</sub> and CH<sub>4</sub> mass emissions determined in paragraph (c)(2)(v) of this section.

(vii) If you chose to conduct natural gas pneumatic pump measurements over multiple years, “n,” according to paragraph (c)(2)(i) of this section, then you must calculate the emissions from all pneumatic pumps at your facility as specified in paragraph (c)(2)(vii)(A) through (D) of this section.

(A) Use the emissions calculated in paragraph (c)(2)(vi) of this section for the pumps measured during the reporting year.

(B) Calculate the whole gas emission factor for pneumatic pumps at the facility using Equation W-2B of this section and all available data from the current year and the previous years in your monitoring cycle (n-1 years) for which natural gas pneumatic pump vent measurements were made according to Calculation Method 2 in paragraph (c)(2) of this section (e.g., if your monitoring cycle is 3 years, then use measured data from the current year and the two previous years). This emission factor must be updated annually.

$$EF_s = \frac{\sum_{y=1}^n MT_{s,y}}{\sum_{y=1}^n Count_y} \tag{Eq. W-2B}$$

Where:

EF<sub>s</sub> = Whole gas population emission factor for natural gas pneumatic pump vents, in standard cubic feet per hour per pump.

MT<sub>s,y</sub> = Volumetric whole gas emissions rate measurement at standard (“s”) conditions during year “y” in standard

cubic feet per hour, as calculated in paragraph (c)(2)(iii) of this section.

County = Count of natural gas driven pneumatic pump vents measured according to Calculation Method 2 in year “y.”

n = Number of years of data to include in the emission factor calculation according to the number of years used to monitor all

natural gas pneumatic pump vents at the facility.

(C) Calculate CH<sub>4</sub> and CO<sub>2</sub> volumetric emissions from natural gas driven pneumatic pumps that were not measured during the reporting year using Equation W-2C of this section.

$$E_{s,i} = Count \times EF_s \times GHG_i \times T \tag{Eq. W-2C}$$

Where:

E<sub>s,i</sub> = Annual total volumetric GHG emissions at standard conditions in standard cubic

feet per year from natural gas driven pneumatic pump vents, for GHG<sub>i</sub>.

Count = Total number of natural gas driven pneumatic pumps that vented directly to

the atmosphere and that were not directly measured according to the requirements in paragraphs (c)(1) or (c)(2)(ii) of this section.

$EF_s$  = Population emission factors for natural gas driven pneumatic pumps (in standard cubic feet per hour per pump) as calculated using Equation W-2B of this section.

$GHG_i$  = Concentration of  $GHG_i$ ,  $CH_4$  or  $CO_2$ , in produced natural gas as defined in paragraph (u)(2)(i) of this section.

$T$  = Average estimated number of hours in the operating year the pumps that vented directly to the atmosphere were pumping liquid using engineering estimates based on best available data. Default is 8,760 hours for pumps that only vented directly to the atmosphere.

(D) Calculate both  $CH_4$  and  $CO_2$  mass emissions from volumetric emissions calculated using Equation W-2C of this section using calculations in paragraph (v) of this section.

(E) Sum the  $CH_4$  and  $CO_2$  mass emissions calculated in paragraphs (c)(2)(vii)(A) and (D) of this section to calculate the total  $CH_4$  and  $CO_2$  mass emissions for Calculation Method 2.

(3) *Calculation Method 3.* If you elect not to measure emissions as specified in Calculation Method 2, then you must use the applicable method specified in paragraphs (c)(3)(i) and (ii) of this section to calculate  $CH_4$  and  $CO_2$  emissions from all natural gas driven pneumatic pumps that are vented directly to the atmosphere at your facility and that are not measured according to paragraph (c)(1) of this section. You must exclude the counts of devices measured according to paragraph (c)(1) of this section from the counts of pumps for which emissions are calculated according to the requirements in this paragraph (c)(3).

(i) Calculate  $CH_4$  and  $CO_2$  volumetric emissions from natural gas driven pneumatic pumps using Equation W-2C of this section, except use the appropriate default whole gas population emission factor for natural gas pneumatic pump vents (in standard cubic feet per hour per device) as provided in table W-1 to this subpart.

(ii) Convert the  $CH_4$  and  $CO_2$  volumetric emissions determined according to paragraph (c)(3)(i) of this section to  $CO_2$  and  $CH_4$  mass emissions using calculations in paragraph (v) of this section.

(4) *Routing to flares, combustion, or vapor recovery systems.* Calculate emissions from natural gas driven pneumatic pumps for periods when they are routed to flares or combustion as specified in paragraph (c)(4)(i) or (ii) of this section, as applicable. If a pump was vented directly to the atmosphere for part of the year and routed to a flare or combustion during another part of the year, then calculate emissions from the time the pump vents directly to the atmosphere as specified in paragraphs (c)(2) or (3) of this section and calculate emissions from the time the pump was routed to a flare or combustion as specified in paragraphs (c)(4)(i) and (ii) of this section, as applicable. For emissions that are collected in a vapor recovery system that is never routed to combustion during the reporting year, paragraphs (c)(2) and (3) and paragraphs (c)(4)(i) and (ii) of this section do not apply and no emissions calculations are required.

(i) If any natural gas driven pneumatic pumps were routed to a flare, you must calculate  $CH_4$ ,  $CO_2$ , and  $N_2O$  emissions for the flare stack as specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n).

(ii) If emissions from any natural gas driven pneumatic pumps were routed to combustion, you must calculate emissions for the combustion equipment as specified in paragraph (z) of this section and report emissions from the combustion equipment as specified in § 98.236(z).

(d) *Acid gas removal unit (AGR) vents and Nitrogen removal unit (NRU) vents.* For AGR vents (including processes such as amine, membrane, molecular sieve or other absorbents and adsorbents), calculate emissions for  $CH_4$  and  $CO_2$  vented directly to the atmosphere or emitted through a sulfur recovery plant, using any of the calculation methods described in paragraphs (d)(1) through (4) of this section, and also comply with paragraphs (d)(5) through (11) of this section, as applicable. For NRU vents, calculate emissions for  $CH_4$  vented directly to the atmosphere using any of the calculation methods described in

paragraphs (d)(1) through (4) of this section, and also comply with paragraphs (d)(5) through (11) of this section, as applicable. If any AGR vents or NRU vents are routed to a flare, you must calculate  $CH_4$ ,  $CO_2$ , and  $N_2O$  emissions for the flare stack as specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n). If any AGR vents or NRU vents are routed through an engine (e.g., permeate from a membrane or de-adsorbed gas from a pressure swing adsorber used as fuel supplement) (i.e., routed to combustion, you must calculate  $CH_4$ ,  $CO_2$ , and  $N_2O$  emissions as specified in subpart C of this part or as specified in paragraph (z) of this section, as applicable.

(1) *Calculation Method 1.* If you operate and maintain a continuous emissions monitoring system (CEMS) that has both a  $CO_2$  concentration monitor and volumetric flow rate monitor, you must calculate  $CO_2$  emissions under this subpart by following the Tier 4 Calculation Method and all associated calculation, quality assurance, reporting, and recordkeeping requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources). Alternatively, you may follow the manufacturer's instructions or industry standard practice. If a  $CO_2$  concentration monitor and volumetric flow rate monitor are not available, you may elect to install a  $CO_2$  concentration monitor and a volumetric flow rate monitor that comply with all of the requirements specified for the Tier 4 Calculation Method in subpart C of this part (General Stationary Fuel Combustion Sources).

(2) *Calculation Method 2.* For  $CO_2$  emissions, if a CEMS is not available but a vent meter is installed, use the  $CO_2$  composition and annual volume of vent gas to calculate emissions using Equation W-3 of this section. For  $CH_4$  emissions, if a vent meter is installed, including the volumetric flow rate monitor on a CEMS for  $CO_2$ , use the  $CH_4$  composition and annual volume of vent gas to calculate emissions using Equation W-3 of this section.

$$E_{a,i} = V_a \times Vol_i$$

(Eq. W-3)

Where:

$E_{a,i}$  = Annual total volumetric  $GHG_i$  (either  $CO_2$  or  $CH_4$ ) emissions at actual conditions, in cubic feet per year.

$V_a$  = Total annual volume of vent gas flowing out of the AGR or NRU in cubic feet per year at actual conditions as determined

by flow meter using methods set forth in § 98.234(b). Alternatively, you may follow the manufacturer's instructions or industry standard practice for calibration of the vent meter.

$Vol_i$  = Annual average volumetric fraction of  $GHG_i$  (either  $CO_2$  or  $CH_4$ ) content in vent

gas flowing out of the AGR or NRU as determined in paragraph (d)(7) of this section.

(3) *Calculation Method 3.* If a CEMS for  $CO_2$  or a vent meter is not installed, you may use the inlet and/or outlet gas

flow rate of the AGR or NRU to calculate emissions for CH<sub>4</sub> and CO<sub>2</sub> using Equations W-4A, W-4B, or W-4C of this section. If inlet gas flow rate and

CH<sub>4</sub> and CO<sub>2</sub> content of the vent gas are known, use Equation W-4A. If outlet gas flow rate and CH<sub>4</sub> and CO<sub>2</sub> content of the vent gas are known, use Equation

W-4B. If inlet gas flow rate and outlet gas flow rate are known, use Equation W-4C.

$$E_{a,i} = V_{in} \times \left[ \frac{Vol_{I,i} - Vol_{O,i}}{Vol_{EM,i} - Vol_{O,i}} \right] \times Vol_{EM,i} \quad (\text{Eq. W-4A})$$

$$E_{a,i} = V_{out} \times \left[ \frac{Vol_{I,i} - Vol_{O,i}}{Vol_{EM,i} - Vol_{I,i}} \right] \times Vol_{EM,i} \quad (\text{Eq. W-4B})$$

$$E_{a,i} = (V_{in} \times Vol_{I,i}) - (V_{out} \times Vol_{O,i}) \quad (\text{Eq. W-4C})$$

Where:

$E_{a,i}$  = Annual total volumetric GHG<sub>i</sub> (either CH<sub>4</sub> or CO<sub>2</sub>) emissions at actual conditions, in cubic feet per year.  
 $V_{in}$  = Total annual volume of natural gas flow into the AGR or NRU in cubic feet per year at actual conditions as determined using methods specified in paragraph (d)(5) of this section.  
 $V_{out}$  = Total annual volume of natural gas flow out of the AGR or NRU in cubic feet per year at actual conditions as determined using methods specified in paragraph (d)(5) of this section.  
 $Vol_{I,i}$  = Annual average volumetric fraction of GHG<sub>i</sub> (either CH<sub>4</sub> or CO<sub>2</sub>) content in natural gas flowing into the AGR or NRU as determined in paragraph (d)(7) of this section.  
 $Vol_{O,i}$  = Annual average volumetric fraction of GHG<sub>i</sub> (either CH<sub>4</sub> or CO<sub>2</sub>) content in natural gas flowing out of the AGR or NRU as determined in paragraph (d)(8) of this section.  
 $Vol_{EM,i}$  = Annual average volumetric fraction of GHG<sub>i</sub> (either CH<sub>4</sub> or CO<sub>2</sub>) content in the vent gas flowing out of the AGR or NRU as determined in paragraph (d)(6) of this section.

(4) *Calculation Method 4.* If CEMS for CO<sub>2</sub> or a vent meter is not installed, you may calculate CH<sub>4</sub> and CO<sub>2</sub> emissions from an AGR or NRU using any standard simulation software package, such as AspenTech HYSYS®, or API 4679 AMINECalc, that uses the Peng-Robinson equation of state and speciates CH<sub>4</sub> and CO<sub>2</sub> emissions. A minimum of the parameters listed in paragraph (d)(4)(i) through (x) of this section, as applicable, must be used to characterize emissions. If paragraph (d)(4)(i) through (x) of this section indicates that an applicable parameter must be measured, collect measurements reflective of representative operating conditions over the time period covered by the simulation. Determine all other applicable parameters in paragraph (d)(4)(i) through (x) of this section by engineering estimate and process

knowledge based on best available data and, if necessary, adjust parameters to represent the operating conditions over the time period covered by the simulation. Determine the number of simulations and associated time periods such that the simulations cover the entire reporting year (*i.e.*, if you calculate emissions using one simulation, use representative parameters for the operating conditions over the calendar year; if you use periodic simulations to cover the calendar year, use parameters for the operating conditions over each corresponding appropriate portion of the calendar year).

(i) Natural gas feed temperature, pressure, and flow rate (must be measured).  
(ii) Acid gas content of feed natural gas (must be measured).  
(iii) Acid gas content of outlet natural gas.  
(iv) CH<sub>4</sub> content of feed natural gas (must be measured).  
(v) CH<sub>4</sub> content of outlet natural gas.  
(vi) For NRU, nitrogen content of feed natural gas (must be measured).  
(vii) For NRU, nitrogen content of outlet natural gas.  
(viii) Unit operating hours, excluding downtime for maintenance or standby.  
(ix) Exit temperature of natural gas.  
(x) For AGR, solvent type, pressure, temperature, circulation rate, and composition.

(5) *Flow rate of inlet.* For Calculation Method 3, determine the gas flow rate of the inlet when using Equation W-4A or W-4C of this section or the gas flow rate of the outlet when using Equation W-4B or W-4C of this section for the natural gas stream of an AGR or NRU using a meter according to methods set forth in § 98.234(b). If you do not have a continuous flow meter, either install a continuous flow meter or use an

engineering calculation to determine the flow rate.

(6) *Composition of vent gas.* For Calculation Method 2 or Calculation Method 3 when using Equation W-4A or W-4B of this section, if a continuous gas analyzer is not available on the vent stack, either install a continuous gas analyzer or take quarterly gas samples from the vent gas stream for each quarter that the AGR or NRU is operating to determine  $Vol_{I,i}$  in Equation W-3 of this section or Equation W-4A or W-4B of this section, according to the methods set forth in § 98.234(b).

(7) *Composition of inlet gas stream.* For Calculation Method 3, if a continuous gas analyzer is installed on the inlet gas stream, then the continuous gas analyzer results must be used. If a continuous gas analyzer is not available, either install a continuous gas analyzer or take quarterly gas samples from the inlet gas stream for each quarter that the AGR or NRU is operating to determine  $Vol_{I,i}$  in Equation W-4A, W-4B, or W-4C of this section, according to the methods set forth in § 98.234(b).

(8) *Composition of outlet gas stream.* For Calculation Method 3, determine annual average volumetric fraction of GHG<sub>i</sub> (either CH<sub>4</sub> or CO<sub>2</sub>) content in natural gas flowing out of the AGR or NRU using one of the methods specified in paragraphs (d)(8)(i) through (iii) of this section.

(i) If a continuous gas analyzer is installed on the outlet natural gas stream, then the continuous gas analyzer results must be used. If a continuous gas analyzer is not available, you may install a continuous gas analyzer.

(ii) If a continuous gas analyzer is not available or installed, quarterly gas samples may be taken from the outlet natural gas stream for each quarter that the AGR or NRU is operating to

determine  $Vol_{O,i}$  in Equation W-4A, W-4B, or W-4C of this section, according to the methods set forth in § 98.234(b).

(iii) If a continuous gas analyzer is not available or installed, you may use the outlet pipeline quality specification for  $CO_2$  in natural gas and the outlet quality specification for  $CH_4$  in natural gas.

(9) *Volumetric emissions.* Calculate annual volumetric  $CH_4$  and  $CO_2$  emissions at standard conditions using calculations in paragraph (t) of this section.

(10) *Mass emissions.* Calculate annual mass  $CH_4$  and  $CO_2$  emissions using calculations in paragraph (v) of this section.

(11) *Emissions recovered and transferred outside the facility.* Determine if  $CO_2$  emissions from the AGR are recovered and transferred outside the facility. Adjust the  $CO_2$  emissions estimated in paragraphs (d)(1) through (d)(10) of this section downward by the magnitude of  $CO_2$  emissions recovered and transferred outside the facility.

(e) *Dehydrator vents.* For dehydrator vents, calculate annual  $CH_4$  and  $CO_2$  emissions using the applicable calculation methods described in paragraphs (e)(1) through (5) of this section. For glycol dehydrators that have an annual average daily natural gas throughput that is greater than or equal to 0.4 million standard cubic feet per day, use Calculation Method 1 in paragraph (e)(1) of this section. For glycol dehydrators that have an annual average of daily natural gas throughput that is greater than 0 million standard cubic feet per day and less than 0.4 million standard cubic feet per day, use either Calculation Method 1 in paragraph (e)(1) of this section or Calculation Method 2 in paragraph (e)(2) of this section. If you are required to or elect to use the method in paragraph (e)(1) of this section, you must use the results of the model to determine annual mass emissions. If emissions from dehydrator vents are routed to a vapor recovery system, you must adjust the emissions downward according to paragraph (e)(4) of this section. If emissions from dehydrator vents are routed to a regenerator firebox/ fire tubes, you must calculate  $CH_4$ ,  $CO_2$ , and  $N_2O$  annual emissions as specified in paragraph (e)(5) of this section. If any dehydrator vents are routed to a flare, you must calculate  $CH_4$ ,  $CO_2$ , and  $N_2O$  emissions for the flare stack as specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n).

(1) *Calculation Method 1.* Calculate annual mass emissions from glycol dehydrators by using a software

program, such as AspenTech HYSYS®, Bryan Research & Engineering ProMax®, or GRI-GLYCalc™, that uses the Peng-Robinson equation of state to calculate the equilibrium coefficient, speciates  $CH_4$  and  $CO_2$  emissions from dehydrators, and has provisions to include regenerator control devices, a separator flash tank, stripping gas, and a gas injection pump or gas assist pump. If you elect to use ProMax®, you must use version 5.0 or above. Emissions must be modeled from both the still vent and, if applicable, the flash tank vent. A minimum of the parameters listed in paragraph (e)(1)(i) through (xi) of this section, as applicable, must be used to characterize emissions. If paragraph (e)(1)(i) through (xi) of this section indicates that an applicable parameter must be measured, collect measurements reflective of representative operating conditions for the time period covered by the simulation. Determine all other applicable parameters in paragraph (e)(1)(i) through (xi) of this section by engineering estimate and process knowledge based on best available data and, if necessary, adjust parameters to represent the operating conditions over the time period covered by the simulation. Determine the number of simulations and associated time periods such that the simulations cover the entire reporting year (*i.e.*, if you calculate emissions using one simulation, use representative parameters for the operating conditions over the calendar year; if you use periodic simulations to cover the calendar year, use parameters for the operating conditions over each corresponding appropriate portion of the calendar year).

(i) Feed natural gas flow rate (must be measured).

(ii) Feed natural gas water content (must be measured).

\* \* \* \* \*

(x) Wet natural gas temperature and pressure at the absorber inlet (must be measured).

(xi) Wet natural gas composition. Measure this parameter using one of the methods described in paragraphs (e)(1)(xi)(A) and (B) of this section.

(A) Use an appropriate standard method published by a consensus-based standards organization if such a method exists or you may use an industry standard practice as specified in § 98.234(b) to sample and analyze wet natural gas composition.

(B) If only composition data for dry natural gas is available, assume the wet natural gas is saturated.

(2) *Calculation Method 2.* Calculate annual volumetric emissions from

glycol dehydrators using Equation W-5 of this section, and then calculate the collective  $CH_4$  and  $CO_2$  mass emissions from the volumetric emissions using the procedures in paragraph (v) of this section:

\* \* \* \* \*

Count = Total number of glycol dehydrators that have an annual average daily natural gas throughput that is greater than 0 million standard cubic feet per day and less than 0.4 million standard cubic feet per day for which you elect to use this Calculation Method 2.

\* \* \* \* \*

(3) *Calculation Method 3.* For dehydrators of any size that use desiccant, you must calculate emissions from the amount of gas vented from the vessel when it is depressurized for the desiccant refilling process using Equation W-6 of this section. From volumetric natural gas emissions, calculate both  $CH_4$  and  $CO_2$  volumetric and mass emissions using the procedures in paragraphs (u) and (v) of this section. Desiccant dehydrator emissions covered in this paragraph do not have to be calculated separately using the method specified in paragraph (i) of this section for blowdown vent stacks.

\* \* \* \* \*

(4) *Emissions vented directly to atmosphere from dehydrators routed to a vapor recovery system, flare, or regenerator firebox/fire tubes.* If the dehydrator(s) has a vapor recovery system, routes emissions to a flare, or routes emissions to a regenerator firebox/fire tubes and you use Calculation Method 1 or Calculation Method 2 in paragraph (e)(1) or (2) of this section, calculate annual emissions vented directly to atmosphere from the dehydrator(s) during periods of time when emissions were not routed to the vapor recovery system, flare, or regenerator firebox/fire tubes as specified in paragraphs (e)(4)(i) and (ii) of this section. If the dehydrator(s) has a vapor recovery system or routes emissions to a flare and you use Calculation Method 3 in paragraph (e)(3) of this section, calculate annual emissions vented directly to atmosphere from the dehydrator(s) during periods of time when emissions were not routed to the vapor recovery system or flare as specified in paragraph (e)(4)(iii) of this section.

(i) When emissions from dehydrator(s) are calculated using Calculation Method 1 or 2, calculate maximum potential annual vented emissions as specified in paragraph

(e)(1) or (2) of this section, and calculate an average hourly vented emissions rate by dividing the maximum potential annual vented emissions by the number of hours that the dehydrator was in operation.

(ii) To calculate total emissions vented directly to atmosphere during periods when the dehydrator was not routing emissions to a vapor recovery system, flare, or regenerator firebox/fire tubes for dehydrator(s) with emissions calculated using Calculation Method 1 or 2, multiply the average hourly vented emissions rate determined in paragraph (e)(4)(i) of this section by the number of hours that the dehydrator vented directly to the atmosphere. Determine the number of hours that the dehydrator vented directly to atmosphere by subtracting the hours that the dehydrator was connected to a vapor recovery system, flare, or regenerator firebox/fire tubes (based on engineering estimate and best available data) from the total operating hours for the dehydrator in the calendar year. You must take into account periods with reduced capture efficiency of the vapor recovery system, flare, or regenerator firebox/fire tubes. If emissions are routed to a flare but the flare is unlit, calculate emissions in accordance with the methodology specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n).

(iii) When emissions from dehydrator(s) are calculated using Calculation Method 3, calculate total annual emissions vented directly to atmosphere from the dehydrator(s) during periods of time when emissions were not routed to the vapor recovery system, flare, or regenerator firebox/fire tubes by determining of the number of depressurization events (including portions of an event) that vented to atmosphere based on engineering estimate and best available data. You must take into account periods with reduced capture efficiency of the vapor recovery system or flare. If emissions are routed to a flare but the flare is unlit, calculate emissions in accordance with the methodology specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n).

(5) *Combustion emissions from routing to regenerator firebox/fire tubes.*

If any dehydrator emissions are routed to a regenerator firebox/fire tubes, calculate emissions from these devices attributable to dehydrator flash tank vents or still vents as specified in paragraphs (e)(5)(i) through (iii) of this section. If you operate a CEMS to monitor the emissions from the regenerator firebox/fire tubes, calculate emissions as specified in paragraph (e)(5)(iv) of this section.

(i) Determine the volume of the total emissions that is routed to a regenerator firebox/fire tubes as specified in paragraph (e)(5)(i)(A) or (B) of this section.

(A) Measure the flow from the dehydrator(s) to the regenerator firebox/fire tubes using a continuous flow measurement device. If you continuously measure flow to the regenerator firebox/fire tubes, you must use the measured volumes to calculate emissions from the regenerator firebox/fire tubes.

(B) Using engineering estimates based on best available data, determine the volume of the total emissions estimated in paragraph (e)(1), (2), or (3) of this section, as applicable, that is routed to the regenerator firebox/fire tubes.

(ii) Determine composition of the gas routed to a regenerator firebox/fire tubes as specified in paragraph (e)(5)(ii)(A) or (B) of this section.

(A) Use the appropriate vent emissions as determined in paragraph (e)(1) or (2) of this section.

(B) Measure the composition of the gas from the dehydrator(s) to the regenerator firebox/fire tubes using a continuous composition analyzer. If you continuously measure gas composition, then those measured data must be used to calculate dehydrator emissions from the regenerator firebox/fire tubes.

(iii) Determine GHG volumetric emissions at actual conditions from the regenerator firebox/fire tubes using Equations W-39A, W-39B, and W-40 in paragraph (z)(3) of this section. Calculate GHG volumetric emissions at standard conditions using calculations in paragraph (t) of this section. Calculate both GHG mass emissions from volumetric emissions using calculations in paragraph (v) of this section.

(iv) If you operate and maintain a CEMS that has both a CO<sub>2</sub> concentration monitor and volumetric flow rate monitor for the combustion gases from

the regenerator firebox/fire tubes, you must calculate only CO<sub>2</sub> emissions for the regenerator firebox/fire tubes. You must follow the Tier 4 Calculation Method and all associated calculation, quality assurance, reporting, and recordkeeping requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources). If a CEMS is used to calculate emissions from a regenerator firebox/fire tubes, the requirements specified in paragraphs (e)(5)(ii) and (iii) of this section are not required.

(f) *Well venting for liquids unloadings.* Calculate annual volumetric natural gas emissions from well venting for liquids unloading when the well is unloaded to the atmosphere or a control device using one of the calculation methods described in paragraph (f)(1), (2), or (3) of this section. Once every 3 consecutive calendar years or on a more frequent basis, you must use Calculation Method 1 to calculate emissions from well venting for liquids unloading for each well. Calculate annual CH<sub>4</sub> and CO<sub>2</sub> volumetric and mass emissions using the method described in paragraph (f)(4) of this section.

(1) *Calculation Method 1.* Calculate emissions from manual and automated unloadings at wells with plunger lifts and wells without plunger lifts separately. For at least one well of each unique well tubing diameter group and pressure group combination in each sub-basin category (see § 98.238 for the definitions of tubing diameter group, pressure group, and sub-basin category), where gas wells are vented to the atmosphere to expel liquids accumulated in the tubing, install a recording flow meter on the vent line used to vent gas from the well (e.g., on the vent line off the wellhead separator or atmospheric storage tank) according to methods set forth in § 98.234(b). Calculate the total emissions from well venting to the atmosphere for liquids unloading using Equation W-7A of this section. Equation W-7A must be used for each unloading type combination (automated plunger lift unloadings, manual plunger lift unloadings, automated unloadings without plunger lifts and manual unloadings without plunger lifts) for any tubing diameter group and pressure group combination in each sub-basin.

$$E_a = FR \times T_p$$

(Eq. W-7A)

Where:

$E_a$  = Annual natural gas emissions for each well of the same tubing diameter group

and pressure group combination in the sub-basin at actual conditions, a, in

cubic feet. Calculate emissions from wells with automated plunger lift unloadings, wells with manual plunger lift unloadings, wells with automated unloadings without plunger lifts and wells with manual unloadings without plunger lifts separately.

FR = Average flow rate in cubic feet per hour for all measured wells of the same tubing

diameter group and pressure group combination in a sub-basin, over the duration of the liquids unloading, under actual conditions as determined in paragraph (f)(1)(i) of this section.

$T_p$  = Cumulative amount of time in hours of venting for each well, p, of the same tubing diameter group and pressure group combination in a sub-basin during

the year. If the available venting data do not contain a record of the date of the venting events and data are not available to provide the venting hours for the specific time period of January 1 to December 31, you may calculate an annualized vent time,  $T_p$ , using Equation W-7B of this section.

$$T_p = \frac{HR_p}{MP_p} \times D_p \quad (\text{Eq. W-7B})$$

Where:

$HR_p$  = Cumulative amount of time in hours of venting for each well, p, during the monitoring period.

$MP_p$  = Time period, in days, of the monitoring period for each well, p. A minimum of 300 days in a calendar year are required. The next period of data collection must start immediately following the end of data collection for the previous reporting year.

$D_p$  = Time period, in days during which the well, p, was in production (365 if the well was in production for the entire year).

(i) Determine the well vent average flow rate ("FR" in Equation W-7A of this section) as specified in paragraphs (f)(1)(i)(A) through (C) of this section for at least one well in a unique well tubing diameter group and pressure group combination in each sub-basin category.

Calculate emissions from wells with automated plunger lift unloadings, wells with manual plunger lift unloadings, wells with automated unloadings without plunger lifts and wells with manual unloadings without plunger lifts separately.

(A) Calculate the average flow rate per hour of venting for each unique tubing diameter group and pressure group combination in each sub-basin category by dividing the recorded total annual flow by the recorded time (in hours) for all measured liquid unloading events with venting to the atmosphere or a control device.

(B) Apply the average hourly flow rate calculated under paragraph (f)(1)(i)(A) of this section to each well in the same pressure group that have the same

tubing diameter group, for the number of hours of each well is vented.

(C) If using Calculation Method 1 more frequently than once every 3 years, you must calculate a new average flow rate each calendar year that you use Calculation Method 1. For a new producing sub-basin category, calculate an average flow rate beginning in the first year of production.

(ii) Calculate natural gas volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(2) *Calculation Method 2.* Calculate the total emissions for each well from manual and automated well venting to the atmosphere for liquids unloading without plunger lift assist using Equation W-8 of this section.

$$E_s = N_p \times \left( (0.37 \times 10^{-3}) \times CD_p^2 \times WD_p \times SP_p \right) + \sum_{q=1}^{N_p} (SFR_p \times (HR_{p,q} - 1.0) \times Z_{p,q}) \quad (\text{Eq. W-8})$$

Where:

$E_s$  = Annual natural gas emissions for each well at standard conditions, s, in cubic feet per year

$N_p$  = Total number of unloading events in the monitoring period per well, p.

$0.37 \times 10^{-3} = \{3.14 (\pi)/4\} / \{14.7 \times 144\}$  (psia converted to pounds per square feet).

$CD_p$  = Casing internal diameter for well, p, in inches.

$WD_p$  = Well depth from either the top of the well or the lowest packer to the bottom of the well, for well, p, in feet.

$SP_p$  = For well, p, shut-in pressure or surface pressure for wells with tubing production, or casing pressure for each well with no packers, in pounds per square inch

absolute (psia). If casing pressure is not available for the well, you may determine the casing pressure by multiplying the tubing pressure of the well with a ratio of casing pressure to tubing pressure from a well in the same sub-basin for which the casing pressure is known. The tubing pressure must be measured during gas flow to a flow-line. The shut-in pressure, surface pressure, or casing pressure must be determined just prior to liquids unloading when the well production is impeded by liquids loading or closed to the flow-line by surface valves.

$SFR_p$  = Average flow-line rate of gas for well, p, at standard conditions in cubic feet per hour. Use Equation W-33 of this section to calculate the average flow-line rate at standard conditions.

$HR_{p,q}$  = Hours that well, p, was left open to the atmosphere during each unloading event, q.

1.0 = Hours for average well to blowdown casing volume at shut-in pressure.

q = Unloading event.

$Z_{p,q}$  = If  $HR_{p,q}$  is less than 1.0 then  $Z_{p,q}$  is equal to 0. If  $HR_{p,q}$  is greater than or equal to 1.0 then  $Z_{p,q}$  is equal to 1.

(3) *Calculation Method 3.* Calculate the total emissions for each sub-basin from well venting to the atmosphere for liquids unloading with plunger lift assist using Equation W-9 of this section.

$$E_s = N_p \times \left( (0.37 \times 10^{-3}) \times TD_p^2 \times WD_p \times SP_p \right) + \sum_{q=1}^{N_p} (SFR_p \times (HR_{p,q} - 0.5) \times Z_{p,q}) \quad (\text{Eq. W-9})$$

## Where:

$E_s$  = Annual natural gas emissions for each well at standard conditions, s, in cubic feet per year.

$N_p$  = Total number of unloading events in the monitoring period per well, p.

$0.37 \times 10^{-3} = \{3.14 (\pi)/4\}/\{14.7 \times 144\}$  (psia converted to pounds per square feet).

$TD_p$  = Tubing internal diameter for well, p, in inches.

$WD_p$  = Tubing depth to plunger bumper for well, p, in feet.

$SP_p$  = Flow-line pressure for well p in pounds per square inch absolute (psia), using engineering estimate based on best available data.

$SFR_p$  = Average flow-line rate of gas for well, p, at standard conditions in cubic feet per hour. Use Equation W-33 of this section to calculate the average flow-line rate at standard conditions.

$HR_{p,q}$  = Hours that well, p, was left open to the atmosphere during each unloading event, q.

0.5 = Hours for average well to blowdown tubing volume at flow-line pressure.

q = Unloading event.

$Z_{p,q}$  = If  $HR_{p,q}$  is less than 0.5 then  $Z_{p,q}$  is equal to 0. If  $HR_{p,q}$  is greater than or equal to 0.5 then  $Z_{p,q}$  is equal to 1.

$$E_{s,n} = \sum_{p=1}^{CW} \left[ T_{p,s,cw} \times FRM_s \times PR_{s,p,cw} - EnF_{s,p,cw} + \left[ T_{p,i,cw} \times FRM_i \div 2 \times PR_{s,p,cw} \right] \right] \text{ (Eq. W-10A)}$$

$$E_{s,n} = \sum_{p=1}^{CW} \left[ FV_{s,p,cw} - EnF_{s,p,cw} + \left[ T_{p,i,cw} \times FR_{p,i,cw} \div 2 \right] \right] \text{ (Eq. W-10B)}$$

## Where:

$E_{s,n}$  = Annual volumetric natural gas emissions in standard cubic feet from gas venting during well completions or workovers following hydraulic fracturing for each well.

CW = Total number of completions or workovers using hydraulic fracturing for each well, p.

$T_{p,s,cw}$  = Cumulative amount of time of flowback, after sufficient quantities of gas are present to enable separation, where gas vented or flared for each completion or workover, in hours, for each well, p, during the reporting year. This may include non-contiguous periods of venting or flaring.

$T_{p,i,cw}$  = Cumulative amount of time of flowback to open tanks/pits, from when gas is first detected until sufficient quantities of gas are present to enable separation, for each completion or workover, in hours, for each well, p, during the reporting year. This may include non-contiguous periods of routing to open tanks/pits but does not include periods when the oil well ceases to produce fluids to the surface.

(4) *Volumetric and mass emissions.* Calculate CH<sub>4</sub> and CO<sub>2</sub> volumetric and mass emissions from volumetric natural gas emissions using calculations in paragraphs (u) and (v) of this section.

\* \* \* \* \*

(g) *Well venting during completions and workovers with hydraulic fracturing.* Calculate annual volumetric natural gas emissions from gas well and oil well venting during completions and workovers involving hydraulic fracturing using Equation W-10A or Equation W-10B of this section. Equation W-10A applies to well venting when the gas flowback rate is measured from a specified number of example completions or workovers in a sub-basin and well type combination and Equation W-10B applies when the gas flowback vent or flare volume is measured for each completion or workover in a sub-basin and well type combination. Completion and workover activities are separated into two periods, an initial period when flowback is routed to open pits or tanks and a subsequent period when gas content is

sufficient to route the flowback to a separator or when the gas content is sufficient to allow measurement by the devices specified in paragraph (g)(1) of this section, regardless of whether a separator is actually utilized. If you elect to use Equation W-10A, you must follow the procedures specified in paragraph (g)(1) of this section. If you elect to use Equation W-10B, you must use a recording flow meter installed on the vent line, downstream of a separator and ahead of a flare or vent, to measure the gas flowback. For either equation, emissions must be calculated separately for completions and workovers, for each sub-basin, and for each well type combination identified in paragraph (g)(2) of this section. You must calculate CH<sub>4</sub> and CO<sub>2</sub> volumetric and mass emissions as specified in paragraph (g)(3) of this section. If emissions from well venting during completions and workovers with hydraulic fracturing are routed to a flare, you must calculate CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O annual emissions as specified in paragraph (n) of this section.

$FRM_s$  = Ratio of average gas flowback, during the period when sufficient quantities of gas are present to enable separation, of well completions and workovers from hydraulic fracturing to 30-day production rate for the sub-basin and well type combination, calculated using procedures specified in paragraph (g)(1)(iii) of this section.

$FRM_i$  = Ratio of initial gas flowback rate during well completions and workovers from hydraulic fracturing to 30-day gas production rate for the sub-basin and well type combination, calculated using procedures specified in paragraph (g)(1)(iv) of this section, for the period of flow to open tanks/pits.

$PR_{s,p,cw}$  = Average gas production flow rate during the first 30 days of production after each completion of a newly drilled well or well workover using hydraulic fracturing in standard cubic feet per hour of each well p, that was measured in the sub-basin and well type combination. If applicable,  $PR_{s,p,cw}$  may be calculated for oil wells using procedures specified in paragraph (g)(1)(vii) of this section.

$EnF_{s,p,cw}$  = Volume of N<sub>2</sub> injected gas in cubic feet at standard conditions that was injected into the reservoir during an

energized fracture job or during flowback during each completion or workover for each well, p, as determined by using an appropriate meter according to methods described in § 98.234(b), or by using receipts of gas purchases that are used for the energized fracture job or injection during flowback. Convert to standard conditions using paragraph (t) of this section. If the fracture process did not inject gas into the reservoir or if the injected gas is CO<sub>2</sub> then  $EnF_{s,p,cw}$  is 0.

$FV_{s,p,cw}$  = Flow volume of vented or flared gas for each completion or workover at each well, p, in standard cubic feet measured using a recording flow meter (digital or analog) on the vent line to measure gas flowback during the separation period of the completion or workover according to methods set forth in § 98.234(b).

$FR_{p,i,cw}$  = Flow rate vented or flared of each completion or workover for each well, p, in standard cubic feet per hour measured using a recording flow meter (digital or analog) on the vent line to measure the flowback, at the beginning of the period of time when sufficient quantities of gas are present to enable separation, of the completion or workover according to methods set forth in § 98.234(b).

(1) If you elect to use Equation W-10A of this section on gas wells, you must use Calculation Method 1 as specified in paragraph (g)(1)(i) of this section to determine the value of FRMs and FRM<sub>i</sub>. These values must be based on the flow rate for flowback gases, once sufficient gas is present to enable separation. The number of measurements or calculations required to estimate FRM<sub>s</sub> and FRM<sub>i</sub> must be determined individually for completions and workovers per sub-basin and well type combination as follows: Complete measurements or calculations for at least one completion or workover for less than or equal to 25 completions or workovers for each well type combination within a sub-basin; complete measurements or calculations for at least two completions or workovers for 26 to 50 completions or workovers for each sub-basin and well type combination; complete measurements or calculations for at least three completions or workovers for 51 to 100 completions or workovers for each sub-basin and well type combination; complete measurements or calculations for at least four completions or workovers for 101 to 250 completions or workovers for each sub-basin and well type combination; and complete measurements or calculations

for at least five completions or workovers for greater than 250 completions or workovers for each sub-basin and well type combination.

\* \* \* \* \*

(iii) \* \* \*

FR<sub>s,p</sub> = Measured average gas flowback rate from Calculation Method 1 described in paragraph (g)(1)(i) of this section, during the separation period in standard cubic feet per hour for well(s) p for each sub-basin and well type combination. Convert measured FR<sub>a</sub> values from actual conditions upstream of the restriction orifice (FR<sub>a</sub>) to standard conditions (FR<sub>s,p</sub>) for each well p using Equation W-33 in paragraph (t) of this section. You may not use flow volume as used in Equation W-10B of this section converted to a flow rate for this parameter.

\* \* \* \* \*

N = Number of measured well completions or workovers using hydraulic fracturing in a sub-basin and well type combination.

(iv) \* \* \*

FR<sub>i,p</sub> = Initial measured gas flowback rate from Calculation Method 1 described in paragraph (g)(1)(i) of this section in standard cubic feet per hour for well(s), p, for each sub-basin and well type combination.

Measured FR<sub>i,p</sub> values must be based on flow conditions at the beginning of the separation period and must be expressed at standard conditions.

\* \* \* \* \*

N = Number of measured well completions or workovers using hydraulic fracturing in a sub-basin and well type combination.

\* \* \* \* \*

(h) *Gas well venting during completions and workovers without hydraulic fracturing.* Calculate annual volumetric natural gas emissions from each gas well venting during workovers without hydraulic fracturing using Equation W-13A of this section. Calculate annual volumetric natural gas emissions from each gas well venting during completions without hydraulic fracturing using Equation W-13B of this section. You must convert annual volumetric natural gas emissions to CH<sub>4</sub> and CO<sub>2</sub> volumetric and mass emissions as specified in paragraph (h)(1) of this section. If emissions from gas well venting during completions and workovers without hydraulic fracturing are routed to a flare, you must calculate CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O annual emissions as specified in paragraph (n) of this section.

$$E_{s,wo} = N_{wo} * EF_{wo} \tag{Eq. W-13A}$$

$$E_{s,p} = V_p \times T_p \tag{Eq. W-13B}$$

Where:

E<sub>s,wo</sub> = Annual volumetric natural gas emissions in standard cubic feet from gas well venting during well workovers without hydraulic fracturing.

N<sub>wo</sub> = Number of workovers per well that do not involve hydraulic fracturing in the reporting year.

EF<sub>wo</sub> = Emission factor for non-hydraulic fracture well workover venting in standard cubic feet per workover. Use 3,114 standard cubic feet natural gas per well workover without hydraulic fracturing.

E<sub>s,p</sub> = Annual volumetric natural gas emissions in standard cubic feet from gas well venting during well completions without hydraulic fracturing.

V<sub>p</sub> = Average daily gas production rate in standard cubic feet per hour for each well, p, undergoing completion without hydraulic fracturing. This is the total annual gas production volume divided by total number of hours the well produced to the flow-line. For completed wells that have not established a production rate, you may use the average flow rate from the first 30 days of

production. In the event that the well is completed less than 30 days from the end of the calendar year, the first 30 days of the production straddling the current and following calendar years shall be used.

T<sub>p</sub> = Time that gas is vented to either the atmosphere or a flare for each well, p, undergoing completion without hydraulic fracturing, in hours during the year.

\* \* \* \* \*

(i) \* \* \*

(2) *Method for determining emissions from blowdown vent stacks according to equipment or event type.* If you elect to determine emissions according to each equipment or event type, using unique physical volumes as calculated in paragraph (i)(1) of this section, you must calculate emissions as specified in paragraph (i)(2)(i) of this section and either paragraph (i)(2)(ii) of this section or, if applicable, paragraph (i)(2)(iii) of this section for each equipment or event type. Categorize equipment and event

types for each industry segment as specified in paragraph (i)(2)(iv) of this section.

(i) \* \* \*

T<sub>a</sub> = Temperature at actual conditions in the unique physical volume (°F). For emergency blowdowns at onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting facilities, onshore natural gas transmission pipeline facilities, and natural gas distribution facilities, engineering estimates based on best available information may be used to determine the temperature.

\* \* \* \* \*

P<sub>a</sub> = Absolute pressure at actual conditions in the unique physical volume (psia). For emergency blowdowns at onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting facilities, onshore natural gas transmission pipeline

facilities, and natural gas distribution facilities, engineering estimates based on best available information may be used to determine the pressure.

\* \* \* \* \*

$T_{a,p}$  = Temperature at actual conditions in the unique physical volume (°F) for each blowdown “p”. For emergency blowdowns at onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting facilities, onshore natural gas transmission pipeline facilities, and natural gas distribution facilities, engineering estimates based on best available information may be used to determine the temperature.

\* \* \* \* \*

$P_{a,b,p}$  = Absolute pressure at actual conditions in the unique physical volume (psia) at the beginning of the blowdown “p”. For emergency blowdowns at onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting facilities, onshore natural gas transmission pipeline facilities, and natural gas distribution facilities, engineering estimates based on best available information may be used to determine the pressure at the beginning of the blowdown.

$P_{a,e,p}$  = Absolute pressure at actual conditions in the unique physical volume (psia) at the end of the blowdown “p”; 0 if blowdown volume is purged using non-GHG gases. For emergency blowdowns at onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting facilities, onshore natural gas transmission pipeline facilities, and natural gas distribution facilities, engineering estimates based on best available information may be used to determine the pressure at the end of the blowdown.

\* \* \* \* \*

(iv) Categorize blowdown vent stack emission events as specified in paragraphs (i)(2)(iv)(A) and (B) of this section, as applicable.

(A) For the onshore petroleum and natural gas production, onshore natural gas processing, onshore natural gas transmission compression, underground natural gas storage, LNG storage, LNG import and export equipment, and onshore petroleum and natural gas gathering and boosting industry segments, equipment or event types must be grouped into the following seven categories: Facility piping (*i.e.*, physical volumes associated with

pipings for which the entire physical volume is located within the facility boundary), pipeline venting (*i.e.*, physical volumes associated with pipelines for which a portion of the physical volume is located outside the facility boundary and the remainder, including the blowdown vent stack, is located within the facility boundary), compressors, scrubbers/strainers, pig launchers and receivers, emergency shutdowns (this category includes emergency shutdown blowdown emissions regardless of equipment type), and all other equipment with a physical volume greater than or equal to 50 cubic feet. If a blowdown event resulted in emissions from multiple equipment types and the emissions cannot be apportioned to the different equipment types, then categorize the blowdown event as the equipment type that represented the largest portion of the emissions for the blowdown event.

(B) For the onshore natural gas transmission pipeline and natural gas distribution industry segments, pipeline segments or event types must be grouped into the following eight categories: Pipeline integrity work (*e.g.*, the preparation work of modifying facilities, ongoing assessments, maintenance or mitigation), traditional operations or pipeline maintenance, equipment replacement or repair (*e.g.*, valves), pipe abandonment, new construction or modification of pipelines including commissioning and change of service, operational precaution during activities (*e.g.*, excavation near pipelines), emergency shutdowns including pipeline incidents as defined in 49 CFR 191.3, and all other pipeline segments with a physical volume greater than or equal to 50 cubic feet. If a blowdown event resulted in emissions from multiple categories and the emissions cannot be apportioned to the different categories, then categorize the blowdown event in the category that represented the largest portion of the emissions for the blowdown event.

\* \* \* \* \*

(j) *Hydrocarbon liquids and produced water storage tanks.* Calculate CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O (when flared) emissions from atmospheric pressure storage tanks receiving hydrocarbon liquids or produced water from onshore petroleum and natural gas production facilities, onshore petroleum and natural gas gathering and boosting facilities (including stationary liquid storage not owned or operated by the reporter), and onshore natural gas processing facilities as specified in this paragraph (j). For wells, gas-liquid separators, or onshore petroleum and natural gas gathering and

boosting or onshore natural gas processing non-separator equipment (*e.g.*, stabilizers, slug catchers) with annual average daily throughput of hydrocarbon liquids greater than or equal to 10 barrels per day, calculate annual CH<sub>4</sub> and CO<sub>2</sub> using Calculation Method 1 or 2 as specified in paragraphs (j)(1) and (2) of this section. For wells, gas-liquid separators, or non-separator equipment with annual average daily throughput of hydrocarbon liquids greater than 0 barrels per day and less than 10 barrels per day, calculate annual CH<sub>4</sub> and CO<sub>2</sub> emissions using Calculation Method 1, 2, or 3 as specified in paragraphs (j)(1) through (3) of this section. Annual average daily throughput of hydrocarbon liquids should be calculated using the flow out of the separator, well, or non-separator equipment determined over the actual days of operation. For atmospheric pressure storage tanks receiving produced water, calculate annual CH<sub>4</sub> emissions using Calculation Method 1, 2, or 3 as specified in paragraphs (j)(1) through (3) of this section. If you are required to or elect to use the method in paragraph (j)(1) of this section, you must use the results of the model to determine annual CH<sub>4</sub> and, if applicable, CO<sub>2</sub> emissions. If you use Calculation Method 1 or Calculation Method 2 for gas-liquid separators, you must also calculate emissions that may have occurred due to dump valves not closing properly using the method specified in paragraph (j)(5) of this section. If emissions from atmospheric pressure storage tanks are routed to a vapor recovery system, you must calculate CH<sub>4</sub> and CO<sub>2</sub> annual emissions as specified in paragraph (j)(4) of this section. If emissions from atmospheric pressure storage tanks are routed to a flare, determine flared emissions in accordance with the methodology specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n). For atmospheric pressure storage tanks routing emissions to a vapor recovery system or a flare, calculate annual emissions vented directly to atmosphere as specified in paragraph (j)(4) of this section.

(1) *Calculation Method 1.* For atmospheric pressure storage tanks receiving hydrocarbon liquids, calculate annual CH<sub>4</sub> and CO<sub>2</sub> emissions using operating conditions in the well, last gas-liquid separator, or last non-separator equipment before liquid transfer to storage tanks. For atmospheric pressure storage tanks receiving produced water, calculate annual CH<sub>4</sub> emissions using operating

conditions in the well, last gas-liquid separator, or last non-separator equipment before liquid transfer to storage tanks. Calculate flashing emissions with a software program, such as AspenTech HYSYS®, Bryan Research & Engineering ProMax®, or, for atmospheric pressure storage tanks receiving hydrocarbon liquids from gas-liquid separator or non-separator equipment, API 4697 E&P Tank, that uses the Peng-Robinson equation of state, models flashing emissions, and speciates CH<sub>4</sub> and CO<sub>2</sub> emissions that will result when the hydrocarbon liquids or produced water from the well, separator, or non-separator equipment enter an atmospheric pressure storage tank. If you elect to use ProMax®, you must use version 5.0 or above. A minimum of the parameters listed in paragraphs (j)(1)(i) through (vii) of this section, as applicable, must be used to characterize emissions. If paragraphs (j)(1)(i) through (vii) of this section indicates that an applicable parameter must be measured, collect measurements reflective of representative operating conditions for the time period covered by the simulation. Determine all other applicable parameters in paragraphs (j)(1)(i) through (vii) of this section by engineering estimate and process knowledge based on best available data and, if necessary, adjust parameters to represent the operating conditions over the time period covered by the simulation. Determine the number of

simulations and associated time periods such that the simulations cover the entire reporting year (*i.e.*, if you calculate emissions using one simulation, use representative parameters for the operating conditions over the calendar year; if you use periodic simulations to cover the calendar year, use parameters for the operating conditions over each corresponding appropriate portion of the calendar year).

(i) Well, separator, or non-separator equipment temperature (must be measured).

(ii) Well, separator, or non-separator equipment pressure (must be measured).

(iii) For atmospheric pressure storage tanks receiving hydrocarbon liquids, sales or stabilized hydrocarbon liquids API gravity (must be measured).

(iv) Sales or stabilized hydrocarbon liquids or produced water production rate (must be measured).

(v) Ambient air temperature.

(vi) Ambient air pressure.

(vii) Well, separator, or non-separator equipment hydrocarbon liquids or produced water composition and Reid vapor pressure (must be measured). Use an appropriate standard method published by a consensus-based standards organization if such a method exists or you may use an industry standard practice as specified in § 98.234(b) to sample and analyze hydrocarbon liquids or produced water composition and Reid vapor pressure.

(2) *Calculation Method 2.* For atmospheric pressure storage tanks

receiving hydrocarbon liquids, calculate annual CH<sub>4</sub> and CO<sub>2</sub> emissions using the methods in paragraph (j)(2)(i) of this section. For atmospheric pressure storage tanks receiving produced water, calculate annual CH<sub>4</sub> emissions using the methods in paragraph (j)(2)(i) of this section.

(i) Assume that all of the CH<sub>4</sub> and, if applicable, CO<sub>2</sub> in solution at well, separator, or non-separator equipment temperature and pressure is emitted from hydrocarbon liquids or produced water sent to atmosphere pressure storage tanks. You may use an appropriate standard method published by a consensus-based standards organization if such a method exists or you may use an industry standard practice as described in § 98.234(b) to sample and analyze hydrocarbon liquids or produced water composition at well, separator, or non-separator pressure and temperature.

(ii) [Reserved]

(3) *Calculation Method 3.* Calculate CH<sub>4</sub> and CO<sub>2</sub> emissions from atmospheric pressure storage tanks receiving hydrocarbon liquids as specified in paragraph (j)(3)(i) of this section. Calculate CH<sub>4</sub> emissions from atmospheric pressure storage tanks receiving produced water as specified in paragraph (j)(3)(ii) of this section.

(i) Calculate CH<sub>4</sub> and CO<sub>2</sub> emissions from atmospheric pressure storage tanks receiving hydrocarbon liquids using Equation W-15A of this section:

$$E_{s,i} = EF_i \times \text{Count} \times 1,000$$

(Eq. W-15A)

Where:

$E_{s,i}$  = Annual total volumetric GHG emissions (either CO<sub>2</sub> or CH<sub>4</sub>) at standard conditions in cubic feet.

$EF_i$  = Population emission factor for separators, wells, or non-separator equipment in thousand standard cubic feet per separator, well, or non-separator equipment per year, for crude oil use 4.2 for CH<sub>4</sub> and 2.8 for CO<sub>2</sub> at 60 °F and 14.7

psia, and for gas condensate use 17.6 for CH<sub>4</sub> and 2.8 for CO<sub>2</sub> at 60 °F and 14.7 psia.

Count = Total number of separators, wells, or non-separator equipment with annual average daily throughput greater than 0 barrels per day and less than 10 barrels per day. Count only separators, wells, or non-separator equipment that feed hydrocarbon liquids directly to the

atmospheric pressure storage tank for which you elect to use this Calculation Method 3.

1,000 = Conversion from thousand standard cubic feet to standard cubic feet.

(ii) Calculate CH<sub>4</sub> emissions from atmospheric pressure storage tanks receiving produced water using Equation W-15B of this section:

$$\text{Mass}_{\text{CH}_4} = EF_{\text{CH}_4} \times \text{FR} \times 0.001$$

(Eq. W-15B)

Where:

$\text{Mass}_{\text{CH}_4}$  = Annual total CH<sub>4</sub> emissions in metric tons.

$EF_{\text{CH}_4}$  = Population emission factor for produced water in metric tons CH<sub>4</sub> per thousand barrels produced water per year. For produced water streams from separators, wells, or non-separator equipment with pressure less than or equal to 50 psi, use 0.0015. For produced water streams from separators, wells, or

non-separator equipment with pressure greater than 50 but less than or equal to 250 psi, use 0.0142. For produced water streams from separators, wells, or non-separator equipment with pressure greater than 250 psi, use 0.0508. Pressure should be representative of separators, wells, or non-separator equipment that feed produced water directly to the atmosphere pressure storage tank.

FR = Annual flow rate of produced water to atmospheric pressure storage tanks, in barrels.

0.001 = Conversion from barrels to thousand barrels.

(4) *Routing to vapor recovery systems or flares.* If the atmospheric pressure storage tank receiving your hydrocarbon liquids or produced water has a vapor recovery system or routes emissions to

a flare, calculate annual emissions vented directly to atmosphere from the storage tank during periods of time when emissions were not routed to the vapor recovery system or flare as specified in paragraph (j)(4)(i) of this section. Determine recovered mass as specified in paragraph (j)(4)(ii) of this section.

(i) For an atmospheric pressure storage tank that routes any emissions to a vapor recovery system or a flare, calculate vented emissions as specified in paragraphs (j)(4)(i)(A) through (E) of this section.

(A) Calculate maximum potential vented emissions as specified in paragraph (j)(1), (2), or (3) of this section, and calculate an average hourly vented emissions rate by dividing the maximum potential vented emissions by the number of hours that the tank was in operation.

(B) To calculate vented emissions during periods when the tank was not routing emissions to a vapor recovery system or a flare, multiply the average hourly vented emissions rate determined in paragraph (j)(4)(i)(A) of this section by the number of hours that the tank vented directly to the atmosphere. Determine the number of

hours that the tank vented directly to atmosphere by subtracting the hours that the tank was connected to a vapor recovery system or flare (based on engineering estimate and best available data) from the total operating hours for the tank in the calendar year. If emissions are routed to a flare but the flare is unlit, calculate emissions in accordance with the methodology specified in paragraph (n) of this section and report emissions from the flare as specified in § 98.236(n).

(C) During periods when a thief hatch is open or not properly seated and emissions from the tank are routed to a vapor recovery system or a flare, assume the capture efficiency of the vapor recovery system or a flare is 0 percent. To calculate vented emissions during such periods, multiply the average hourly vented emissions rate determined in paragraph (j)(4)(i)(A) of this section by the number of hours that the thief hatch is open or not properly seated. Determine the number of hours that the thief hatch is open or not properly seated as specified in paragraph (j)(7) of this section.

(D) Calculate vented emissions not captured by the vapor recovery system or a flare due to causes other than open

or not properly seated thief hatches based on best available data.

(E) Calculate total emissions vented directly to atmosphere as the sum of the emissions calculated as specified in paragraphs (j)(4)(i)(B) through (D) of this section.

(ii) Using engineering estimates based on best available data, determine the portion of the total emissions estimated in paragraphs (j)(1) through (3) of this section that is recovered using a vapor recovery system. You must take into account periods with reduced capture efficiency of the vapor recovery system (e.g., when a thief hatch is open or not properly seated) when calculating mass recovered as specified in paragraphs (j)(4)(i)(C) and (D) of this section.

(5) *Gas-liquid separator dump valves.* If you use Calculation Method 1 or Calculation Method 2 in paragraph (j)(1) or (2) of this section, calculate emissions from occurrences of gas-liquid separator liquid dump valves that did not close properly during the calendar year by using Equation W-16 of this section. Determine the total time a dump valve did not close properly in the calendar year ( $T_{dv}$ ) as specified in paragraph (j)(5)(i) of this section.

$$E_{s,i,dv} = CF_{dv} \times \frac{E_{s,i}}{8,760} \times T_{dv}$$

(Eq. W-16)

Where:

$E_{s,i,dv}$  = Annual volumetric GHG emissions (either CO<sub>2</sub> or CH<sub>4</sub>) at standard conditions in cubic feet from atmospheric pressure storage tanks that resulted from the dump valve on an associated gas-liquid separator that did not close properly.

$CF_{dv}$  = Correction factor for tank emissions for time period  $T_{dv}$  is 2.87 for crude oil production. Correction factor for tank emissions for time period  $T_{dv}$  is 4.37 for gas condensate production.

$E_{s,i}$  = Annual volumetric GHG emissions (either CO<sub>2</sub> or CH<sub>4</sub>) as determined in paragraphs (j)(1) and (2) and, if applicable, (j)(4) of this section, in standard cubic feet per year, from atmospheric pressure storage tanks with dump valves on an associated gas-liquid separator that did not close properly.

8,760 = Conversion to hourly emissions.

$T_{dv}$  = Total time a dump valve did not close properly in the calendar year as determined in paragraph (j)(5)(i) of this section, in hours.

(i) You must perform a visual inspection of each gas-liquid separator liquid dump valve to determine if the valve is stuck in an open or partially open position, in accordance with

paragraph (j)(5)(i)(A) and (B) of this section.

(A) Visual inspections must be conducted at least once in a calendar year.

(B) If stuck gas-liquid separator liquid dump valve is identified, the dump valve must be counted as being open since the beginning of the calendar year, or from the previous visual inspection that did not identify the dump valve as being stuck in the open position in the same calendar year. If the dump valve is fixed following visual inspection, the time period for which the dump valve was stuck open will end upon being repaired. If a stuck dump valve is identified and not repaired, the time period for which the dump valve was stuck open must be counted as having occurred through the rest of the calendar year.

(ii) [Reserved]

(6) *Mass emissions.* Calculate both CH<sub>4</sub> and CO<sub>2</sub> mass emissions from natural gas volumetric emissions using calculations in paragraph (v) of this section.

(7) *Thief hatches.* If a thief hatch sensor is operating on a controlled

atmospheric pressure storage tank, you must use data obtained from the thief hatch sensor to determine periods when the thief hatch is open or not properly seated. An applicable operating thief hatch sensor must be capable of transmitting and logging data whenever a thief hatch is open or not properly seated, as well as when the thief hatch is subsequently closed. If a thief hatch sensor is not operating, you must perform a visual inspection of each thief hatch on a controlled atmospheric pressure storage tank in accordance with paragraph (j)(7)(i) through (iii) of this section.

(i) For thief hatches on atmospheric pressure storage tanks subject to the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, visual inspections must be conducted at least as frequent as the required visual, audible, or olfactory fugitive emissions components surveys described in § 60.5397b or the applicable approved state plan or applicable Federal plan in

part 62. If the time between required visual, audible, or olfactory fugitive emissions components surveys described in § 60.5397b or the applicable approved state plan or applicable Federal plan in part 62 is greater than one year, visual inspections must be conducted at least annually.

(ii) For thief hatches on atmospheric pressure storage tanks not subject to the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, visual inspections must be conducted at least once in a calendar year.

(iii) If one visual inspection is conducted in the calendar year, assume the thief hatch was open for the entire calendar year. If multiple visual

inspections are conducted in the calendar year, assume a thief hatch found open in the first visual inspection was open since the beginning of the year until the date of the visual inspection; assume a thief hatch found open in the last visual inspection of the year was open from the preceding visual inspection through the end of the year; assume a thief hatch found open in a visual inspection between the first and last visual inspections of the year was open since the preceding visual inspection until the date of the visual inspection.

(k) *Condensate storage tanks.* For vent stacks connected to one or more condensate storage tanks, either water or hydrocarbon, without vapor recovery, flares, or other controls, in onshore natural gas transmission compression or underground natural gas storage,

calculate CH<sub>4</sub> and CO<sub>2</sub> annual emissions from compressor scrubber dump valve leakage as specified in paragraphs (k)(1) through (4) of this section.

\* \* \* \* \*

(l) *Well testing venting and flaring.* Calculate CH<sub>4</sub> and CO<sub>2</sub> annual emissions from well testing venting as specified in paragraphs (l)(1) through (5) of this section. If emissions from well testing venting are routed to a flare, you must calculate CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O annual emissions as specified in paragraph (n) of this section.

\* \* \* \* \*

(3) Estimate venting emissions using Equation W-17A (for oil wells) or Equation W-17B (for gas wells) of this section for each well tested during the reporting year.

$$E_{a,n} = GOR * FR * D \tag{Eq. W-17A}$$

$$E_{a,n} = PR * D \tag{Eq. W-17B}$$

Where:

E<sub>a,n</sub> = Annual volumetric natural gas emissions from well testing for each well being tested in cubic feet under actual conditions.

GOR = Gas to oil ratio in cubic feet of gas per barrel of oil for each well being tested; oil here refers to hydrocarbon liquids produced of all API gravities.

FR = Average annual flow rate in barrels of oil per day for the oil well being tested.

PR = Average annual production rate in actual cubic feet per day for the gas well being tested.

D = Number of days during the calendar year that the well is tested.

\* \* \* \* \*

(m) *Associated gas venting and flaring.* Calculate CH<sub>4</sub> and CO<sub>2</sub> annual emissions from associated gas venting not in conjunction with well testing (refer to paragraph (l) of this section) as specified in paragraphs (m)(1) through (4) of this section. If emissions from

associated gas venting are routed to a flare, you must calculate CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O annual emissions as specified in paragraph (n) of this section.

\* \* \* \* \*

(3) Estimate venting emissions using Equation W-18 of this section. Alternatively, if you measure the flow to a vent using a continuous flow measurement device, you must use the measured flow volumes to calculate vented associated gas emissions.

$$E_{s,n,p} = (GOR_p \times V_p) - SG_p \tag{Eq. W-18}$$

Where:

E<sub>s,n,p</sub> = Annual volumetric natural gas emissions at each well from associated gas venting at standard conditions, in cubic feet.

GOR<sub>p</sub> = Gas to oil ratio, for well p, in standard cubic feet of gas per barrel of oil; oil here refers to hydrocarbon liquids produced of all API gravities.

V<sub>p</sub> = Volume of oil produced, for well p, in barrels in the calendar year only during time periods in which associated gas was vented or flared.

SG<sub>p</sub> = Volume of associated gas sent to sales or volume of associated gas used for other purposes at the facility site, including powering engines, separators, safety systems and/or combustion equipment and not flared or vented, for well p, in standard cubic feet of gas in

the calendar year only during time periods in which associated gas was vented or flared.

\* \* \* \* \*

(n) *Flare stack emissions.* Except as specified in paragraph (n)(9) of this section, calculate CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions from each flare stack as specified in paragraphs (n)(1) through (8) of this section. For each flare, disaggregate the total flared emissions to applicable source types as specified in paragraph (n)(10) of this section.

(1) *Flow measurement.* Measure total flow to the flare as specified in either paragraph (n)(1)(i) or (ii) of this section.

(i) Use a continuous parameter monitoring system for measuring the

flow of gas to the flare downstream of any sweep, purge, or auxiliary gas addition. You may use direct flow meters or other parameter monitoring systems combined with engineering calculations, such as line pressure and burner nozzle dimensions, to satisfy this requirement. The continuous parameter monitoring system must measure data values at least once every hour.

(ii) Use a continuous parameter monitoring system for measuring the flow of gas from each source that routes gas to the flare, including purge gas, sweep gas, and auxiliary fuel. You may use direct flow meters or other parameter monitoring systems combined with engineering

calculations, such as line pressure and burner nozzle dimensions, to satisfy this requirement. If the emission streams for multiple sources are routed to a manifold before being combined with other emission streams, you may conduct the measurement in the manifold instead of from each source that is routed to the manifold.

(2) *Pilot.* Continuously monitor for the presence of a pilot flame or combustion flame as specified in paragraph (n)(2)(i) of this section or visually inspect for the presence of a pilot flame or combustion flame as specified in paragraph (n)(2)(ii) of this section. If you continuously monitor, then periods when the flare are unlit must be determined based on those data.

(i) At least once every five minutes monitor for the presence of a pilot flame or combustion flame using a device (including, but not limited to, a thermocouple, ultraviolet beam sensor, or infrared sensor) capable of detecting that the pilot or combustion flame is present at all times. Continuous monitoring systems used for the presence of a pilot flame or combustion flame are not subject to a minimum accuracy requirement beyond being able to detect the presence or absence of a flame and are exempt from the calibration requirements of this part 98. Track the length of time over all periods when the flare is unlit. Use the measured flow during these time periods, as determined from measurements obtained under paragraph (n)(1) of this section, to calculate the fraction of the total annual volume that is routed to the flare when it is unlit. If the monitoring device is out of service for more than one week, then visually inspect for the presence of a pilot flame or combustion flame at least once per week for the first 4 weeks that a monitoring device is out of service or until a repaired or new device is operational, whichever period is shorter. If the continuous monitoring device is out of service for less than one week, then at least one visual inspection must be conducted during the outage. If a flame is not detected during a weekly visual inspection, assume the pilot has been unlit since the previous inspection or the last time the continuous monitoring device detected a flame, and assume that the pilot remains unlit until a subsequent inspection or continuous monitoring device detects a flame. If the monitoring device outage lasts more than 4 weeks, then you may switch to conducting inspections at least once per

month in accordance with paragraph (n)(2)(ii) of this section.

(ii) At least once per month visually inspect for the presence of a pilot flame or combustion flame. If a flame is not detected, assume the pilot has been unlit since the previous inspection and that it remains unlit until a subsequent inspection detects a flame. Use the sum of the measured flows, as determined from measurements obtained under paragraph (n)(1) of this section, during all time periods when the pilot was determined to be unlit, to calculate the fraction of the total annual volume that is routed to the flare when it is unlit.

(3) *Gas composition.* Determine the composition of the inlet gas to the flare as specified in either paragraph (n)(3)(i), (ii), (iii), or (iv) of this section.

(i) Use a continuous gas composition analyzer on the inlet gas to the flare burner downstream of any purge, sweep, or auxiliary fuel addition to determine the annual average mole fractions of methane, ethane, propane, butane, pentanes plus, and CO<sub>2</sub>.

(ii) Take samples of the inlet gas to the flare burner downstream of any purge, sweep, or auxiliary fuel addition at least once every quarter in which gas is routed to the flare and analyze for methane, ethane, propane, butane, pentanes plus, and CO<sub>2</sub> constituents. Determine the annual average concentration of each constituent as the flow-weighted annual average of all measurements for that constituent during the year.

(iii) Use a continuous gas composition analyzer on the emissions streams from each emission source that routes gas to the flare. Also take samples of purge gas, sweep gas, and auxiliary fuel at least annually, and analyze for methane, ethane, propane, butane, pentanes plus, and CO<sub>2</sub>. If the emission streams for multiple sources are routed to a manifold before being combined with other emission streams, you may measure gas composition in the manifold instead of from each source that is routed to the manifold. Determine the flow-weighted annual average concentration of each constituent.

(iv) Take samples of the emission streams from each source that routes gas to the flare at least once every quarter in which gas is routed to the flare and analyze for methane, ethane, propane, butane, pentanes plus, and CO<sub>2</sub>. Also take samples of purge gas, sweep gas, and auxiliary fuel at least annually, and analyze for methane, ethane, propane, butane, pentanes plus, and CO<sub>2</sub>. If the emission streams for multiple sources

are routed to a manifold before being combined with other emission streams, you may measure gas composition in the manifold instead of from each source that is routed to the manifold. Determine the annual average concentration of each constituent in each stream as the flow-weighted average of all measurements for that constituent during the year.

(4) *Combustion efficiency.* Use the applicable default combustion efficiency specified in paragraphs (n)(4)(i) through (iii) of this section. If you change the Tier with which you comply during a year, then use the applicable default combustion efficiencies in paragraphs (n)(4)(i) through (iii) of this section for portions of the year during which the different monitoring methodologies were used, and calculate a time-weighted average combustion efficiency to report for the flare.

(i) *Tier 1.* If you monitor the flare as specified in § 63.670 and § 63.671 of this chapter, then use a default combustion efficiency of 98 percent. The alternative means of emissions limitation specified in § 63.670(r) of this chapter do not apply for the purposes of this paragraph (n). References to deviations in § 63.670(b) of this chapter do not apply for the purposes of this paragraph (n). References to refineries or refinery process units in § 63.670 of this chapter mean facilities in any of the industry segments specified in § 98.230 for the purposes of this paragraph (n). Reporting requirements in § 63.670(q) of this chapter mean recordkeeping requirements for the purposes of this paragraph (n).

(ii) *Tier 2.* If you are required to monitor the flare as specified in § 60.5417b(d)(1)(viii) of this chapter, or you elect to implement the flare monitoring requirements in § 60.5417b(d)(1)(viii) of this chapter, then use a default combustion efficiency of 95 percent. The exemptions from monitoring gas flow in § 60.5417b(d)(1)(viii)(D)(1) through (4) of this chapter do not apply for the purposes of this paragraph (n).

(iii) *Tier 3.* If you do not monitor the flare as specified in either paragraph (n)(4)(i) or (ii) of this section, then use a default combustion efficiency of 92 percent.

(5) *Calculate CH<sub>4</sub> and CO<sub>2</sub> emissions.* Calculate GHG volumetric emissions from flaring at standard conditions using Equations W-19 and W-20 of this section and as specified in paragraphs (n)(5)(i) through (iv) of this section.

$$E_{s,CH_4} = V_s * X_{CH_4} * [(1-\eta) * Z_L + Z_U] \text{ (Eq. W-19)}$$

$$E_{s,CO_2} = V_s * X_{CO_2} + \sum_{j=1}^5 (\eta * V_s * Y_j * R_j * Z_L) \text{ (Eq. W-20)}$$

Where:

$E_{s,CH_4}$  = Annual CH<sub>4</sub> emissions from flare stack in cubic feet, at standard conditions.

$E_{s,CO_2}$  = Annual CO<sub>2</sub> emissions from flare stack in cubic feet, at standard conditions.

$V_s$  = Volume of gas sent to flare in standard cubic feet, during the year as determined in paragraph (n)(1) of this section.

$\eta$  = Flare combustion efficiency, expressed as fraction of gas combusted by a burning flare.

$X_{CH_4}$  = Annual average mole fraction of CH<sub>4</sub> in the feed gas to the flare or in each of the streams routed to the flare as determined in paragraph (n)(3) of this section.

$X_{CO_2}$  = Annual average mole fraction of CO<sub>2</sub> in the feed gas to the flare or in each of the streams routed to the flare as determined in paragraph (n)(3) of this section.

$Z_U$  = Fraction of the feed gas sent to an unlit flare determined from both the total time the flare was unlit as determined by monitoring the pilot flame or combustion flame as specified in paragraph (n)(2) of this section and the volume of gas routed to the flare during periods when the flare was unlit as determined by the flow measurement required by paragraph (n)(1) of this section.

$Z_L$  = Fraction of the feed gas sent to a burning flare (equal to  $1 - Z_U$ ).

$Y_j$  = Annual average mole fraction of hydrocarbon constituents j (such as methane, ethane, propane, butane, and pentanes-plus) in the feed gas to the flare or in each of the streams routed to the flare as determined in paragraph (n)(3) of this section.

$R_j$  = Number of carbon atoms in the hydrocarbon constituent j in the feed gas to the flare: 1 for methane, 2 for ethane, 3 for propane, 4 for butane, and 5 for pentanes-plus).

(i) If you measure the gas flow at the flare inlet as specified in paragraph (n)(1)(i) of this section and you measure gas composition for the inlet gas to the flare as specified in paragraph (n)(3)(i) or (ii) of this section, then use those data in Equations W-19 and W-20 to calculate total emissions from the flare.

(ii) If you measure the flow from each source as specified in paragraph (n)(1)(ii) of this section and you measure gas composition for the inlet gas to the flare as specified in paragraph (n)(3)(i) or (ii) of this section, then sum the flows for each stream to calculate the total annual gas flow to the flare. Use that total annual flow with the annual

average concentration of each constituent as calculated in paragraph (n)(3)(i) or (ii) of this section in Equations W-19 and W-20 to calculate total emissions from the flare.

(iii) If you measure the flow from each source as specified in paragraph (n)(1)(ii) of this section and you measure gas composition for the emission stream from each source as specified in paragraph (n)(3)(iii) or (iv) of this section, then calculate total emissions from the flare as specified in either paragraph (n)(5)(iii)(A) or (B) of this section.

(A) Use each set of stream-specific flow and annual average concentration data in Equations W-19 and W-20 to calculate stream-specific flared emissions for each stream, and then sum the results from each stream-specific calculation to calculate the total emissions from the flare.

(B) Sum the flows from each source to calculate the total gas flow into the flare and use the source-specific flows and source-specific annual average concentrations to determine flow-weighted annual average concentrations of CO<sub>2</sub> and hydrocarbon constituents in the combined gas stream into the flare. Use the calculated total gas flow and the calculated flow-weighted annual average concentrations for the inlet gas stream to the flare in Equations W-19 and W-20 to calculate the total emissions from the flare.

(iv) You may not combine measurement of the inlet gas flow to the flare as specified in paragraph (n)(1)(i) of this section with measurement of the gas composition of the streams from each source as specified in paragraph (n)(3)(iii) or (iv) of this section.

(6) *Convert volume at actual conditions to volume at standard conditions.* Convert GHG volumetric emissions to standard conditions using calculations in paragraph (t) of this section.

(7) *Convert volumetric emissions to mass emissions.* Calculate both CH<sub>4</sub> and CO<sub>2</sub> mass emissions from volumetric emissions using calculation in paragraph (v) of this section.

(8) *Calculate N<sub>2</sub>O emissions.* Calculate N<sub>2</sub>O emissions from flare stacks using Equation W-40 in paragraph (z) of this section. Determine higher heating values to use in Equation

W-40 calculations as specified in paragraphs (n)(8)(i) through (iii) of this section, as applicable.

(i) If you measure composition of the inlet gas to the flare as specified in either paragraph (n)(3)(i) or (ii) of this section, then calculate a flare-specific higher heating value to use in Equation W-40 to calculate total N<sub>2</sub>O emissions from the flare.

(ii) If you measure composition of the individual streams routed to the flare as specified in paragraph (n)(3)(iii) or (iv) of this section, and you calculate CH<sub>4</sub> and CO<sub>2</sub> emissions per stream as specified in paragraph (n)(5)(iii)(A) of this section, then calculate stream-specific higher heating values. Use the stream-specific higher heating values in separate stream-specific calculations of N<sub>2</sub>O emissions and sum the resulting values to calculate the total N<sub>2</sub>O emissions from the flare.

(iii) If you measure composition of the individual streams routed to the flare as specified in paragraph (n)(3)(iii) or (iv) of this section, and you calculate CH<sub>4</sub> and CO<sub>2</sub> emissions using flow-weighted annual average concentrations for the inlet gas to the flare as calculated according to paragraph (n)(5)(iii)(B) of this section, then either calculate higher heating values and N<sub>2</sub>O emissions as specified in paragraph (n)(8)(ii) of this section, or calculate a flare-specific higher heating value using the calculated flow-weighted composition of the inlet gas to the flare, and use this flare-specific higher heating value to calculate the total N<sub>2</sub>O emissions from the flare.

(9) *CEMS.* If you operate and maintain a CEMS that has both a CO<sub>2</sub> concentration monitor and volumetric flow rate monitor for the combustion gases from the flare, you must calculate CO<sub>2</sub> emissions for the flare using the CEMS. You must follow the Tier 4 Calculation Method and all associated calculation, quality assurance, reporting, and recordkeeping requirements for Tier 4 in subpart C of this part (General Stationary Fuel Combustion Sources). If a CEMS is used to calculate flare stack CO<sub>2</sub> emissions, you must also comply with all other requirements specified in paragraphs (n)(1) through (8) of this section, except that calculation of CO<sub>2</sub> emissions using

Equation W–20 in paragraph (n)(5) of this section is not required.

(10) *Disaggregation.* Using engineering calculations and best available data, disaggregate the total emissions from the flare as calculated in paragraphs (n)(7) and (8) of this section or paragraph (n)(9) of this section, as applicable, to each source type listed in paragraphs (n)(10)(i) through (viii) of this section, as applicable to the industry segment, that routed emissions to the flare.

(i) Acid gas removal units.

(ii) Dehydrators.

(iii) Completions and workovers with hydraulic fracturing.

(iv) Completions and workovers without hydraulic fracturing.

(v) Hydrocarbon liquids and produced water storage tanks.

(vi) Well testing.

(vii) Associated gas.

(viii) Other (collectively).

(o) *Centrifugal compressor venting.* If you are required to report emissions from centrifugal compressor venting as specified in § 98.232(d)(2), (e)(2), (f)(2), (g)(2), and (h)(2), you must conduct volumetric emission measurements specified in paragraph (o)(1) of this section using methods specified in paragraphs (o)(2) through (5) of this section; perform calculations specified in paragraphs (o)(6) through (9) of this section; and calculate CH<sub>4</sub> and CO<sub>2</sub> mass emissions as specified in paragraph (o)(11) of this section. If you are required to report emissions from centrifugal compressor venting at an onshore petroleum and natural gas production facility as specified in § 98.232(c)(19) or an onshore petroleum and natural gas gathering and boosting facility as specified in § 98.232(j)(8), you must calculate volumetric emissions as specified in paragraph (o)(10) of this section and calculate CH<sub>4</sub> and CO<sub>2</sub> mass emissions as specified in paragraph (o)(11) of this section. If emissions from a compressor source are routed to a flare, paragraphs (o)(1) through (11) of this section do not apply and instead you must calculate CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O emissions as specified in paragraph (n) of this section. If emissions from a compressor source are routed to combustion, paragraphs (o)(1) through (11) of this section do not apply and instead you must calculate and report emissions as specified in subpart C of this part or paragraph (z) of this section, as applicable. If emissions from a compressor source are routed to a vapor recovery system, paragraphs (o)(1) through (11) of this section do not apply.

(1) \* \* \*

(i) *Centrifugal compressor source as found measurements.* Measure venting from each compressor according to either paragraph (o)(1)(i)(A), (B), or (C) of this section at least once annually, based on the compressor mode (as defined in § 98.238) in which the compressor was found at the time of measurement, except as specified in paragraph (o)(1)(i)(D) of this section. If additional measurements beyond the required annual testing are performed (including duplicate measurements or measurement of additional operating modes), then all measurements satisfying the applicable monitoring and QA/QC that is required by this paragraph (o) must be used in the calculations specified in this section.

(A) For a compressor measured in operating-mode, you must measure volumetric emissions from blowdown valve leakage through the blowdown vent as specified in paragraph (o)(2)(i) of this section, measure volumetric emissions from wet seal oil degassing vents as specified in paragraph (o)(2)(ii) of this section if the compressor has wet seal oil degassing vents, and measure volumetric emissions from dry seal vents as specified in paragraph (o)(2)(iii) of this section if the compressor has dry seals.

(B) For a compressor measured in not-operating-depressurized-mode, you must measure volumetric emissions from isolation valve leakage as specified in paragraph (o)(2)(i) of this section. If a compressor is not operated and has blind flanges in place throughout the reporting period, measurement is not required in this compressor mode.

(C) For a compressor measured in standby-pressurized-mode, you must measure volumetric emissions from blowdown valve leakage through the blowdown vent as specified in paragraph (o)(2)(i) of this section, measure volumetric emissions from wet seal oil degassing vents as specified in paragraph (o)(2)(ii) of this section if the compressor has wet seal oil degassing vents, and measure volumetric emissions from dry seal vents as specified in paragraph (o)(2)(iii) of this section if the compressor has dry seals.

\* \* \* \* \*

(2) *Methods for performing as found measurements from individual centrifugal compressor sources.* If conducting measurements for each compressor source, you must determine the volumetric emissions from blowdown valves and isolation valves as specified in paragraph (o)(2)(i) of this section, the volumetric emissions from wet seal oil degassing vents as specified in paragraph (o)(2)(ii) of this section,

and the volumetric emissions from dry seal vents as specified in paragraph (o)(2)(iii) of this section.

(i) For blowdown valves on compressors in operating-mode or in standby-pressurized-mode and for isolation valves on compressors in not-operating-depressurized-mode, determine the volumetric emissions using one of the methods specified in paragraphs (o)(2)(i)(A) through (D) of this section.

\* \* \* \* \*

(ii) For wet seal oil degassing vents in operating-mode or in standby-pressurized-mode, determine volumetric flow at standard conditions, using one of the methods specified in paragraphs (o)(2)(ii)(A) through (C) of this section. You must quantitatively measure the volumetric flow for wet seal oil degassing vent; you may not use screening methods set forth in § 98.234(a) to screen for emissions for the wet seal oil degassing vent.

(A) Use a temporary meter such as a vane anemometer or permanent flow meter according to methods set forth in § 98.234(b).

(B) Use calibrated bags according to methods set forth in § 98.234(c).

(C) Use a high volume sampler according to methods set forth in § 98.234(d).

(iii) For dry seal vents in operating-mode or in standby-pressurized-mode, determine volumetric flow at standard conditions from each dry seal vent using one of the methods specified in paragraphs (o)(2)(iii)(A) through (D) of this section. If a compressor has more than one dry seal vent, determine the aggregate dry seal vent volumetric flow for the compressor as the sum of the volumetric flows determined for each dry seal vent on the compressor.

(A) Use a temporary meter such as a vane anemometer or permanent flow meter according to methods set forth in § 98.234(b).

(B) Use calibrated bags according to methods set forth in § 98.234(c).

(C) Use a high volume sampler according to methods set forth in § 98.234(d).

(D) You may choose to use any of the methods set forth in § 98.234(a)(1) through (3) to screen for emissions. If emissions are detected using one of these specified methods, then you must use one of the methods specified in paragraph (o)(2)(iii)(A) through (C) of this section. If emissions are not detected using the methods in § 98.234(a)(1) through (3), then you may assume that the volumetric emissions are zero. For the purposes of this paragraph, when using any of the

methods in § 98.234(a), emissions are detected whenever a leak is detected according to the methods. Acoustic leak detection is only applicable for through-valve leakage and is not applicable for screening dry seal vents.

(4) \* \* \*

(ii) \* \* \*

(E) You may choose to use any of the methods set forth in § 98.234(a)(1) through (3) to screen for emissions. If emissions are detected using one of these methods, then you must use one of the methods specified in paragraph (o)(4)(ii)(A) through (D) of this section. If emissions are not detected using the methods in § 98.234(a)(1) through (3), then you may assume that the volumetric emissions are zero. For the purposes of this paragraph, when using any of the methods in § 98.234(a), emissions are detected whenever a leak is detected according to the method. Acoustic leak detection is only applicable for through-valve leakage and is not applicable for screening a manifolded group of compressor sources.

\* \* \* \* \*

(6) \* \* \*

(i) Using Equation W–21 of this section, calculate the annual volumetric GHG emissions for each centrifugal compressor mode-source combination specified in paragraphs (o)(1)(i)(A) through (C) of this section that was measured during the reporting year.

\* \* \* \* \*

m = Compressor mode-source combination specified in paragraph (o)(1)(i)(A), (B), or (C) of this section that was measured for the reporting year.

(ii) Using Equation W–22 of this section, calculate the annual volumetric GHG emissions from each centrifugal compressor mode-source combination specified in paragraphs (o)(1)(i)(A) through (C) of this section that was not measured during the reporting year.

\* \* \* \* \*

m = Compressor mode-source combination specified in paragraph (o)(1)(i)(A), (B), or (C) of this section that was not measured in the reporting year.

(iii) Using Equation W–23 of this section, develop an emission factor for each compressor mode-source combination specified in paragraphs (o)(1)(i)(A) through (C) of this section. These emission factors must be calculated annually and used in Equation W–22 of this section to determine volumetric emissions from a centrifugal compressor in the mode-

source combinations that were not measured in the reporting year.

\* \* \* \* \*

m = Compressor mode-source combination specified in paragraph (o)(1)(i)(A), (B), or (C) of this section.

\* \* \* \* \*

(8) \* \* \*

T<sub>g</sub> = Total time the manifolded group of compressor sources g had potential for emissions in the reporting year, in hours. Include all time during which at least one compressor source in the manifolded group of compressor sources g was in a mode-source combination specified in either paragraph (o)(1)(i)(A), (o)(1)(i)(B), (o)(1)(i)(C), (p)(1)(i)(A), (p)(1)(i)(B), or (p)(1)(i)(C) of this section. Default of 8760 hours may be used.

\* \* \* \* \*

(10) *Method for calculating volumetric GHG emissions from wet seal oil degassing vents at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility.* You must calculate volumetric emissions from centrifugal compressors at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility as specified in paragraphs (o)(10)(i) through (iii), as applicable.

(i) For centrifugal compressors at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility that are subject to the centrifugal compressor standards in § 60.5380b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter for dry seals and self-contained wet seals, you must conduct measurements according to paragraphs (o)(10)(i)(A) and (B) of this section.

(A) You must conduct the volumetric emission measurements as required by § 60.5380b(a)(5) of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, conduct any additional volumetric emission measurements specified in paragraph (o)(1) of this section using methods specified in paragraphs (o)(2) through (5) of this section, and calculate emissions as specified in paragraphs (o)(6) through (9) of this section. Conduct all measurements required by this paragraph (o)(10)(i)(A) at the frequency specified by § 60.5380b(a)(4) of this chapter or an applicable approved state plan or applicable Federal plan in part

62 of this chapter. For any reporting year in which measuring at the frequency specified by § 60.5380b(a)(4) of this chapter results in measurement not being required for a subject compressor, calculate emissions for all mode-source combinations as specified in paragraph (o)(6)(ii) of this section.

(B) You must conduct measurements of compressors as specified in paragraph (o)(1)(i)(B) of this section such that at the end of each calendar year, you have taken measurements in not-operating-depressurized-mode over the last 3 consecutive calendar years for at least one-third of the compressors at your facility that are subject to the centrifugal compressor standards in § 60.5380b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter for dry seals and self-contained wet seals.

(ii) For centrifugal compressors at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility that are not subject to the centrifugal compressor standards in § 60.5380b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter for dry seals and self-contained wet seals, you may elect to conduct the volumetric emission measurements specified in paragraph (o)(1) of this section using methods specified in paragraphs (o)(2) through (5) of this section and perform calculations specified in paragraphs (o)(6) through (9) of this section.

(iii) For any centrifugal compressors at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility for which paragraphs (o)(10)(i) and (ii) of this section do not apply, you must calculate atmospheric centrifugal compressor wet seal oil degassing vents at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility using Equation W–25 of this section. Emissions from centrifugal compressor wet seal oil degassing vents that are routed to a flare, combustion, or vapor recovery system are not required to be determined under this paragraph (o).

$$E_{s,i} = \text{Count} * EF_{i,s} \quad (\text{Eq. W-25})$$

Where:

E<sub>s,i</sub> = Annual volumetric GHG<sub>i</sub> (either CH<sub>4</sub> or CO<sub>2</sub>) emissions from centrifugal compressor wet seals, at standard conditions, in cubic feet.

Count = Total number of centrifugal compressors that have wet seal oil

degassing vents that are vented directly to the atmosphere.

EF<sub>i,s</sub> = Emission factor for GHG<sub>i</sub>. Use 1.2 × 10<sup>7</sup> standard cubic feet per year per compressor for CH<sub>4</sub> and 5.30 × 10<sup>5</sup> standard cubic feet per year per compressor for CO<sub>2</sub> at 60 °F and 14.7 psia.

\* \* \* \* \*

(p) *Reciprocating compressor venting.* If you are required to report emissions from reciprocating compressor venting as specified in § 98.232(d)(1), (e)(1), (f)(1), (g)(1), and (h)(1), you must conduct volumetric emission measurements specified in paragraph (p)(1) of this section using methods specified in paragraphs (p)(2) through (5) of this section; perform calculations specified in paragraphs (p)(6) through (9) of this section; and calculate CH<sub>4</sub> and CO<sub>2</sub> mass emissions as specified in paragraph (p)(11) of this section. If you are required to report emissions from reciprocating compressor venting at an onshore petroleum and natural gas production facility as specified in § 98.232(c)(11) or an onshore petroleum and natural gas gathering and boosting facility as specified in § 98.232(j)(9), you must calculate volumetric emissions as specified in paragraph (p)(10) of this section and calculate CH<sub>4</sub> and CO<sub>2</sub> mass emissions as specified in paragraph (p)(11) of this section. If emissions from a compressor source are routed to a flare, paragraphs (p)(1) through (11) of this section do not apply and instead you must calculate CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O emissions as specified in paragraph (n) of this section. If emissions from a compressor source are routed to combustion, paragraphs (p)(1) through (11) of this section do not apply and instead you must calculate and report emissions as specified in subpart C of this part or paragraph (z) of this section, as applicable. If emissions from a compressor source are routed to a vapor recovery system, paragraphs (p)(1) through (11) of this section do not apply.

(1) \* \* \*

(i) Reciprocating compressor source as found measurements. Measure venting from each compressor according to either paragraph (p)(1)(i)(A), (B), or (C) of this section at least once annually, based on the compressor mode (as defined in § 98.238) in which the compressor was found at the time of measurement, except as specified in paragraph (p)(1)(i)(D) of this section. If additional measurements beyond the required annual testing are performed (including duplicate measurements or measurement of additional operating modes), then all measurements satisfying the applicable monitoring and

QA/QC that is required by this paragraph (p) must be used in the calculations specified in this section.

(A) For a compressor measured in operating-mode, you must measure volumetric emissions from blowdown valve leakage through the blowdown vent as specified in paragraph (p)(2)(i) of this section, and measure volumetric emissions from reciprocating rod packing as specified in paragraph (p)(2)(ii) or (iii) of this section, as applicable.

(B) For a compressor measured in not-operating-depressurized-mode, you must measure volumetric emissions from isolation valve leakage as specified in paragraph (p)(2)(i) of this section. If a compressor is not operated and has blind flanges in place throughout the reporting period, measurement is not required in this compressor mode.

(C) For a compressor measured in standby-pressurized-mode, you must measure volumetric emissions from blowdown valve leakage through the blowdown vent as specified in paragraph (p)(2)(i) of this section and measure volumetric emissions from reciprocating rod packing as specified in paragraph (p)(2)(ii) or (iii) of this section, as applicable.

(D) An annual as found measurement is not required in the first year of operation for any new compressor that begins operation after as found measurements have been conducted for all existing compressors. For only the first year of operation of new compressors, calculate emissions according to paragraph (p)(6)(ii) of this section.

\* \* \* \* \*

(2) *Methods for performing as found measurements from individual reciprocating compressor sources.* If conducting measurements for each compressor source, you must determine the volumetric emissions from blowdown valves and isolation valves as specified in paragraph (p)(2)(i) of this section. You must determine the volumetric emissions from reciprocating rod packing as specified in paragraph (p)(2)(ii) or (iii) of this section, as applicable.

\* \* \* \* \*

(ii) For reciprocating rod packing equipped with an open-ended vent line on compressors in operating-mode or standby-pressurized-mode, determine the volumetric emissions using one of the methods specified in paragraphs (p)(2)(ii)(A) through (C) of this section.

\* \* \* \* \*

(C) You may choose to use any of the methods set forth in § 98.234(a)(1) through (3) to screen for emissions. If

emissions are detected using one of these specified methods, then you must use one of the methods specified in paragraphs (p)(2)(ii)(A) and (B) of this section. If emissions are not detected using the methods in § 98.234(a)(1) through (3), then you may assume that the volumetric emissions are zero. For the purposes of this paragraph (p)(2)(ii)(C), when using any of the methods in § 98.234(a), emissions are detected whenever a leak is detected according to the method. Acoustic leak detection is only applicable for through-valve leakage and is not applicable for screening or measuring rod packing emissions.

(iii) \* \* \*

(A) You must use the methods described in § 98.234(a)(1) through (3) to conduct annual leak detection of equipment leaks from the packing case into an open distance piece, or for compressors with a closed distance piece, conduct annual detection of gas emissions from the rod packing vent, distance piece vent, compressor crank case breather cap, or other vent emitting gas from the rod packing. Acoustic leak detection is only applicable for through-valve leakage and is not applicable for screening rod packing emissions.

\* \* \* \* \*

(4) \* \* \*

(ii) \* \* \*

(C) A high volume sampler according to methods set forth in § 98.234(d).

\* \* \* \* \*

(E) You may choose to use any of the methods set forth in § 98.234(a)(1) through (3) to screen for emissions. If emissions are detected using one of these specified methods, then you must use one of the methods specified in paragraphs (p)(4)(ii)(A) through (D) of this section. If emissions are not detected using the methods in § 98.234(a)(1) through (3), then you may assume that the volumetric emissions are zero. For the purposes of this paragraph, when using any of the methods in § 98.234(a), emissions are detected whenever a leak is detected according to the method. Acoustic leak detection is only applicable for through-valve leakage and is not applicable for screening a manifolded group of compressor sources.

\* \* \* \* \*

(6) \* \* \*

(ii) Using Equation W-27 of this section, calculate the annual volumetric GHG emissions from each reciprocating compressor mode-source combination specified in paragraphs (p)(1)(i)(A) through (C) of this section that was not measured during the reporting year.

\* \* \* \* \*

(iii) Using Equation W-28 of this section, develop an emission factor for each compressor mode-source combination specified in paragraphs (p)(1)(i)(A) through (C) of this section. These emission factors must be calculated annually and used in Equation W-27 of this section to determine volumetric emissions from a reciprocating compressor in the mode-source combinations that were not measured in the reporting year.

\* \* \* \* \*

(8) \* \* \*  
 T<sub>g</sub> = Total time the manifolded group of compressor sources g had potential for emissions in the reporting year, in hours. Include all time during which at least one compressor source in the manifolded group of compressor sources g was in a mode-source combination specified in either paragraph (o)(1)(i)(A), (o)(1)(i)(B), (o)(1)(i)(C), (p)(1)(i)(A), (p)(1)(i)(B), or (p)(1)(i)(C) of this section. Default of 8760 hours may be used.

\* \* \* \* \*

(10) *Method for calculating volumetric GHG emissions from reciprocating compressor venting at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility.* You must calculate volumetric emissions from reciprocating compressors at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility as specified in paragraphs (p)(10)(i) through (iii) of this section, as applicable.

(i) For reciprocating compressors at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility that are subject to the reciprocating compressor standards in § 60.5385b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, you must conduct measurements according to paragraphs (p)(10)(i)(A) and (B) of this section.

(A) You must conduct the volumetric emission measurements as required by § 60.5385b(b) and (c) of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, conduct any additional volumetric emission measurements specified in paragraph (p)(1) of this section using methods specified in paragraphs (p)(2) through (5) of this section, and calculate emissions as specified in paragraphs (p)(6) through (9) of this section. Conduct all

measurements required by this paragraph (p)(10)(i)(A) at the frequency specified by § 60.5385b(a) of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter. For any reporting year in which measuring at the frequency specified by § 60.5385b(a) of this chapter results in measurement not being required for a subject compressor, calculate emissions for all mode-source combinations as specified in paragraph (p)(6)(ii) of this section.

(B) You must conduct measurements of compressors as specified in paragraph (p)(1)(i)(B) of this section such that at the end of each calendar year, you have taken measurements in not-operating-depressurized-mode over the last 3 consecutive calendar years for at least one-third of the compressors at your facility that are subject to the reciprocating compressor standards in § 60.5385b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter.

(ii) For reciprocating compressors at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility that are not subject to the reciprocating compressor standards in § 60.5385b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, you may elect to conduct volumetric emission measurements specified in paragraph (p)(1) of this section using methods specified in paragraphs (p)(2) through (5) of this section and perform calculations specified in paragraphs (p)(6) through (9) of this section.

(iii) For any reciprocating compressors at an onshore petroleum and natural gas production facility or an onshore petroleum and natural gas gathering and boosting facility for which paragraphs (p)(10)(i) and (ii) of this section do not apply, you must calculate reciprocating compressor atmospheric venting of rod packing emissions using Equation W-29D of this section. Reciprocating compressor rod packing emissions that are routed to a flare, combustion, or vapor recovery system are not required to be determined under this paragraph (p).

$$E_{s,i} = \text{Count} * EF_{i,s} \quad (\text{Eq. W-29D})$$

Where:

E<sub>s,i</sub> = Annual volumetric GHG<sub>i</sub> (either CH<sub>4</sub> or CO<sub>2</sub>) emissions from reciprocating compressors, at standard conditions, in cubic feet.

Count = Total number of reciprocating compressors with rod packing emissions vented directly to the atmosphere.  
 EF<sub>i,s</sub> = Emission factor for GHG<sub>i</sub>. Use 2.13 × 10<sup>5</sup> standard cubic feet per year per compressor for CH<sub>4</sub> and 1.18 × 10<sup>4</sup> standard cubic feet per year per compressor for CO<sub>2</sub> at 60 °F and 14.7 psia.

\* \* \* \* \*

(q) *Equipment leak surveys.* For the components identified in paragraphs (q)(1)(i) through (iii) of this section, you must conduct equipment leak surveys using the leak detection methods specified in paragraphs (q)(1)(i) through (iii) and (v) of this section. For the components identified in paragraph (q)(1)(iv) of this section, you may elect to conduct equipment leak surveys, and if you elect to conduct surveys, you must use a leak detection method specified in paragraph (q)(1)(iv) of this section. This paragraph (q) applies to components in streams with gas content greater than 10 percent CH<sub>4</sub> plus CO<sub>2</sub> by weight. Components in streams with gas content less than or equal to 10 percent CH<sub>4</sub> plus CO<sub>2</sub> by weight are exempt from the requirements of this paragraph (q) and do not need to be reported. Tubing systems equal to or less than one half inch diameter are exempt from the requirements of this paragraph (q) and do not need to be reported. Equipment leak components in vacuum service are exempt from the survey and emission estimation requirements of this paragraph (q) and only the count of these equipment must be reported.

(1) *Survey requirements*—(i) For the components listed in § 98.232(e)(7), (f)(5), (g)(4), and (h)(5), that are not subject to the well site or compressor station fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, you must conduct surveys using any of the leak detection methods listed in § 98.234(a) and calculate equipment leak emissions using the procedures specified in either paragraph (q)(2) or (3) of this section.

(ii) For the components listed in § 98.232(i)(1), you must conduct surveys using any of the leak detection methods listed in § 98.234(a) except § 98.234(a)(2)(ii) and calculate equipment leak emissions using the procedures specified in either paragraph (q)(2) or (3) of this section.

(iii) For the components listed in § 98.232(c)(21)(i), (e)(7) and (8), (f)(5) through (8), (g)(4), (g)(6) and (7), (h)(5), (h)(7) and (8), and (j)(10)(i) that are

subject to the well site or compressor station fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, you must conduct surveys using any of the leak detection methods in § 98.234(a)(1)(ii) or (iii) or (a)(2)(ii), as applicable, and calculate equipment leak emissions using the procedures specified in either paragraph (q)(2) or (3) of this section.

(iv) For the components listed in § 98.232(c)(21)(i), (e)(8), (f)(6) through (8), (g)(6) or (7), (h)(7) or (8), or (j)(10)(i), that are not subject to fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, you may elect to conduct surveys according to this paragraph (q), and, if you elect to do so, then you must use one of the leak detection methods in § 98.234(a).

(A) If you elect to use a leak detection method in § 98.234(a) for the surveyed component types in § 98.232(c)(21)(i), (f)(7), (g)(6), (h)(7), or (j)(10)(i) in lieu of the population count methodology specified in paragraph (r) of this section, then you must calculate emissions for the surveyed component types in § 98.232(c)(21)(i), (f)(7), (g)(6), (h)(7), or (j)(10)(i) using the procedures in either paragraph (q)(2) or (3) of this section.

(B) If you elect to use a leak detection method in § 98.234(a) for the surveyed component types in § 98.232(e)(8), (f)(6) and (8), (g)(7), and (h)(8), then you must use the procedures in either paragraph (q)(2) or (3) of this section to calculate those emissions.

(C) If you elect to use a leak detection method in § 98.234(a)(1)(ii) or (iii) or (a)(2)(ii), as applicable, for any elective survey under paragraph (q)(1)(iv) of this section, then you must survey the component types in § 98.232(c)(21)(i), (e)(8), (f)(6) through (8), (g)(6) and (7), (h)(7) and (8), and (j)(10)(i) that are not subject to fugitive emissions standards in § 60.5397a of this chapter, the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, and you must calculate emissions from the surveyed component types in § 98.232(c)(21)(i), (e)(8), (f)(6) through (8), (g)(6) and (7), (h)(7) and (8), and (j)(10)(i) using the emission calculation requirements in

either paragraph (q)(2) or (3) of this section.

(v) For the components listed in § 98.232(d)(7), you must conduct surveys as specified in paragraphs (q)(1)(v)(A) and (B) of this section and you must calculate equipment leak emissions using the procedures specified in either paragraph (q)(2) or (3) of this section.

(A) For the components listed in § 98.232(d)(7) that are not subject to the equipment leak standards for onshore natural gas processing plants in § 60.5400b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, you may use any of the leak detection methods listed in § 98.234(a).

(B) For the components listed in § 98.232(d)(7) that are subject to the equipment leak standards for onshore natural gas processing plants in § 60.5400b of this chapter, or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, you must use either of the leak detection methods in § 98.234(a)(1)(iii) or (a)(2)(ii).

(vi) Except as provided in paragraph (q)(1)(vii) of this section, you must conduct at least one complete leak detection survey in a calendar year. If you conduct multiple complete leak detection surveys in a calendar year, you must use the results from each complete leak detection survey when calculating emissions using the procedures specified in either paragraph (q)(2) or (3) of this section. Except as provided in paragraphs (q)(1)(vi)(A) through (G) of this section, a complete leak detection survey is a survey in which all equipment components required to be surveyed as specified in paragraphs (q)(1)(i) through (v) of this section are surveyed.

(A) For components subject to the well site and compressor station fugitive emissions standards in § 60.5397a of this chapter, each survey conducted in accordance with § 60.5397a of this chapter using one of the methods in § 98.234(a) will be considered a complete leak detection survey for purposes of this section.

(B) For components subject to the well site, centralized production facility, and compressor station fugitive emissions standards in § 60.5397b of this chapter, each survey conducted in accordance with the fugitive emissions standards for well sites, centralized production facilities, and compressor stations in § 60.5397b of this chapter using one of the methods in § 98.234(a) will be considered a complete leak

detection survey for purposes of this section.

(C) For components subject to the well site, centralized production facility, and compressor station fugitive emissions standards in an applicable approved state plan or applicable Federal plan in part 62 of this chapter, each survey conducted in accordance with the applicable approved state plan or applicable Federal plan in part 62 of this chapter using one of the methods in § 98.234(a) will be considered a complete leak detection survey for purposes of this section.

(D) For an onshore petroleum and natural gas production facility electing to conduct leak detection surveys according to paragraph (q)(1)(iv) of this section, a survey of all required components at a single well-pad will be considered a complete leak detection survey for purposes of this section.

(E) For an onshore petroleum and natural gas gathering and boosting facility electing to conduct leak detection surveys according to paragraph (q)(1)(iv) of this section, a survey of all required components at a gathering and boosting site, as defined in § 98.238, will be considered a complete leak detection survey for purposes of this section.

(F) For an onshore natural gas processing facility subject to the equipment leak standards for onshore natural gas processing plants in § 60.5400b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, each survey conducted in accordance with the equipment leak standards for onshore natural gas processing plants in § 60.5400b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter will be considered a complete leak detection survey for the purposes of calculating emissions using the procedures specified in either paragraph (q)(2) or (3) of this section. At least one complete leak detection survey conducted during the reporting year must include all components listed in § 98.232(d)(7) and subject to this paragraph (q), including components which are considered inaccessible emission sources as defined in part 60 of this chapter.

(G) For natural gas distribution facilities that choose to conduct equipment leak surveys at all above grade transmission-distribution transfer stations over multiple years as provided in paragraph (q)(1)(vii) of this section, a survey of all required components at the above grade transmission-distribution transfer stations monitored during the calendar year will be considered a

complete leak detection survey for purposes of this section.

(vii) Natural gas distribution facilities are required to perform equipment leak surveys only at above grade stations that qualify as transmission-distribution transfer stations. Below grade transmission-distribution transfer stations and all metering-regulating stations that do not meet the definition of transmission-distribution transfer stations are not required to perform equipment leak surveys under this section. Natural gas distribution facilities may choose to conduct equipment leak surveys at all above grade transmission-distribution transfer stations over multiple years “n,” not exceeding a five-year period to cover all above grade transmission-distribution

transfer stations. If the facility chooses to use the multiple year option, then the number of transmission-distribution transfer stations that are monitored in each year should be approximately equal across all years in the cycle.

(2) *Calculation Method 1: Leaker emission factor calculation methodology.* If you elect not to measure leaks according to Calculation Method 2 as specified in paragraph (q)(3) of this section, you must use this Calculation Method 1 for all components included in a complete leak survey. For industry segments listed in § 98.230(a)(2) through (9), if equipment leaks are detected during surveys required or elected for components listed in paragraphs (q)(1)(i) through (v) of this section, then you must calculate equipment leak

emissions per component type per reporting facility using Equation W-30 of this section and the requirements specified in paragraphs (q)(2)(i) through (ix) of this section. For the industry segment listed in § 98.230(a)(8), the results from Equation W-30 are used to calculate population emission factors on a meter/regulator run basis using Equation W-31 of this section. If you chose to conduct equipment leak surveys at all above grade transmission-distribution transfer stations over multiple years, “n,” according to paragraph (q)(1)(vii) of this section, then you must calculate the emissions from all above grade transmission-distribution transfer stations as specified in paragraph (q)(2)(xi) of this section.

$$E_{s,p,i} = GHG_i \times EF_{sp} \times \sum_{z=1}^{x_p} T_{p,z} \times k \quad (\text{Eq. W-30})$$

Where:

$E_{s,p,i}$  = Annual total volumetric emissions of GHG<sub>i</sub> from specific component type “p” (in accordance with paragraphs (q)(1)(i) through (v) of this section) in standard (“s”) cubic feet, as specified in paragraphs (q)(2)(ii) through (x) of this section.

$x_p$  = Total number of specific component type “p” detected as leaking in any leak survey during the year. A component found leaking in two or more surveys during the year is counted as one leaking component.

$EF_{s,p}$  = Leaker emission factor as specified in paragraphs (q)(2)(iii) through (x) of this section.

$k$  = Factor to adjust for undetected leaks by respective leak detection method, where  $k$  equals 1.25 for the methods in § 98.234(q)(1), (3) and (5);  $k$  equals 1.55 for the method in § 98.234(q)(2)(i); and  $k$  equals 1.27 for the method in § 98.234(q)(2)(ii).

$GHG_i$  = For onshore petroleum and natural gas production facilities and onshore petroleum and natural gas gathering and boosting facilities, concentration of GHG<sub>i</sub>, CH<sub>4</sub>, or CO<sub>2</sub>, in produced natural gas as defined in paragraph (u)(2) of this section; for onshore natural gas processing facilities, concentration of GHG<sub>i</sub>, CH<sub>4</sub> or CO<sub>2</sub>, in the total hydrocarbon of the feed natural gas; for onshore natural gas transmission compression and underground natural gas storage, GHG<sub>i</sub> equals 0.975 for CH<sub>4</sub> and  $1.1 \times 10^{-2}$  for CO<sub>2</sub>; for LNG storage and LNG import and export equipment, GHG<sub>i</sub> equals 1 for CH<sub>4</sub> and 0 for CO<sub>2</sub>; and for natural gas distribution, GHG<sub>i</sub> equals 1 for CH<sub>4</sub> and  $1.1 \times 10^{-2}$  CO<sub>2</sub>.

$T_{p,z}$  = The total time the surveyed component “z,” component type “p,” was assumed to be leaking and operational, in hours.

If one leak detection survey is conducted in the calendar year, assume the component was leaking for the entire calendar year. If multiple leak detection surveys are conducted in the calendar year, assume a component found leaking in the first survey was leaking since the beginning of the year until the date of the survey; assume a component found leaking in the last survey of the year was leaking from the preceding survey through the end of the year; assume a component found leaking in a survey between the first and last surveys of the year was leaking since the preceding survey until the date of the survey; and sum times for all leaking periods. For each leaking component, account for time the component was not operational (*i.e.*, not operating under pressure) using an engineering estimate based on best available data.

(i) The leak detection surveys selected for use in Equation W-30 must be conducted during the calendar year as indicated in paragraph (q)(1)(vi) and (vii) of this section, as applicable.

(iii) Onshore petroleum and natural gas production facilities must, if available, use the site-specific leaker emission factor calculated in accordance with paragraph (q)(4) of section or use the appropriate default whole gas leaker emission factors consistent with the well type, where components associated with gas wells are considered to be in gas service and components associated with oil wells are considered to be in oil service as listed in Table W-2 to this subpart.

(iv) Onshore petroleum and natural gas gathering and boosting facilities

must, if available, use the site-specific leaker emission factor calculated in accordance with paragraph (q)(4) of section or use the appropriate default whole gas leaker factors for components in gas service listed in Table W-2 to this subpart.

(v) Onshore natural gas processing facilities must, if available, use the site-specific leaker emission factor calculated in accordance with paragraph (q)(4) of section or use the appropriate default total hydrocarbon leaker emission factors for compressor components in gas service and non-compressor components in gas service listed in table W-4 to this subpart.

(vi) Onshore natural gas transmission compression facilities must, if available, use the site-specific leaker emission factor calculated in accordance with paragraph (q)(4) of section or use the appropriate default total hydrocarbon leaker emission factors for compressor components in gas service and non-compressor components in gas service listed in table W-4 to this subpart.

(vii) Underground natural gas storage facilities must, if available, use the site-specific leaker emission factor calculated in accordance with paragraph (q)(4) of section or use the appropriate default total hydrocarbon leaker emission factors for storage stations or storage wellheads in gas service listed in table W-4 to this subpart.

(viii) LNG storage facilities must, if available, use the site-specific leaker emission factor calculated in accordance with paragraph (q)(4) of section or use the appropriate default methane leaker

emission factors for LNG storage components in LNG service or gas service listed in table W-6 to this subpart.

(ix) LNG import and export facilities must, if available, use the site-specific leaker emission factor calculated in accordance with paragraph (q)(4) of this section or use the appropriate default methane leaker emission factors for LNG terminals components in LNG service or

gas service listed in table W-6 to this subpart.

(x) Natural gas distribution facilities must use Equation W-30 of this section and the default methane leaker emission factors for transmission-distribution transfer station components in gas service listed in table W-6 to this subpart to calculate component emissions from annual equipment leak surveys conducted at above grade

transmission-distribution transfer stations.

(A) Use Equation W-31 of this section to determine the meter/regulator run population emission factors for each GHG<sub>i</sub>. As additional survey data become available, you must recalculate the meter/regulator run population emission factors for each GHG<sub>i</sub> annually according to paragraph (q)(2)(x)(B) of this section.

$$EF_{s,MR,i} = \frac{\sum_{y=1}^n \sum_{p=1}^7 E_{s,p,i,y}}{\sum_{y=1}^n \sum_{w=1}^{Count_{MR,y}} T_{w,y}}$$

(Eq. W-31)

Where:

$EF_{s,MR,i}$  = Meter/regulator run population emission factor for GHG<sub>i</sub> based on all surveyed above grade transmission-distribution transfer stations over “n” years, in standard cubic feet of GHG<sub>i</sub> per operational hour of all meter/regulator runs.

$E_{s,p,i,y}$  = Annual total volumetric emissions at standard conditions of GHG<sub>i</sub> from component type “p” during year “y” in standard (“s”) cubic feet, as calculated using Equation W-30 of this section.

p = Seven component types listed in Table W-6 to this subpart for transmission-distribution transfer stations.

$T_{w,y}$  = The total time the surveyed meter/regulator run “w” was operational, in hours during survey year “y” using an engineering estimate based on best available data.

$Count_{MR,y}$  = Count of meter/regulator runs surveyed at above grade transmission-distribution transfer stations in year “y”.

y = Year of data included in emission factor “ $EF_{s,MR,i}$ ” according to paragraph (q)(2)(x)(B) of this section.

n = Number of years of data, according to paragraph (q)(1)(vii) of this section, whose results are used to calculate emission factor “ $EF_{s,MR,i}$ ” according to paragraph (q)(2)(x)(B) of this section.

(B) The emission factor “ $eFs_{MR,i}$ ,” based on annual equipment leak surveys at above grade transmission-distribution transfer stations, must be calculated annually. If you chose to conduct equipment leak surveys at all above grade transmission-distribution transfer stations over multiple years, “n,” according to paragraph (q)(1)(vii) of this section and you have submitted a smaller number of annual reports than the duration of the selected cycle period of 5 years or less, then all available data from the current year and previous years must be used in the calculation of the emission factor “ $EF_{s,MR,i}$ ” from Equation

W-31 of this section. After the first survey cycle of “n” years is completed and beginning in calendar year (n+1), the survey will continue on a rolling basis by including the survey results from the current calendar year “y” and survey results from all previous (n – 1) calendar years, such that each annual calculation of the emission factor “ $EF_{s,MR,i}$ ” from Equation W-31 is based on survey results from “n” years. Upon completion of a cycle, you may elect to change the number of years in the next cycle period (to be 5 years or less). If the number of years in the new cycle is greater than the number of years in the previous cycle, calculate “ $EF_{s,MR,i}$ ” from Equation W-31 in each year of the new cycle using the survey results from the current calendar year and the survey results from the preceding number years that is equal to the number of years in the previous cycle period. If the number of years, “ $n_{new}$ ,” in the new cycle is smaller than the number of years in the previous cycle, “n,” calculate “ $EF_{s,MR,i}$ ” from Equation W-31 in each year of the new cycle using the survey results from the current calendar year and survey results from all previous ( $n_{new} - 1$ ) calendar years.

(xi) If you chose to conduct equipment leak surveys at all above grade transmission-distribution transfer stations over multiple years, “n,” according to paragraph (q)(1)(vii) of this section, you must use the meter/regulator run population emission factors calculated using Equation W-31 of this section and the total count of all meter/regulator runs at above grade transmission-distribution transfer stations to calculate emissions from all above grade transmission-distribution transfer stations using Equation W-32B in paragraph (r) of this section.

(3) *Calculation Method 2: Leaker measurement methodology.* For industry segments listed in § 98.230(a)(2) through (9), if equipment leaks are detected during surveys required or elected for components listed in paragraphs (q)(1)(i) through (v) of this section, you may elect to measure the volumetric flow rate of each natural gas leak identified during a complete leak survey. If you elect to use this method, you must use this method for all components included in a complete leak survey and you must determine the volumetric flow rate of each natural gas leak identified during the leak survey and aggregate the emissions by the method of leak detection and component type as specified in paragraphs (q)(3)(i) through (vii) of this section.

(i) Determine the volumetric flow rate of each natural gas leak identified during the leak survey following the methods § 98.234(b) through (d), as appropriate for each leak identified. You do not need to use the same measurement method for each leak measured.

(ii) For each leak, calculate the volume of natural gas emitted as the product of the natural gas flow rate measured in paragraph (q)(3)(i) of this section and the duration of the leak. If one leak detection survey is conducted in the calendar year, assume the component was leaking for the entire calendar year. If multiple leak detection surveys are conducted in the calendar year, assume a component found leaking in the first survey was leaking since the beginning of the year until the date of the survey; assume a component found leaking in the last survey of the year was leaking from the preceding survey through the end of the year;

assume a component found leaking in a survey between the first and last surveys of the year was leaking since the preceding survey until the date of the survey. For each leaking component, account for time the component was not operational (*i.e.*, not operating under pressure) using an engineering estimate based on best available data.

(iii) For each leak, convert the volumetric emissions of natural gas determined in paragraph (q)(3)(ii) of this section to standard conditions using the method specified in paragraph (t)(1) of this section.

(iv) For each leak, convert the volumetric emissions of natural gas at standard conditions determined in paragraph (q)(3)(iii) of this section to CO<sub>2</sub> and CH<sub>4</sub> volumetric emissions at standard conditions using the methods specified in paragraph (u) of this section.

(v) For each leak, convert the GHG volumetric emissions at standard conditions determined in paragraph (q)(3)(iv) of this section to GHG mass emissions using the methods specified in paragraph (v) of this section.

(vi) Sum the CO<sub>2</sub> and CH<sub>4</sub> mass emissions determined in paragraph (q)(3)(v) of this section separately for each type of component required to be surveyed by the method used for the survey for which a leak was detected.

(vii) Multiply the total CO<sub>2</sub> and CH<sub>4</sub> mass emissions by survey method and component type determined in paragraph (q)(3)(vi) by the survey specific value for “k”, the factor adjustment for undetected leaks, where k equals 1.25 for the methods in § 98.234(q)(1), (3) and (5); k equals 1.55 for the method in § 98.234(q)(2)(i); and k equals 1.27 for the method in § 98.234(q)(2)(ii).

(viii) For natural gas distribution facilities:

(A) Use Equation W–31 of this section to determine the meter/regulator run population emission factors for each GHG<sub>i</sub> using the methods as specified in paragraphs (q)(2)(x)(A) and (B) of this section, except use the GHG mass emissions calculated in paragraph (q)(3)(vi) of this section rather than the emissions calculated using Equation W–30.

(B) If you chose to conduct equipment leak surveys at all above grade transmission-distribution transfer stations over multiple years, “n,”

according to paragraph (q)(1)(vii) of this section, you must use the meter/regulator run population emission factors calculated according to paragraph (q)(3)(vii)(A) of this section and the total count of all meter/regulator runs at above grade transmission-distribution transfer stations to calculate emissions from all above grade transmission-distribution transfer stations using Equation W–32B in paragraph (r) of this section.

(4) *Development of site-specific component-level leaker emission factors by leak detection method.* If you elect to measure leaks according to Calculation Method 2 as specified in paragraph (q)(3) of this section, you must use the measurement values determined in accordance with paragraph (q)(3) of this section to calculate a site-specific component-level leaker emission factor by leak detection method as provided in paragraphs (q)(4)(i) through (iv) of this section.

(i) You must track the leak measurements made separately for each of the applicable components listed in paragraphs (q)(1)(i) through (v) of this section and by the leak detection method according to the following three bins.

(A) Method 21 as specified in § 98.234(a)(2)(i).

(B) Method 21 as specified in § 98.234(a)(2)(ii).

(C) Optical gas imaging (OGI) and other leak detection methods as specified in § 98.234(a)(1), (3), or (5).

(ii) You must accumulate a minimum of 50 leak measurements total for a given component type and leak detection method combination before you can develop and use a site-specific component-level leaker emission factor for use in calculating emissions according to paragraph (q)(2) of this section (Calculation Method 1: Leaker emission factor calculation methodology).

(iii) Sum the volumetric flow rate of natural gas determined in accordance with paragraph (q)(3)(i) of this section for each leak by component type and leak detection method as specified in paragraph (q)(4)(i) of this section meeting the minimum number of measurement requirement in paragraph (q)(4)(ii) of this section.

(iv) Convert the volumetric flow rate of natural gas determined in paragraph (q)(4)(iii) of this section to standard

conditions using the method specified in paragraph (t)(1) of this section.

(v) Determine the emission factor in units of standard cubic feet per hour component (scf/hr-component) by dividing the sum of the volumetric flow rate of natural gas determined in paragraph (q)(4)(iv) of this section by the total number of leak measurements for that component type and leak detection method combination.

(vi) You must update the emission factor determined in (q)(4)(v) of this section annually to include the results from all complete leak surveys for which leak measurement was performed during the reporting year in accordance with paragraph (q)(3) of this section.

(r) *Equipment leaks by population count.* This paragraph (r) applies to emissions sources listed in § 98.232(c)(21)(ii), (f)(7), (g)(5), (h)(6), and (j)(10)(ii) if you are not required to comply with paragraph (q) of this section and if you do not elect to comply with paragraph (q) of this section for these components in lieu of this paragraph (r). This paragraph (r) also applies to emission sources listed in § 98.232(i)(2) through (6), (j)(11), and (m)(3) through (5). To be subject to the requirements of this paragraph (r), the listed emissions sources also must contact streams with gas content greater than 10 percent CH<sub>4</sub> plus CO<sub>2</sub> by weight. Emissions sources that contact streams with gas content less than or equal to 10 percent CH<sub>4</sub> plus CO<sub>2</sub> by weight are exempt from the requirements of this paragraph (r) and do not need to be reported. Tubing systems equal to or less than one half inch diameter are exempt from the requirements of this paragraph (r) and do not need to be reported. Equipment leak components in vacuum service are exempt from the survey and emission estimation requirements of this paragraph (r) and only the count of these equipment must be reported. You must calculate emissions from all emission sources listed in this paragraph (r) using Equation W–32A of this section, except for natural gas distribution facility emission sources listed in § 98.232(i)(3). Natural gas distribution facility emission sources listed in § 98.232(i)(3) must calculate emissions using Equation W–32B of this section and according to paragraph (r)(6)(ii) of this section.

$$E_{s,e,i} = Count_e * EF_{s,e} * GHG_i * T_e$$

(Eq. W-32A)

$$E_{s,MR,i} = Count_{MR} * EF_{s,MR,i} * T_{w,avg} \quad (\text{Eq. W-32B})$$

Where:

$E_{s,e,i}$  = Annual volumetric emissions of GHG<sub>i</sub> from the emission source type in standard cubic feet. The emission source type may be a major equipment (e.g., wellhead, separator), component (e.g., connector, open-ended line), below grade metering-regulating station, below grade transmission-distribution transfer station, distribution main, distribution service, gathering pipeline, transmission company interconnect metering-regulating station, farm tap and/or direct sale metering-regulating station, or transmission pipeline.

$E_{s,MR,i}$  = Annual volumetric emissions of GHG<sub>i</sub> from all meter/regulator runs at above grade metering-regulating stations that are not above grade transmission-distribution transfer stations or, when used to calculate emissions according to paragraph (q)(2)(xi) or (q)(3)(vii)(B) of this section, the annual volumetric emissions of GHG<sub>i</sub> from all meter/regulator runs at above grade transmission-distribution transfer stations.

$Count_e$  = Total number of the emission source type at the facility. Onshore petroleum and natural gas production facilities and onshore petroleum and natural gas gathering and boosting facilities must count each major equipment piece listed in Table W-1 to this subpart. Onshore petroleum and natural gas gathering and boosting facilities must also count the miles of gathering pipelines by material type (protected steel, unprotected steel, plastic, or cast iron). Underground natural gas storage facilities must count each component listed in Table W-3 to this subpart. LNG storage facilities must count the number of vapor recovery compressors. LNG import and export facilities must count the number of vapor recovery compressors. Natural gas distribution facilities must count the: (1) Number of distribution services by material type; (2) miles of distribution mains by material type; (3) number of below grade transmission-distribution transfer stations; and (4) number of below grade metering-regulating stations; as listed in Table W-5 to this subpart. Onshore natural gas transmission pipeline facilities must count the following, as listed in Table W-5 to this subpart: (1) Miles of transmission pipelines by material type; (2) number of transmission company interconnect metering-regulating stations; and (3) number of farm tap and/or direct sale metering-regulating stations.

$Count_{MR}$  = Total number of meter/regulator runs at above grade metering-regulating stations that are not above grade transmission-distribution transfer stations or, when used to calculate emissions according to paragraph (q)(2)(xi) or (q)(3)(vii)(B) of this section, the total number of meter/regulator runs

at above grade transmission-distribution transfer stations.

$EF_{s,e}$  = Population emission factor for the specific emission source type, as listed in tables W-1, W-3, and W-5 to this subpart.

$EF_{s,MR,i}$  = Meter/regulator run population emission factor for GHG<sub>i</sub> based on all surveyed above grade transmission-distribution transfer stations over “n” years, in standard cubic feet of GHG<sub>i</sub> per operational hour of all meter/regulator runs, as determined in Equation W-31 of this section.

GHG<sub>i</sub> = For onshore petroleum and natural gas production facilities and onshore petroleum and natural gas gathering and boosting facilities, concentration of GHG<sub>i</sub>, CH<sub>4</sub>, or CO<sub>2</sub>, in produced natural gas as defined in paragraph (u)(2) of this section; for onshore natural gas transmission compression, underground natural gas storage, and onshore natural gas transmission pipeline, GHG<sub>i</sub> equals 0.975 for CH<sub>4</sub> and  $1.1 \times 10^{-2}$  for CO<sub>2</sub>; for LNG storage and LNG import and export equipment, GHG<sub>i</sub> equals 1 for CH<sub>4</sub> and 0 for CO<sub>2</sub>; and for natural gas distribution, GHG<sub>i</sub> equals 1 for CH<sub>4</sub> and  $1.1 \times 10^{-2}$  CO<sub>2</sub>.

$T_e$  = Average estimated time that each emission source type associated with the equipment leak emission was operational in the calendar year, in hours, using engineering estimate based on best available data.

$T_{w,avg}$  = Average estimated time that each meter/regulator run was operational in the calendar year, in hours per meter/regulator run, using engineering estimate based on best available data.

(1) Calculate both CH<sub>4</sub> and CO<sub>2</sub> mass emissions from volumetric emissions using calculations in paragraph (v) of this section.

(2) Onshore petroleum and natural gas production facilities and onshore petroleum and natural gas gathering and boosting facilities must use the appropriate default whole gas population emission factors listed in table W-1 of this subpart. Major equipment associated with gas wells are considered gas service equipment in table W-1 of this subpart. Onshore petroleum and natural gas gathering and boosting facilities shall use the gas service equipment emission factors in table W-1 of this subpart. Major equipment associated with crude oil wells are considered crude service equipment in table W-1 of this subpart. Where facilities conduct EOR operations, the emission factor listed in table W-1 of this subpart shall be used to estimate all streams of gases, including recycle CO<sub>2</sub> stream. For meters/piping, use one meters/piping per well-pad for onshore petroleum and

natural gas production operations and the number of meters in the facility for onshore petroleum and natural gas gathering and boosting operations.

(3) Underground natural gas storage facilities must use the appropriate default total hydrocarbon population emission factors for storage wellheads in gas service listed in table W-3 to this subpart.

(4) LNG storage facilities must use the appropriate default methane population emission factors for LNG storage compressors in gas service listed in table W-5 to this subpart.

(5) LNG import and export facilities must use the appropriate default methane population emission factors for LNG terminal compressors in gas service listed in table W-5 to this subpart.

(6) Natural gas distribution facilities must use the appropriate methane emission factors as described in paragraphs (r)(6)(i) and (ii) of this section.

(i) Below grade transmission-distribution transfer stations, below grade metering-regulating stations, distribution mains, and distribution services must use the appropriate default methane population emission factors listed in table W-5 of this subpart to estimate emissions from components listed in § 98.232(i)(2), (4), (5), and (6), respectively.

(ii) Above grade metering-regulating stations that are not above grade transmission-distribution transfer stations must use the meter/regulator run population emission factor calculated in Equation W-31 for the components listed in § 98.232(i)(3). Natural gas distribution facilities that do not have above grade transmission-distribution transfer stations are not required to calculate emissions for above grade metering-regulating stations and are not required to report GHG emissions in § 98.236(r)(2)(v).

(7) Natural gas transmission pipeline facilities must use the appropriate default methane population emission factors listed in table W-5 of this subpart to estimate emissions from components listed in § 98.232(m)(3) through (5).

(s) *Offshore petroleum and natural gas production facilities.* Report CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions for offshore petroleum and natural gas production from all equipment leaks, vented emission, and flare emission source types as identified by BOEM in compliance with 30 CFR 550.302 through 304.

(1) Offshore production facilities that report to BOEM's emissions inventory shall report the same annual emissions as calculated and reported to BOEM as referenced in 30 CFR 550.302 through 304.

(i) For any reporting year that does not coincide with a BOEM emissions inventory data collection year, report the most recent published BOEM emissions inventory data referenced in 30 CFR 550.302 through 550.304. Adjust emissions based on the operating time for the facility relative to the operating time in the most recent published BOEM emissions inventory data.

(ii) As an alternative to the adjustment provisions in paragraph (s)(1)(i) of this section, you may use the most recent monitoring and calculation methods published by BOEM referenced in 30 CFR 550.302 through 550.304 to calculate and report annual emissions.

(2) Offshore production facilities that do not report to BOEM's emissions inventory must use the most recent monitoring and calculation methods published by BOEM referenced in 30 CFR 550.302 through 550.304 to calculate and report annual emissions.

(i) For any reporting year that does not coincide with a BOEM emissions inventory data collection year, you may report the most recent emissions data submitted to demonstrate compliance with this subpart of part 98, with emissions adjusted based on the operating time for the facility relative to operating time in the previous reporting period.

(ii) As an alternative to the adjustment provisions in paragraph (s)(2)(i) of this section, you may use the most recent monitoring and calculation methods published by BOEM referenced in 30 CFR 550.302 through 550.304 to calculate and report annual emissions.

(3) If BOEM discontinues or delays their data collection effort by more than 3 years, then offshore reporters shall once in every 3 years use the most recent BOEM data collection and emissions estimation methods to estimate emissions. These emission estimates would be used to report emissions from the facility sources as required in paragraph (s)(1)(i) of this section.

(4) For either first or subsequent year reporting, offshore facilities either within or outside of BOEM jurisdiction that were not covered in the previous BOEM data collection cycle must use the most recent BOEM data collection and emissions estimation methods published by BOEM referenced in 30 CFR 550.302 through 550.304 to calculate and report emissions.

(t) \* \* \*

(2) \* \* \*

\* \* \* \* \*

$Z_a$  = Compressibility factor at actual conditions for  $GHG_i$ . You may use either a default compressibility factor of 1, or a site-specific compressibility factor based on actual temperature and pressure conditions.

\* \* \* \* \*

(u) \* \* \*

(2) \* \* \*

(ii) *GHG mole fraction in feed natural gas for all emissions sources upstream of the de-methanizer or dew point control and GHG mole fraction in facility specific residue gas to transmission pipeline systems for all emissions sources downstream of the de-methanizer overhead or dew point control for onshore natural gas processing facilities.* For onshore natural gas processing plants that solely fractionate a liquid stream, use the GHG mole percent in feed natural gas liquid for all streams. If you have a continuous gas composition analyzer on feed natural gas, you must use these values for determining the mole fraction. If you do not have a continuous gas composition analyzer, then annual samples must be taken according to methods set forth in § 98.234(b).

\* \* \* \* \*

(y) *Other large release events.*

Calculate CO<sub>2</sub> and CH<sub>4</sub> emissions from other large release events as specified in paragraphs (y)(2) through (5) of this section for each release that meets or exceeds the applicable criteria in paragraph (y)(1) of this section. You are not required to measure every release from your facility, but if you have credible information that demonstrates the release meets or exceeds one of the thresholds or credible information that the release may reasonably be anticipated to meet or exceed (or to have met or exceeded) one of the thresholds in paragraph (y)(1) of this section, then you must calculate the event emissions and, if the thresholds are confirmed to be exceeded, report the emissions as an other large release event.

(1) You must report emissions for other large release events that emit GHG at or above any applicable threshold listed in paragraphs (y)(1)(i) or (ii) of this section considering the entire event duration. The thresholds listed in paragraphs (y)(1)(i) or (ii) of this section are not limited to the emissions that occur within a given reporting year.

(i) For sources not subject to reporting under paragraphs (a) through (s), (w), (x), (dd), or (ee) of this section (such as but not limited to a fire, explosion, well

blowout, or pressure relief), a release that either:

(A) Emits methane at any point in time at a rate of 100 kg/hr or greater; or  
 (B) Emits combined GHG across the entire event duration of 250 metric tons of CO<sub>2e</sub> or more.

(ii) For sources subject to reporting under paragraphs (a) through (s), (w), (x), (dd), or (ee) of this section, a release that emits GHG at or above at least one of the thresholds listed in paragraphs (y)(1)(ii)(A) or (B) of this section. For a release meeting the criteria in either paragraph (y)(1)(ii)(A) or (B) of this section, you must report the emissions as an other large release event and exclude the emissions from this release in the source-specific emissions calculated under paragraphs (a) through (s), (w), (x), (dd), or (ee) of this section, as applicable.

(A) Emits methane at any point in time at a rate of 100 kg/hr or greater in excess of the emissions calculated from the source using the applicable methods under paragraphs (a) through (s), (w), (x), (dd), or (ee) of this section; or

(B) Emits combined GHG across the entire event duration of 250 metric tons of CO<sub>2e</sub> or more in excess of the emissions calculated from the source using the applicable methods under paragraphs (a) through (s), (w), (x), (dd), or (ee) of this section.

(2) Estimate the total volume of gas released during the event in standard cubic feet and the methane emission rate at any point in time during the event in kilograms per hour using measurement data according to § 98.234(b), if available, or a combination of process knowledge, engineering estimates, and best available data when measurement data are not available according to paragraphs (y)(2)(i) through (v) of this section.

(i) The total volume of gas released must be estimated as the product of the measured or estimated average flow or release rate and the estimated event duration. For events for which information is available showing variable or decaying flow rates, you must calculate the maximum natural gas flow or release rate during the event and either determine a representative average release rate across the entire event or determine representative release rates for specific time periods within the event duration. If you elect to determine representative release rates for specific time periods within the event duration, calculate the volume of gas released for each time period within the event duration as the product of the representative release rate and the length of the corresponding time period

and sum the volume of gas released across each of the time periods for the full duration of the event.

(ii) The start time of the event must be determined based on monitored process parameters. If monitored process parameters cannot identify the start of the event, the event must be assumed to start on the date of the most recent monitoring or measurement survey that confirms the source was not emitting at or above the rates specified in paragraph (y)(1) of this section or assumed to have a duration of 182 days, whichever duration is shorter.

(iii) The end time of the event must be the date of the confirmed repair or confirmed cessation of emissions.

(iv) For the purposes of paragraph (y)(2)(ii) of this section, “monitoring or measurement survey” includes any monitoring or measurement method in § 98.234(a) through (d) as well as advanced screening methods such as monitoring systems mounted on vehicles, drones, helicopters, airplanes, or satellites capable of identifying emissions at the thresholds specified in paragraph (y)(1).

(v) For events that span two different reporting years, calculate the portion of the event’s volumetric emissions calculated according to paragraph (y)(2)(i) of this section that occurred in each reporting year considering only reporting year 2025 and later reporting years. For events with consistent flow or for which one average emissions rate is used, use the relative duration of the event within each reporting year to apportion the volume of gas released for each reporting year. For variable flow events for which the volume of gas released is estimated for separate time periods, sum the volume of gas released across each of the time periods within a given reporting year separately. If one of the time periods span two different reporting years, calculate the portion of the volumetric emissions calculated for that time period that applies to each reporting year based on the number of hours in that time period within each reporting year.

(3) Determine the composition of the gas released to the atmosphere using measurement data, if available, or a combination of process knowledge, engineering estimates, and best available data when measurement data are not available. In the event of an explosion or fire, where a portion of the natural gas may be combusted, estimate the composition of the gas released to the atmosphere considering the fraction of natural gas released directly to the atmosphere and the fraction of natural gas that was combusted by the explosion or fire during the release

event. Assume a maximum combustion efficiency of 92 percent for natural gas that is combusted in an explosion or fire when estimating the CO<sub>2</sub> composition of the release. You may use different compositions for different periods within the duration if available information suggests composition varied during the release (e.g., if a portion of the release occurred while fire was present and a portion of the release occurred when no fire was present).

(4) Calculate the GHG volumetric emissions using Equation W–35 in paragraph (u)(1) of this section.

(5) Calculate both CH<sub>4</sub> and CO<sub>2</sub> mass emissions from volumetric emissions using calculations in paragraph (v) of this section.

(z) *Onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, and natural gas distribution combustion emissions.* Except as specified in paragraphs (z)(6) and (7) of this section, calculate CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O combustion-related emissions from stationary or portable equipment using the applicable method in paragraphs (z)(1) through (3) of this section according to the fuel combusted as specified in those paragraphs:

(1) If a fuel combusted in the stationary or portable equipment meets the specifications of paragraph (z)(1)(i) of this section, then calculate emissions according to paragraph (z)(1)(ii) of this section.

(i) The fuel combusted in the stationary or portable equipment is listed in table C–1 of subpart C of this part or is a blend in which all fuels are listed in table C–1. If the fuel is natural gas or the blend contains natural gas, the natural gas must also meet the criteria of paragraphs (z)(1)(i)(A) and (B) of this section.

(A) The natural gas must be of pipeline quality specification.

(B) The natural gas must have a minimum higher heating value of 950 Btu per standard cubic foot.

(ii) For fuels listed in paragraph (z)(1)(i) of this section, calculate CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions for each unit or group of units combusting the same fuel according to any Tier listed in subpart C of this part, except that each natural gas-fired reciprocating internal combustion engine or gas turbine must use one of the methods in paragraph (z)(4) of this section to quantify a CH<sub>4</sub> emission factor instead of using the CH<sub>4</sub> emission factor in table C–2 of subpart C of this part. You must follow all applicable calculation requirements for that tier listed in § 98.33, any monitoring or QA/QC requirements listed for that tier in § 98.34, any

missing data procedures specified in § 98.35, and any recordkeeping requirements specified in § 98.37. You must report emissions according to paragraph (z)(5) of this section.

(2) If a fuel combusted in the stationary or portable equipment meets the specifications of paragraph (z)(2)(i) of this section, then calculate emissions according to paragraph (z)(2)(ii) of this section.

(i) The fuel combusted in the stationary or portable equipment is natural gas that is not pipeline quality or it is a blend containing natural gas that is not pipeline quality with only fuels that are listed in table C–1. The natural gas must meet the criteria of paragraphs (z)(2)(i)(A) through (C) of this section.

(A) The natural gas must have a minimum higher heating value of 950 Btu per standard cubic foot.

(B) The natural gas must have a maximum CO<sub>2</sub> content of 1 percent by volume.

(C) The natural gas must have a minimum CH<sub>4</sub> content of 85 percent by volume.

(ii) For fuels listed in paragraph (z)(2)(i) of this section, calculate CO<sub>2</sub>, CH<sub>4</sub>, and N<sub>2</sub>O emissions for each unit or group of units combusting the same fuel according to Tier 2, Tier 3, or Tier 4 listed in subpart C of this part, except that each natural gas-fired reciprocating engine or gas turbine must use one of the methods in paragraph (z)(4) of this section to quantify a CH<sub>4</sub> emission factor instead of using the CH<sub>4</sub> emission factor in table C–2 of subpart C of this part. You must follow all applicable calculation requirements for that tier listed in § 98.33, any monitoring or QA/QC requirements listed for that tier in § 98.34, any missing data procedures specified in § 98.35, and any recordkeeping requirements specified in § 98.37. You must report emissions according to paragraph (z)(5) of this section.

(3) If a fuel combusted in the stationary or portable equipment meets the specifications of paragraph (z)(3)(i) of this section, then calculate emissions according to paragraph (z)(3)(ii) of this section.

(i) The fuel combusted in the stationary or portable equipment does not meet the criteria of either paragraph (z)(1)(i) or (z)(2)(i) of this section. Examples include natural gas that is not of pipeline quality, natural gas that has a higher heating value of less than 950 Btu per standard cubic feet, and natural gas that is not pipeline quality and does not meet the composition criteria of either paragraph (z)(2)(i)(B) or (C) of this section. Other examples include field

gas that does not meet the definition of natural gas in § 98.238 and blends containing field gas that does not meet the definition of natural gas in § 98.238.

(ii) For fuels listed in paragraph (z)(3)(i) of this section, calculate combustion emissions for each unit or group of units combusting the same fuel as follows:

(A) You may use company records to determine the volume of fuel combusted

in the unit or group of units during the reporting year.

(B) If you have a continuous gas composition analyzer on fuel to the combustion unit(s), you must use these compositions for determining the concentration of each constituent in the flow of gas to the unit or group of units. If you do not have a continuous gas composition analyzer on gas to the combustion unit(s), you may use engineering estimates based on best

available data to determine the concentration of each constituent in the flow of gas to the unit or group of units. Otherwise, you must use the appropriate gas compositions for each stream going to the combustion unit(s) as specified in paragraph (u)(2) of this section.

(C) Calculate GHG volumetric emissions at actual conditions using Equations W-39A and W-39B of this section:

$$E_{a,CO_2} = (V_a * Y_{CO_2}) + \eta * \sum_{j=1}^5 V_a * Y_j * R_j \quad (\text{Eq. W-39A})$$

$$E_{a,CH_4} = V_a * (1 - \eta) * Y_{CH_4} \quad (\text{Eq. W-39B})$$

Where:

$E_{a,CO_2}$  = Contribution of annual CO<sub>2</sub> emissions from portable or stationary fuel combustion sources in cubic feet, under actual conditions.

$V_a$  = Volume of gas sent to the combustion unit or group of units in actual cubic feet, during the year.

$Y_{CO_2}$  = Mole fraction of CO<sub>2</sub> in gas sent to the combustion unit or group of units.

$\eta$  = Fraction of gas combusted for portable and stationary equipment determined using engineering estimation. For internal combustion devices that are not reciprocating internal combustion engines or gas turbines, a default of 0.995 can be used. For two-stroke lean-burn reciprocating internal combustion

engines, a default of 0.953 must be used; for four-stroke lean-burn reciprocating internal combustion engines, a default of 0.962 must be used; for four-stroke rich-burn reciprocating internal combustion engines, a default of 0.997 must be used, and for gas turbines, a default of 0.999 must be used.

$Y_j$  = Mole fraction of hydrocarbon constituent j (such as methane, ethane, propane, butane, and pentanes plus) in gas sent to the combustion unit or group of units.

$R_j$  = Number of carbon atoms in the hydrocarbon constituent j in gas sent to the combustion unit or group of units; 1 for methane, 2 for ethane, 3 for propane, 4 for butane, and 5 for pentanes plus.

$E_{a,CH_4}$  = Contribution of annual CH<sub>4</sub> emissions from portable or stationary

fuel combustion sources in cubic feet, under actual conditions.

$Y_{CH_4}$  = Mole fraction of methane in gas sent to the combustion unit or group of units.

(D) Calculate GHG volumetric emissions at standard conditions using calculations in paragraph (t) of this section.

(E) Calculate both combustion-related CH<sub>4</sub> and CO<sub>2</sub> mass emissions from volumetric CH<sub>4</sub> and CO<sub>2</sub> emissions using calculation in paragraph (v) of this section.

(F) Calculate N<sub>2</sub>O mass emissions using Equation W-40 of this section.

$$Mass_{N_2O} = (1 \times 10^{-3}) \times Fuel \times HHV \times EF \quad (\text{Eq. W-40})$$

Where:

$Mass_{N_2O}$  = Annual N<sub>2</sub>O emissions from the combustion of a particular type of fuel (metric tons).

Fuel = Annual mass or volume of the fuel combusted (mass or volume per year, choose appropriately to be consistent with the units of HHV).

HHV = Site-specific higher heating value of the fuel, mmbtu/unit of the fuel (in units consistent with the fuel quantity combusted).

EF = Use  $1.0 \times 10^{-4}$  kg N<sub>2</sub>O/mmbtu.

$1 \times 10^{-3}$  = Conversion factor from kilograms to metric tons.

(4) For each natural gas-fired reciprocating internal combustion engine or gas turbine calculating emissions according to paragraph (z)(1)(ii) or (z)(2)(ii) of this section, you must determine a CH<sub>4</sub> emission factor (kg CH<sub>4</sub>/MMBtu) using one of the methods provided in paragraphs (z)(4)(i) through (iii) of this section. If you are

required to or elect to use the method in paragraph (z)(4)(i) of this section, you must use the results of the performance test to determine the CH<sub>4</sub> emission factor.

(i) Conduct a performance test following the applicable procedures in § 98.234(i).

(ii) Original equipment manufacturer information, which may include manufacturer specification sheets, emissions certification data, or other manufacturer data providing expected emission rates from the reciprocating internal combustion engine or gas turbine.

(iii) Applicable equipment type-specific emission factor from table W-7 of this subpart.

(5) Emissions from fuel combusted in stationary or portable equipment at onshore petroleum and natural gas production facilities, at onshore

petroleum and natural gas gathering and boosting facilities, and at natural gas distribution facilities that are calculated according to the procedures in either paragraph (z)(1)(ii) or (z)(2)(ii) of this section must be reported according to the requirements specified in § 98.236(z) rather than the reporting requirements specified in subpart C of this part.

(6) External fuel combustion sources with a rated heat capacity equal to or less than 5 mmbtu/hr do not need to report combustion emissions or include these emissions for threshold determination in § 98.231(a). You must report the type and number of each external fuel combustion unit.

(7) Internal fuel combustion sources, not compressor-drivers, with a rated heat capacity equal to or less than 1 mmbtu/hr (or the equivalent of 130 horsepower), do not need to report combustion emissions or include these

emissions for threshold determination in § 98.231(a). You must report the type and number of each internal fuel combustion unit.

(aa) through (cc) [Reserved]

(dd) *Drilling mud degassing*. Calculate annual volumetric CH<sub>4</sub> emissions from the degassing of drilling mud using one of the calculation methods described in paragraphs (dd)(1) or (2) of this section. If you have taken mudlogging measurements, including gas trap-derived gas concentration and mud pumping rate, you must use Calculation Method 1 as described in paragraph (dd)(1) of this section. If you have not taken mudlogging measurements, you may use Calculation Method 2 as described in paragraph (dd)(2) of this section.

(1) *Calculation Method 1*. For each well in the sub-basin in which drilling

mud was used during well drilling, you must calculate CH<sub>4</sub> emissions from drilling mud degassing applying an emissions rate derived from a representative well in the same sub-basin and at the same approximate total depth. You must follow the procedures specified in paragraph (dd)(1)(i) of this section to calculate CH<sub>4</sub> emissions for the representative well and follow the procedures in paragraphs (dd)(1)(ii) through (iv) of this section to calculate CH<sub>4</sub> emissions for every well drilled in the sub-basin and at the same approximate total depth.

(i) Calculate CH<sub>4</sub> emissions from mud degassing for one representative well in each sub-basin and at each approximate total depth. For the representative well, you must use mudlogging measurements, including gas trap derived gas concentration and mud

pumping rate, taken during the reporting year. In the first year of reporting, you may use measurements from the prior reporting year if measurements from the current reporting year are not available. Use Equation W-41 of this section to calculate natural gas emissions from mud degassing at the representative well. You must identify and calculate CH<sub>4</sub> emissions for a new representative well for the sub-basin and same approximate total depth every 2 calendar years or on a more frequent basis. If a representative well is not available in the same sub-basin and at the same targeted approximate total depth, you may choose a well within the facility that is drilled into the same formation and at the same approximate total depth.

$$E_{s,CH_4,r} = MR_r \times T_r \times \frac{X_n}{1,000,000} \times GHG_{CH_4} \times 0.1337 \quad (\text{Eq. W-41})$$

Where:

$E_{s,CH_4,r}$  = Annual total volumetric CH<sub>4</sub> emissions from mud degassing for the representative well, r, in standard cubic feet.

$MR_r$  = Average mud rate for the representative well, r, in gallons per minute.

$T_r$  = Total time that drilling mud is circulated in the representative well, r, in minutes.

$X_n$  = Concentration of natural gas in the drilling mud as measured by the gas trap, in parts per million.

$GHG_{CH_4}$  = Measured mole fraction of CH<sub>4</sub> in natural gas entrained in the drilling mud.

0.1337 = Conversion from gallons to standard cubic feet.

(ii) Calculate the emissions rate of CH<sub>4</sub> in standard cubic feet per minute from the representative well using Equation W-42 of this section.

$$ER_{s,CH_4,r} = \frac{E_{s,CH_4,r}}{T_r} \quad (\text{Eq. W-42})$$

Where:

$ER_{s,CH_4,r}$  = Volumetric CH<sub>4</sub> emission rate from mud degassing for the representative well, r, in standard cubic feet per minute.

$E_{s,CH_4,r}$  = Annual total volumetric CH<sub>4</sub> emissions from mud degassing for the representative well, r, in standard cubic feet.

$T_r$  = Total time that drilling mud is circulated in the representative well, r, in minutes.

(iii) Use Equation W-43 of this section to calculate emissions for any wells drilled in the same sub-basin and targeting the same approximate total depth in the reporting year.

$$E_{s,CH_4,p} = ER_{s,CH_4,r} \times T_p \quad (\text{Eq. W-43})$$

Where:

$E_{s,CH_4,p}$  = Annual total CH<sub>4</sub> emissions from mud degassing for the well, p, in standard cubic feet.

$ER_{s,CH_4,r}$  = Volumetric CH<sub>4</sub> emission rate from mud degassing for the representative well, r, in standard cubic feet per minute.

$T_p$  = Total time that drilling mud is circulated in the well, p, during the reporting year, in minutes.

(iv) Calculate CH<sub>4</sub> mass emissions using calculations in paragraph (v) of this section.

(2) *Calculation Method 2*. If you did not take mudlogging measurements, calculate emissions from mud degassing for each well using Equation W-44 of this section:

$$Mass_{CH_4,p} = EF_{CH_4} \times DD_p \quad (\text{Eq. W-44})$$

Where:

$Mass_{CH_4,p}$  = Annual total CH<sub>4</sub> emissions for the well, p, in metric tons.

$EF_{CH_4}$  = Emission factor in metric tons CH<sub>4</sub> per drilling day. Use 0.2605 for water-based drilling muds, 0.0586 for oil-based

drilling muds, and 0.0586 for synthetic drilling muds.  
 $DD_p$  = Total number of drilling days for the well, p. The first drilling day is the day

that the borehole penetrated the first hydrocarbon-bearing zone and the last drilling day is the day drilling mud ceases to be circulated in the wellbore.

(ee) *Crankcase venting*. For reciprocating internal combustion engines or gas turbines, calculate annual CH<sub>4</sub> volumetric emissions from

crankcase venting at standard conditions using Equation W-45 of this section:

$$E_{CH_4} = EF \times GHG_{CH_4} \times Count \times T \quad (\text{Eq. W-45})$$

Where:

E<sub>CH<sub>4</sub></sub> = Annual total volumetric emissions of CH<sub>4</sub> from crankcase venting on reciprocating internal combustion engines or gas turbines, in standard cubic feet.

EF = Emission factor for crankcase venting on reciprocating internal combustion engines or gas turbines, in standard cubic feet gas per hour per crankcase vent. Use 2.28 standard cubic feet gas per hour per crankcase vent.

GHG<sub>CH<sub>4</sub></sub> = Average concentration of CH<sub>4</sub> in the gas stream entering reciprocating internal combustion engines or gas turbines. If the concentration of CH<sub>4</sub> is unknown, use the concentration of CH<sub>4</sub> in the gas stream either using engineering estimates based on best available data or as defined in paragraph (u)(2) of this section.

Count = Total number of crankcase vents on reciprocating internal combustion engines or gas turbines.

T = Total operating hours per year for reciprocating internal combustion engines or gas turbines with crankcase vents.

■ 13. Amend § 98.234 by:

■ a. Revising the introductory text and paragraphs (a) and (d)(3);

■ b. Adding paragraph (d)(5);

■ c. Removing the text “Equation W-41” and “Eq. W-41” in paragraph (e) and adding in its place the text “Equation W-46” and “Eq. W-46”, respectively;

■ d. Removing and reserving paragraphs (f) and (g); and

■ e. Adding paragraph (i).

The revisions and additions read as follows:

**§ 98.234 Monitoring and QA/QC requirements.**

The GHG emissions data for petroleum and natural gas emissions sources must be quality assured as applicable as specified in this section. Offshore petroleum and natural gas production facilities shall adhere to the monitoring and QA/QC requirements as set forth in 30 CFR 550.

(a) You must use any of the applicable methods described in paragraphs (a)(1) through (5) of this section to conduct leak detection(s) or screening survey(s) as specified in § 98.233(k), (o), and (p) that occur during a calendar year. You must use any of the methods described in paragraphs (a)(1) through (5) of this section to conduct leak detection(s) of

equipment leaks from components as specified in § 98.233(q)(1)(i) or (ii) or (q)(1)(v)(A) that occur during a calendar year. You must use one of the methods described in paragraph (a)(1)(ii) or (iii) or (a)(2)(ii) of this section, as applicable, to conduct leak detection(s) of equipment leaks from components as specified in § 98.233(q)(1)(iii) or (q)(1)(v)(B). If electing to comply with § 98.233(q) as specified in § 98.233(q)(1)(iv), you must use any of the methods described in paragraphs (a)(1) through (5) of this section to conduct leak detection(s) of equipment leaks from component types as specified in § 98.233(q)(1)(iv) that occur during a calendar year. Inaccessible emissions sources, as defined in 40 CFR part 60, are not exempt from this subpart. If the primary leak detection method employed cannot be used to monitor inaccessible components without elevating the monitoring personnel more than 2 meters above a support surface, you must use alternative leak detection devices as described in paragraph (a)(1) or (3) of this section to monitor inaccessible equipment leaks or vented emissions at least once per calendar year.

(1) *Optical gas imaging instrument*. Use an optical gas imaging instrument for equipment leak detection as specified in either paragraph (a)(1)(i), (ii), or (iii) of this section. You may use any of the methods as specified in paragraphs (a)(1)(i) through (iii) of this section unless you are required to use a specific method in § 98.233(q)(1).

(i) *Optical gas imaging instrument as specified in § 60.18 of this chapter*. Use an optical gas imaging instrument for equipment leak detection in accordance with 40 CFR part 60, subpart A, § 60.18 of the *Alternative work practice for monitoring equipment leaks*, § 60.18(i)(1)(i); § 60.18(i)(2)(i) except that the minimum monitoring frequency shall be annual using the detection sensitivity level of 60 grams per hour as stated in 40 CFR part 60, subpart A, Table 1: *Detection Sensitivity Levels*; § 60.18(i)(2)(ii) and (iii) except the gas chosen shall be methane, and § 60.18(i)(2)(iv) and (v); § 60.18(i)(3); § 60.18(i)(4)(i) and (v); including the requirements for daily instrument checks and distances, and excluding

requirements for video records. Any emissions detected by the optical gas imaging instrument from an applicable component is a leak. In addition, you must operate the optical gas imaging instrument to image the source types required by this subpart in accordance with the instrument manufacturer's operating parameters.

(ii) *Optical gas imaging instrument as specified in § 60.5397a of this chapter*. Use an optical gas imaging instrument for equipment leak detection in accordance with § 60.5397a(c)(3) and (7), and (e) of this chapter and paragraphs (a)(1)(ii)(A) through (C) of this section.

(A) For the purposes of this subpart, any visible emissions observed by the optical gas imaging instrument from a component required or elected to be monitored as specified in § 98.233(q)(1) is a leak.

(B) For the purposes of this subpart, the term “fugitive emissions component” in § 60.5397a of this chapter means “component.”

(C) For the purpose of complying with § 98.233(q)(1)(iv), the phrase “the collection of fugitive emissions components at well sites and compressor stations” in § 60.5397a of this chapter means “the collection of components for which you elect to comply with § 98.233(q)(1)(iv).”

(iii) *Optical gas imaging instrument as specified in appendix K to part 60 of this chapter*. Use an optical gas imaging instrument for equipment leak detection in accordance with appendix K to part 60, Determination of Volatile Organic Compound and Greenhouse Gas Leaks Using Optical Gas Imaging. Any emissions detected by the optical gas imaging instrument from an applicable component is a leak.

(2) *Method 21*. Use the equipment leak detection methods in Method 21 in appendix A-7 to part 60 of this chapter as specified in paragraph (a)(2)(i) or (ii) of this section. You may use either of the methods as specified in paragraphs (a)(2)(i) and (ii) of this section unless you are required to use a specific method in § 98.233(q)(1). You must survey all applicable source types at the facility needed to conduct a complete equipment leak survey as defined in § 98.233(q)(1). For the purposes of this subpart, the term “fugitive emissions

component” in § 60.5397a of this chapter and § 60.5397b of this chapter means “component.”

(i) *Method 21 with a leak definition of 10,000 ppm.* Use the equipment leak detection methods in Method 21 in appendix A–7 to part 60 of this chapter using methane as the reference compound. If an instrument reading of 10,000 ppm or greater is measured for any applicable component, a leak is detected.

(ii) *Method 21 with a leak definition of 500 ppm.* Use the equipment leak detection methods in Method 21 in appendix A–7 to part 60 of this chapter using methane as the reference compound. If an instrument reading of 500 ppm or greater is measured for any applicable component, a leak is detected.

(3) *Infrared laser beam illuminated instrument.* Use an infrared laser beam illuminated instrument for equipment leak detection. Any emissions detected by the infrared laser beam illuminated instrument is a leak. In addition, you must operate the infrared laser beam illuminated instrument to detect the source types required by this subpart in accordance with the instrument manufacturer’s operating parameters.

(4) [Reserved]

(5) *Acoustic leak detection device.* Use the acoustic leak detection device to detect through-valve leakage. When using the acoustic leak detection device to quantify the through-valve leakage, you must use the instrument manufacturer’s calculation methods to quantify the through-valve leak. When using the acoustic leak detection device, if a leak of 3.1 scf per hour or greater is calculated, a leak is detected. In addition, you must operate the acoustic leak detection device to monitor the source valves required by this subpart in accordance with the instrument manufacturer’s operating parameters. Acoustic stethoscope type devices designed to detect through-valve leakage when put in contact with the valve body and that provide an audible leak signal but do not calculate a leak rate can be used to identify through-valve leakage. For these acoustic stethoscope type devices, a leak is detected if an audible leak signal is observed or registered by the device. If the acoustic stethoscope type device is used as a screening to a measurement method and a leak is detected, the leak must be measured using any one of the methods specified in paragraphs (b) through (d) of this section.

\* \* \* \* \*  
(d) \* \* \*

(3) For high volume samplers that output methane mass emissions, you

must use the calculations in § 98.233(u) and (v) in reverse to determine the natural gas volumetric emissions at standard conditions. For high volume samplers that output methane volumetric flow in actual conditions, divide the volumetric methane flow rate by the mole fraction of methane in the natural gas according to the provisions in § 98.233(u) and estimate natural gas volumetric emissions at standard conditions using calculations in § 98.233(t). Estimate CH<sub>4</sub> and CO<sub>2</sub> volumetric and mass emissions from volumetric natural gas emissions using the calculations in § 98.233(u) and (v).

\* \* \* \* \*  
(5) If the measured methane flow exceeds the manufacturer’s reported quantitation limit or if the measured natural gas flow determined as specified in paragraph (d)(3) of this section exceeds 70 percent of the manufacturer’s reported maximum sampling flow rate, then the flow exceeds the capacity of the instrument and you must either use a temporary or permanent flow meter according to paragraph (b) of this section or use calibrated bags according to paragraph (c) of this section to determine the leak or flow rate.

\* \* \* \* \*  
(i) You must use any of the applicable methods described in paragraphs (j)(1) through (3) of this section to conduct a performance test to determine the concentration of CH<sub>4</sub> in the exhaust gas. This concentration must be used to develop a CH<sub>4</sub> emission factor (kg/MMBtu) for estimating combustion slip from reciprocating internal combustion engines or gas turbines as specified in § 98.233(z)(4). Each performance test must be conducted within 10 percent of 100 percent peak load. You may not conduct performance tests during period of startup, shutdown or malfunction. You must conduct three separate test runs for each performance test. Each test run must be conducted within 10 percent of 100 percent peak (or the highest achievable) load and last at least 1 hour.

(1) EPA Method 18, Volatile Organic Compounds by Gas Chromatography in appendix A–6 to part 60 of this chapter.

(2) EPA Method 320, Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transform Infrared (FTIR) Spectroscopy in appendix A to part 63 of this chapter.

(3) ASTM D6348–12 Standard Test Method for Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform Infrared (FTIR) Spectroscopy (incorporated by reference, see § 98.7).

■ 14. Amend § 98.235 by revising paragraph (f) to read as follows:

**§ 98.235 Procedures for estimating missing data.**

\* \* \* \* \*

(f) For the first 6 months of required data collection, facilities that are currently subject to this subpart W and that start up new emission sources or acquire new sources from another facility that were not previously subject to this subpart W may use best engineering estimates for any data related to those newly operating or newly acquired sources that cannot reasonably be measured or obtained according to the requirements of this subpart.

\* \* \* \* \*

■ 15. Amend § 98.236 by:

■ a. Revising the introductory text and paragraph (a) introductory text, paragraphs (a)(1) through (8), (a)(9) introductory text, (a)(9)(iii), (vi), and (xii);

■ b. Adding paragraphs (a)(9)(xiii) and (xiv);

■ c. Revising paragraphs (a)(10), (b), (c), (d), (e), (f)(1) introductory text, (f)(1)(i) through (vii), and (f)(1)(xi) introductory text;

■ d. Adding paragraph (f)(1)(xi)(F);

■ e. Revising paragraph (f)(1)(xii) introductory text;

■ f. Adding paragraph (f)(1)(xii)(F);

■ g. Revising paragraphs (f)(2) introductory text and (f)(2)(i), (iii) through (v), (ix), and (x);

■ h. Adding paragraphs (f)(2)(xi) and (xii);

■ i. Revising paragraphs (g) introductory text, (g)(1) through (3), (g)(5)(i) through (iii), (g)(6) and (10), (h)(1) introductory text, (h)(1)(i), (iii), and (iv), (h)(2) introductory text, (h)(2)(i), (iii), and (iv);

■ j. Removing paragraphs (h)(2)(v) through (vii);

■ k. Revising paragraphs (h)(3) introductory text, (h)(3)(i), (h)(4), (i) introductory text, and (i)(1) introductory text;

■ l. Redesignating paragraphs (i)(1)(i) through (iii) as (i)(1)(ii) through (iv), respectively;

■ m. Adding new paragraph (i)(1)(i);

■ n. Revising paragraph (i)(2), (j), (k) introductory text, (k)(1), (k)(2) introductory text, and (k)(2)(i);

■ o. Removing paragraph (k)(3);

■ p. Revising paragraphs (l)(1) introductory text, (l)(1)(i) through (v), (l)(2), (l)(3) introductory text, (l)(3)(i) through (iv), (l)(4), (m) introductory text, and (m)(1) and (4) through (7);

■ q. Removing paragraph (m)(8);

■ r. Revising paragraphs (n), (o) introductory text, (o)(1), (o)(2)(i)(A) and (B), (o)(2)(ii)(A), (o)(2)(ii)(D)

introductory text, (o)(2)(ii)(E), (o)(5), (p) introductory text, (p)(1), (p)(2)(ii)(A), (p)(2)(ii)(D) introductory text, (p)(2)(ii)(E), (p)(3)(ii) introductory text, (p)(5), (q) introductory text, (q)(1) and (2), (r) introductory text, (r)(1) and (3), (s), (x)(1), (y), (z), (aa) introductory text, (aa)(1) introductory text, (aa)(1)(i) introductory text, and (aa)(1)(i)(B) and (C);

- s. Adding paragraph (aa)(1)(i)(D);
- t. Revising paragraphs (aa)(1)(ii)(D) through (H);
- u. Adding paragraph (aa)(1)(iii) and (iv);
- v. Revising paragraphs (aa)(2), (aa)(3) introductory text, and (aa)(3)(i);
- w. Adding paragraphs (aa)(3)(viii) and (ix);
- x. Revising paragraphs (aa)(4)(i), (aa)(5)(ii), (aa)(6) and (7), and (aa)(8)(ii);
- y. Removing and reserving paragraph (aa)(9);
- z. Revising paragraphs (aa)(10) introductory text and (aa)(10)(ii) and (iv);
- aa. Adding paragraph (aa)(10)(v);
- bb. Revising paragraphs (aa)(11)(ii) through (iv), (bb) introductory text, and (cc); and
- cc. Adding paragraphs (dd) and (ee).

The revisions and additions read as follows:

#### § 98.236 Data reporting requirements.

In addition to the information required by § 98.3(c), each annual report must contain reported emissions and related information as specified in this section. Reporters that use a flow or volume measurement system that corrects to standard conditions as provided in the introductory text in § 98.233 for data elements that are otherwise required to be determined at actual conditions, report gas volumes at standard conditions rather than the gas volumes at actual conditions and report the standard temperature and pressure used by the measurement system rather than the actual temperature and pressure.

(a) The annual report must include the information specified in paragraphs (a)(1) through (10) of this section for each applicable industry segment. The annual report must also include annual emissions totals, in metric tons of each GHG, for each applicable industry segment listed in paragraphs (a)(1) through (10) of this section, and each applicable emission source listed in paragraphs (b) through (z), (dd) and (ee) of this section.

(1) *Onshore petroleum and natural gas production.* For the equipment/activities specified in paragraphs (a)(1)(i) through (xxii) of this section, report the information specified in the applicable paragraphs of this section.

(i) *Natural gas pneumatic devices.*

Report the information specified in paragraph (b) of this section.

(ii) *Natural gas driven pneumatic pumps.* Report the information specified in paragraph (c) of this section.

(iii) *Acid gas removal units and nitrogen removal units.* Report the information specified in paragraph (d) of this section.

(iv) *Dehydrators.* Report the information specified in paragraph (e) of this section.

(v) *Liquids unloading.* Report the information specified in paragraph (f) of this section.

(vi) *Completions and workovers with hydraulic fracturing.* Report the information specified in paragraph (g) of this section.

(vii) *Completions and workovers without hydraulic fracturing.* Report the information specified in paragraph (h) of this section.

(viii) *Blowdown vent stacks.* Report the information specified in paragraph (i) of this section.

(ix) *Hydrocarbon liquids and produced water storage tanks.* Report the information specified in paragraph (j) of this section.

(x) *Well testing.* Report the information specified in paragraph (l) of this section.

(xi) *Associated natural gas.* Report the information specified in paragraph (m) of this section.

(xii) *Flare stacks.* Report the information specified in paragraph (n) of this section.

(xiii) *Centrifugal compressors.* Report the information specified in paragraph (o) of this section.

(xiv) *Reciprocating compressors.* Report the information specified in paragraph (p) of this section.

(xv) *Equipment leak surveys.* Report the information specified in paragraph (q) of this section.

(xvi) *Equipment leaks by population count.* Report the information specified in paragraph (r) of this section.

(xvii) *EOR injection pumps.* Report the information specified in paragraph (w) of this section.

(xviii) *EOR hydrocarbon liquids.* Report the information specified in paragraph (x) of this section.

(xix) *Other large release events.* Report the information specified in paragraph (y) of this section.

(xx) *Combustion equipment.* Report the information specified in paragraph (z) of this section.

(xxi) *Drilling mud degassing.* Report the information specified in paragraph (dd) of this section.

(xxii) *Crankcase vents.* Reporting the information specified in paragraph (ee) of this section.

(2) *Offshore petroleum and natural gas production.* For the equipment/activities specified in paragraphs (a)(2)(i) and (ii) of this section, report the information specified in the applicable paragraphs of this section.

(i) *Offshore petroleum and natural gas production.* Report the information specified in paragraph (s) of this section.

(ii) *Other large release events.* Report the information specified in paragraph (y) of this section.

(3) *Onshore natural gas processing.* For the equipment/activities specified in paragraphs (a)(3)(i) through (xi) of this section, report the information specified in the applicable paragraphs of this section.

(i) *Natural gas pneumatic devices.* Report the information specified in paragraph (b) of this section.

(ii) *Acid gas removal units and nitrogen removal units.* Report the information specified in paragraph (d) of this section.

(iii) *Dehydrators.* Report the information specified in paragraph (e) of this section.

(iv) *Blowdown vent stacks.* Report the information specified in paragraph (i) of this section.

(v) *Hydrocarbon liquids and produced water storage tanks.* Report the information specified in paragraph (j) of this section.

(vi) *Flare stacks.* Report the information specified in paragraph (n) of this section.

(vii) *Centrifugal compressors.* Report the information specified in paragraph (o) of this section.

(viii) *Reciprocating compressors.* Report the information specified in paragraph (p) of this section.

(ix) *Equipment leak surveys.* Report the information specified in paragraph (q) of this section.

(x) *Other large release events.* Report the information specified in paragraph (y) of this section.

(xi) *Crankcase vents.* Report the information specified in paragraph (ee) of this section.

(4) *Onshore natural gas transmission compression.* For the equipment/activities specified in paragraphs (a)(4)(i) through (x) of this section, report the information specified in the applicable paragraphs of this section.

(i) *Natural gas pneumatic devices.* Report the information specified in paragraph (b) of this section.

(ii) *Dehydrators.* Report the information specified in paragraph (e) of this section.

(iii) *Blowdown vent stacks.* Report the information specified in paragraph (i) of this section.

(iv) *Condensate storage tanks*. Report the information specified in paragraph (k) of this section.

(v) *Flare stacks*. Report the information specified in paragraph (n) of this section.

(vi) *Centrifugal compressors*. Report the information specified in paragraph (o) of this section.

(vii) *Reciprocating compressors*. Report the information specified in paragraph (p) of this section.

(viii) *Equipment leak surveys*. Report the information specified in paragraph (q) of this section.

(ix) *Other large release events*. Report the information specified in paragraph (y) of this section.

(x) *Crankcase vents*. Reporting the information specified in paragraph (ee) of this section.

(5) *Underground natural gas storage*. For the equipment/activities specified in paragraphs (a)(5)(i) through (xi) of this section, report the information specified in the applicable paragraphs of this section.

(i) *Natural gas pneumatic devices*. Report the information specified in paragraph (b) of this section.

(ii) *Dehydrators*. Report the information specified in paragraph (e) of this section.

(iii) *Blowdown vent stacks*. Report the information specified in paragraph (i) of this section.

(iv) *Condensate storage tanks*. Report the information specified in paragraph (k) of this section.

(v) *Flare stacks*. Report the information specified in paragraph (n) of this section.

(vi) *Centrifugal compressors*. Report the information specified in paragraph (o) of this section.

(vii) *Reciprocating compressors*. Report the information specified in paragraph (p) of this section.

(viii) *Equipment leak surveys*. Report the information specified in paragraph (q) of this section.

(ix) *Equipment leaks by population count*. Report the information specified in paragraph (r) of this section.

(x) *Other large release events*. Report the information specified in paragraph (y) of this section.

(xi) *Crankcase vents*. Reporting the information specified in paragraph (ee) of this section.

(6) *LNG storage*. For the equipment/activities specified in paragraphs (a)(6)(i) through (ix) of this section, report the information specified in the applicable paragraphs of this section.

(i) *Acid gas removal units and nitrogen removal units*. Report the information specified in paragraph (d) of this section.

(ii) *Blowdown vent stacks*. Report the information specified in paragraph (i) of this section.

(iii) *Flare stacks*. Report the information specified in paragraph (n) of this section.

(iv) *Centrifugal compressors*. Report the information specified in paragraph (o) of this section.

(v) *Reciprocating compressors*. Report the information specified in paragraph (p) of this section.

(vi) *Equipment leak surveys*. Report the information specified in paragraph (q) of this section.

(vii) *Equipment leaks by population count*. Report the information specified in paragraph (r) of this section.

(viii) *Other large release events*. Report the information specified in paragraph (y) of this section.

(ix) *Crankcase vents*. Reporting the information specified in paragraph (ee) of this section.

(7) *LNG import and export equipment*. For the equipment/activities specified in paragraphs (a)(7)(i) through (ix) of this section, report the information specified in the applicable paragraphs of this section.

(i) *Acid gas removal units and nitrogen removal units*. Report the information specified in paragraph (d) of this section.

(ii) *Blowdown vent stacks*. Report the information specified in paragraph (i) of this section.

(iii) *Flare stacks*. Report the information specified in paragraph (n) of this section.

(iv) *Centrifugal compressors*. Report the information specified in paragraph (o) of this section.

(v) *Reciprocating compressors*. Report the information specified in paragraph (p) of this section.

(vi) *Equipment leak surveys*. Report the information specified in paragraph (q) of this section.

(vii) *Equipment leaks by population count*. Report the information specified in paragraph (r) of this section.

(viii) *Other large release events*. Report the information specified in paragraph (y) of this section.

(ix) *Crankcase vents*. Reporting the information specified in paragraph (ee) of this section.

(8) *Natural gas distribution*. For the equipment/activities specified in paragraphs (a)(8)(i) through (vii) of this section, report the information specified in the applicable paragraphs of this section.

(i) *Natural gas pneumatic devices*. Report the information specified in paragraph (b) of this section.

(ii) *Blowdown vent stacks*. Report the information specified in paragraph (i) of this section.

(iii) *Equipment leak surveys*. Report the information specified in paragraph (q) of this section.

(iv) *Equipment leaks by population count*. Report the information specified in paragraph (r) of this section.

(v) *Other large release events*. Report the information specified in paragraph (y) of this section.

(vi) *Combustion equipment*. Report the information specified in paragraph (z) of this section.

(vii) *Crankcase vents*. Reporting the information specified in paragraph (ee) of this section.

(9) *Onshore petroleum and natural gas gathering and boosting*. For the equipment/activities specified in paragraphs (a)(9)(i) through (xiv) of this section, report the information specified in the applicable paragraphs of this section.

\* \* \* \* \*

(iii) *Acid gas removal units and nitrogen removal units*. Report the information specified in paragraph (d) of this section.

\* \* \* \* \*

(vi) *Hydrocarbon liquids and produced water storage tanks*. Report the information specified in paragraph (j) of this section.

\* \* \* \* \*

(xii) *Other large release events*. Report the information specified in paragraph (y) of this section.

(xiii) *Combustion equipment*. Report the information specified in paragraph (z) of this section.

(xiv) *Crankcase vents*. Reporting the information specified in paragraph (ee) of this section.

(10) *Onshore natural gas transmission pipeline*. For the equipment/activities specified in paragraphs (a)(10)(i) through (iii) of this section, report the information specified in the applicable paragraphs of this section.

(i) *Blowdown vent stacks*. Report the information specified in paragraph (i) of this section.

(ii) *Equipment leaks by population count*. Report the information specified in paragraph (r) of this section.

(iii) *Other large release events*. Report the information specified in paragraph (y) of this section.

(b) *Natural gas pneumatic devices*. You must indicate whether the facility contains the following types of equipment: Continuous high bleed natural gas pneumatic devices, continuous low bleed natural gas pneumatic devices, and intermittent bleed natural gas pneumatic devices. If the facility contains any continuous high bleed natural gas pneumatic devices, continuous low bleed natural

gas pneumatic devices, or intermittent bleed natural gas pneumatic devices, then you must report the information specified in paragraphs (b)(1) through (5) of this section, as applicable. You must report the information specified in paragraphs (b)(1) through (5) of this section, as applicable, for each well-pad (for onshore petroleum and natural gas production), each gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for all other applicable industry segments).

(1) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(2) The number of natural gas pneumatic devices as specified in paragraphs (b)(2)(i) through (vii) of this section, as applicable. If a natural gas pneumatic device was vented directly to the atmosphere for part of the year and routed to a flare, combustion unit, or vapor recovery system during another part of the year, then include the device in each of the applicable counts specified in paragraphs (b)(2)(ii) through (vii) of this section.

(i) The total number of natural gas pneumatic devices of each type (continuous low bleed, continuous high bleed, and intermittent bleed), determined according to § 98.233(a)(4) through (6).

(ii) The total number of natural gas pneumatic devices of each type (continuous low bleed, continuous high bleed, and intermittent bleed) vented directly to the atmosphere, determined according to § 98.233(a)(4) through (6).

(iii) The total number of natural gas pneumatic devices of each type (continuous low bleed, continuous high bleed, and intermittent bleed) routed to a flare, combustion, or vapor recovery system.

(iv) The total number of natural gas pneumatic devices of each type (continuous low bleed, continuous high bleed, and intermittent bleed) vented directly to the atmosphere for which emissions were calculated using Calculation Method 1 according to § 98.233(a)(1).

(v) The total number of natural gas pneumatic devices of each type (continuous low bleed, continuous high bleed, and intermittent bleed) vented directly to the atmosphere for which emissions were calculated using Calculation Method 2 according to § 98.233(a)(2).

(vi) The total number of natural gas pneumatic devices of each type (continuous low bleed, continuous high

bleed, and intermittent bleed) vented directly to the atmosphere for which emissions were calculated using Calculation Method 3 according to § 98.233(a)(3).

(vii) If the reported values in paragraphs (b)(2)(i) through (vi) of this section are estimated values determined according to § 98.233(a)(5), then you must report the information specified in paragraphs (b)(2)(vii)(A) through (C) of this section.

(A) The number of natural gas pneumatic devices of each type reported in paragraphs (b)(2)(i) through (vi) of this section that are counted.

(B) The number of natural gas pneumatic devices of each type reported in paragraphs (b)(2)(i) through (vi) of this section that are estimated (not counted).

(C) Whether the calendar year is the first calendar year of reporting or the second calendar year of reporting.

(3) For natural gas pneumatic devices for which emissions were calculated using Calculation Method 1 according to § 98.233(a)(1), report the information in paragraphs (b)(3)(i) through (vi) of this section for each measurement location.

(i) Unique measurement location identification number.

(ii) Type of flow monitor (volumetric flow monitor; mass flow monitor).

(iii) Number of natural gas pneumatic devices of each type (continuous low bleed, continuous high bleed, and intermittent bleed) downstream of the flow monitor.

(iv) An indication of whether a natural gas driven pneumatic pump is also downstream of the flow monitor.

(v) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, for the natural gas pneumatic devices calculated according to § 98.233(a)(1) for the measurement location.

(vi) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, for the natural gas pneumatic devices calculated according to § 98.233(a)(1) for the measurement location.

(4) If you used Calculation Method 2 according to § 98.233(a)(2), report the information in paragraphs (b)(4)(i) through (vii) of this section, as applicable.

(i) The number of years used in the current measurement cycle.

(ii) For onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities:

(A) Indicate whether the emissions from the natural gas pneumatic devices at this well-pad or gathering and boosting site, as applicable, were measured during the reporting year or if

the emissions were calculated using Equation W-1B.

(B) If the natural gas pneumatic devices at this well-pad or gathering and boosting site, as applicable, were measured during the reporting year, indicate the primary measurement method used (temporary flow meter, calibrated bagging, or high volume sampler).

(C) If the emissions from natural gas pneumatic devices at this well-pad or gathering and boosting site, as applicable, were calculated using Equation W-1B, report the following information for each type of natural gas pneumatic device (continuous low bleed, continuous high bleed, and intermittent bleed).

(1) The value of the emissions factor for the reporting year as calculated using Equation W-1A (in scf/hour/device).

(2) The total number of natural gas pneumatic devices measured across all years upon which the emission factor is based (*i.e.*, the cumulative value of “ $\sum_{y=1}^n Count_{t,y}$ ” in Equation W-1A of this subpart).

(3) Total number of natural gas pneumatic devices that vent directly to the atmosphere and that were not directly measured according to the requirements in § 98.233(a)(1) or (a)(2)(iii) (*i.e.*, “Count<sub>t</sub>” in Equation W-1B).

(4) The average estimated number of hours in the operating year the natural gas pneumatic devices were in service (*i.e.*, supplied with natural gas) (“T<sub>t</sub>” in Equation W-1B of this subpart).

(iii) For onshore natural gas processing facilities, onshore natural gas transmission compression facilities, underground natural gas storage facilities, and natural gas distribution facilities:

(A) Indicate the primary measurement method used (temporary flow meter, calibrated bagging, or high volume sampler) to measure the emissions from natural gas pneumatic devices at this facility.

(B) Indicate whether the emissions from any natural gas pneumatic devices at this facility were calculated using Equation W-1B.

(C) If the emissions from any natural gas pneumatic devices at this facility were calculated using Equation W-1B, report the following information for each type of natural gas pneumatic device (continuous low bleed, continuous high bleed, and intermittent bleed).

(1) The value of the emission factor for the reporting year as calculated using Equation W-1A (in scf/hour/device).

(2) The total number of natural gas pneumatic devices measured across all years upon which the emission factor is based (*i.e.*, the cumulative value of “ $\Sigma_{y=1}^n \text{Count}_{t,y}$ ” in Equation W-1A of this subpart).

(3) Total number of natural gas pneumatic devices that vent directly to the atmosphere and that were not directly measured according to the requirements in § 98.233(a)(1) or (a)(2)(iii) (*i.e.*, “Count<sub>t</sub>” in Equation W-1B of this subpart).

(4) The average estimated number of hours in the operating year the natural gas pneumatic devices were in service (*i.e.*, supplied with natural gas) (“T<sub>t</sub>” in Equation W-1B of this subpart).

(iv) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, cumulative by type of natural gas pneumatic device for which emissions were directly measured and calculated as specified in § 98.233(a)(2)(iii) through (viii). Enter 0 if the natural gas pneumatic devices at this well-pad or gathering and boosting were not monitored during the reporting year.

(v) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, cumulative by type of natural gas pneumatic device for which emissions were directly measured and calculated as specified in § 98.233(a)(2)(iii) through (viii). Enter 0 if the devices at this well-pad or gathering and boosting were not monitored during the reporting year.

(vi) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, cumulative by type of natural gas pneumatic device for which emissions were calculated according to § 98.233(a)(2)(ix). Enter 0 if all devices at this well-pad, gathering and boosting site, or facility were monitored during the reporting year.

(vii) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, cumulative by type of natural gas pneumatic device for which emissions were calculated according to § 98.233(a)(2)(ix). Enter 0 if all devices at this well-pad, gathering and boosting site, or facility were monitored during the reporting year.

(5) If you used Calculation Method 3 according to § 98.233(a)(3), report the information in paragraphs (b)(5)(i) through (vi) of this section.

(i) For continuous high bleed and continuous low bleed natural gas pneumatic devices:

(A) Indicate whether you measured emissions according to § 98.233(a)(3)(i)(A) or used default emission factors according to § 98.233(a)(3)(i)(B) to calculate emissions from your continuous high bleed and continuous low bleed natural gas pneumatic devices vented directly to the atmosphere at this well-pad,

gathering and boosting site, or facility, as applicable.

(B) If measurements were made according to § 98.233(a)(3)(i)(A), indicate the primary measurement method used (temporary flow meter, calibrated bagging, or high volume sampler).

(C) If default emission factors were used according to § 98.233(a)(3)(i)(B) to calculate emissions, report the following information for each type of applicable natural gas pneumatic device (continuous low bleed and continuous high bleed).

(1) Total number of natural gas pneumatic devices that vent directly to the atmosphere and that were not directly measured according to the requirements in § 98.233(a)(1) or (a)(2)(iii) (“Count<sub>t</sub>” in Equation W-1B of this subpart).

(2) The average estimated number of hours in the operating year that the natural gas pneumatic devices were in service (*i.e.*, supplied with natural gas) (“T<sub>t</sub>” in Equation W-1B of this subpart).

(ii) The number of years used in the current monitoring cycle for intermittent bleed pneumatic devices.

(iii) For intermittent bleed natural gas pneumatic devices at onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting facilities:

(A) Indicate whether the emissions from intermittent bleed natural gas pneumatic devices at this well-pad or gathering and boosting site, as applicable, were monitored during the reporting year and calculated using Equation W-1C of this subpart or if the emissions were calculated using Equation W-1D of this subpart.

(B) If the natural gas pneumatic devices at this well-pad or gathering and boosting site, as applicable, were monitored during the reporting year, indicate the primary monitoring method used (OGI; Method 21 at 10,000 ppm; Method 21 at 500 ppm; or infrared laser beam) and the number of complete monitoring surveys conducted at the well-pad or gathering and boosting site.

(C) If the emissions from intermittent bleed natural gas pneumatic devices at this well-pad or gathering and boosting site, as applicable, were calculated using Equation W-1C of this subpart, report the following information:

(1) The total number of intermittent bleed natural gas pneumatic devices detected as malfunctioning in any pneumatic device monitoring survey during the calendar year (“x” in Equation W-1C of this subpart).

(2) Average time the intermittent bleed natural gas pneumatic devices were in service (*i.e.*, supplied with

natural gas) and assumed to be malfunctioning in the calendar year (average value of “T<sub>m,z</sub>” in Equation W-1C of this subpart).

(3) The total number of intermittent bleed natural gas pneumatic devices that were monitored but were not detected as malfunctioning in any pneumatic device monitoring survey during the calendar year (“Count” in Equation W-1C of this subpart).

(4) Average time the intermittent bleed natural gas pneumatic devices that were monitored but were not detected as malfunctioning in any pneumatic device monitoring survey during the calendar year were in service (*i.e.*, supplied with natural gas) during the calendar year (“T<sub>avg</sub>” in Equation W-1C of this subpart).

(D) If the emissions from intermittent bleed natural gas pneumatic devices at this well-pad or gathering and boosting site, as applicable, were calculated using Equation W-1D of this subpart, report the following information:

(1) Total number of intermittent bleed natural gas pneumatic devices that were not surveyed during the year at the well-pad or gathering and boosting site (“Count<sub>c</sub>” in Equation W-1D of this subpart as applied to the well-pad or gathering and boosting site).

(2) Total number the number of unique intermittent bleed natural gas pneumatic devices vented directly to the atmosphere facility-wide that were monitored during the reporting year and identified as malfunctioning as determined according to § 98.233(a)(3)(iv)(B) (“Count<sub>B</sub>” in Equation W-1D of this subpart).

(3) Total number the number of unique intermittent bleed natural gas pneumatic devices vented directly to the atmosphere facility-wide that were monitored during the reporting year as determined according to § 98.233(a)(3)(iv)(A) (“Count<sub>A</sub>” in Equation W-1D of this subpart).

(4) Average time, in hours, the intermittent bleed natural gas pneumatic devices that were not monitored but during the calendar year were in service (*i.e.*, supplied with natural gas) during the calendar year (“T<sub>avg</sub>” in Equation W-1D of this subpart).

(iv) For intermittent bleed natural gas pneumatic devices at onshore natural gas processing facilities, onshore natural gas transmission compression facilities, underground natural gas storage facilities, and natural gas distribution facilities:

(A) Indicate the primary monitoring method used (OGI; Method 21 at 10,000 ppm; Method 21 at 500 ppm, or infrared laser beam) and the number of complete

monitoring surveys conducted at the facility.

(B) The total number of intermittent bleed natural gas pneumatic devices detected as malfunctioning in any pneumatic device monitoring survey during the calendar year (“x” in Equation W–1C of this subpart).

(C) Average time the intermittent bleed natural gas pneumatic devices were in service (*i.e.*, supplied with natural gas) and assumed to be malfunctioning in the calendar year (average value of “T<sub>m,z</sub>” in Equation W–1C of this subpart).

(D) The total number of intermittent bleed natural gas pneumatic devices that were monitored but were not detected as malfunctioning in any pneumatic device monitoring survey during the calendar year (“Count” in Equation W–1C of this subpart).

(E) Average time the intermittent bleed natural gas pneumatic devices that were monitored but were not detected as malfunctioning in any pneumatic device monitoring survey during the calendar year were in service (*i.e.*, supplied with natural gas) during the calendar year (“T<sub>avg</sub>” in Equation W–1C of this subpart).

(F) If the emissions from some of the intermittent bleed natural gas pneumatic devices at this facility were calculated using Equation W–1D of this subpart, report the following information:

(1) Total number of intermittent bleed natural gas pneumatic devices that were not surveyed during the year at the facility (“Count<sub>c</sub>” in Equation W–1D of this subpart).

(2) Total number of unique intermittent bleed natural gas pneumatic devices vented directly to the atmosphere facility-wide that were monitored during the reporting year and identified as malfunctioning as determined according to § 98.233(a)(3)(iv)(B) (“Count<sub>B</sub>” in Equation W–1D of this subpart).

(3) Total number the number of unique intermittent bleed natural gas pneumatic devices vented directly to the atmosphere facility-wide that were monitored during the reporting year as determined according to § 98.233(a)(3)(iv)(A) (“Count<sub>A</sub>” in Equation W–1D of this subpart).

(4) Average time, in hours, the intermittent bleed natural gas pneumatic devices that were not monitored but during the calendar year were in service (*i.e.*, supplied with natural gas) during the calendar year (“T<sub>avg</sub>” in Equation W–1D of this subpart).

(v) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, for each type of natural gas

pneumatic device calculated according to Calculation Method 3 in § 98.233(a)(3).

(vi) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, for each type of natural gas pneumatic device calculated according to Calculation Method 3 in § 98.233(a)(3).

(c) *Natural gas driven pneumatic pumps.* You must indicate whether the facility has any natural gas driven pneumatic pumps. If the facility contains any natural gas driven pneumatic pumps, then you must report the information specified in paragraphs (c)(1) through (7) of this section. If a pump was vented directly to the atmosphere for part of the year and routed to a flare, combustion, or vapor recovery system during another part of the year, then include the pump in each of the counts specified in paragraphs (c)(2) through (4) of this section. You must report the information specified in paragraphs (c)(1) through (7) of this section, as applicable, for each well-pad (for onshore petroleum and natural gas production) and each gathering and boosting site (for onshore petroleum and natural gas gathering and boosting).

(1) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(2) The number of natural gas driven pneumatic pumps as specified in paragraphs (c)(2)(i) through (vi) of this section, as applicable. If a natural gas driven pneumatic pump was vented directly to the atmosphere for part of the year and routed to a flare, combustion unit, or vapor recovery system during another part of the year, then include the device in each of the applicable counts specified in paragraphs (c)(2)(ii) through (vi) of this section.

(i) Count of natural gas driven pneumatic pumps.

(ii) Count of natural gas driven pneumatic pumps vented directly to the atmosphere at any point during the year.

(iii) Count of natural gas driven pneumatic pumps routed to a flare, combustion, or vapor recovery system at any point during the year.

(iv) Count of natural gas driven pneumatic pumps vented directly to the atmosphere for which emissions were calculated using Calculation Method 1 according to § 98.233(c)(1).

(v) Count of natural gas driven pneumatic pumps vented directly to the atmosphere for which emissions were calculated using Calculation Method 2 according to § 98.233(c)(2).

(vi) Count of natural gas driven pneumatic pumps vented directly to the

atmosphere for which emissions were calculated using Calculation Method 3 according to § 98.233(c)(3).

(3) For natural gas driven pneumatic pumps for which emissions were calculated using Calculation Method 1 according to § 98.233(c)(1), report the information in paragraphs (c)(3)(i) through (vi) of this section for each measurement location.

(i) Unique measurement location identification number.

(ii) Type of flow monitor (volumetric flow monitor; mass flow monitor).

(iii) Number of natural gas driven pneumatic pumps downstream of the flow monitor.

(iv) An indication of whether any natural gas pneumatic devices are also downstream of the monitoring location.

(v) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, for the pneumatic pump(s) calculated according to § 98.233(c)(1) for the measurement location.

(vi) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, for the pneumatic pump(s) calculated according to § 98.233(c)(1) for the measurement location.

(4) If you used Calculation Method 2 according to § 98.233(c)(2), report the information in paragraphs (c)(4)(i) through (vi) of this section, as applicable.

(i) The number of years used in the current measurement cycle.

(ii) Indicate whether the emissions from the pneumatic pumps at this well-pad or gathering and boosting site, as applicable, were measured during the reporting year or if the emissions were calculated using Equation W–2C.

(A) If the pneumatic pumps at this well-pad or gathering and boosting site, as applicable, were measured during the reporting year, indicate the primary measurement method used (temporary flow meter, calibrated bagging, or high volume sampler).

(B) If the emissions from pneumatic pumps at this well-pad or gathering and boosting site, as applicable, were calculated using Equation W–2C, report the following information:

(1) The value of the emissions factor for the reporting year as calculated using Equation W–2B (in scf/hour/pump).

(2) The total number of pumps measured across all years upon which the emission factor is based (*i.e.*, the cumulative value of “ $\sum_{y=1}^n \text{Count}_y$ ” term used in Equation W–2B).

(3) Total number of natural gas driven pneumatic pumps that vent directly to the atmosphere and that were not directly measured according to the requirements in § 98.233(c)(1) or (c)(2)(iii) (*i.e.*, “Count” in Equation W–2B).

(4) The average estimated number of hours in the operating year the pumps were pumping liquid (*i.e.*, “T” in Equation W–2C).

(iii) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, cumulative for all natural gas driven pneumatic pumps for which emissions were directly measured and calculated as specified in § 98.233(c)(2)(ii) through (vi). Enter 0 if emissions from none of the natural gas driven pneumatic pumps at this well-pad or gathering and boosting site were measured during the reporting year.

(iv) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, cumulative for all natural gas driven pneumatic pumps for which emissions were directly measured and calculated as specified in § 98.233(c)(2)(ii) through (vi). Enter 0 if emissions from none of the natural gas driven pneumatic pumps at this well-pad or gathering and boosting site were measured during the reporting year.

(v) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, cumulative for all natural gas driven pneumatic pumps for which emissions were calculated according to § 98.233(c)(2)(vii)(B) through (D). Enter 0 if emissions from all natural gas driven pneumatic pumps at this well-pad or gathering and boosting site were measured during the reporting year.

(vi) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, cumulative for all natural gas driven pneumatic pumps for which emissions were calculated according to § 98.233(c)(2)(vii)(B) through (D). Enter 0 if emissions from all natural gas driven pneumatic pumps at this well-pad or gathering and boosting site were measured during the reporting year.

(5) If you used Calculation Method 3 according to § 98.233(c)(3), report the information in paragraphs (c)(5)(i) through (iii) of this section for the natural gas driven pneumatic pumps subject to Calculation Method 3.

(i) Average estimated number of hours in the calendar year that natural gas driven pneumatic pumps that vented directly to atmosphere were pumping liquid (“T” in Equation W–2C of this subpart).

(ii) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, for all natural gas driven pneumatic pumps vented directly to the atmosphere combined, calculated according to § 98.233(c)(3).

(iii) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, for all natural gas driven pneumatic pumps vented directly to the atmosphere combined, calculated according to § 98.233(c)(3).

(d) *Acid gas removal units and nitrogen removal units.* You must indicate whether your facility has any acid gas removal units or nitrogen removal units that vent directly to the

atmosphere, to a flare or engine, or to a sulfur recovery plant. For any acid gas removal units or nitrogen removal units that vent directly to the atmosphere or to a sulfur recovery plant, you must report the information specified in paragraphs (d)(1) and (2) of this section. For acid gas removal units or nitrogen removal units that were routed to a flare or routed to an engine for the entire year, you must only report the information specified in paragraph (d)(1)(i) through (iv) and (x) of this section.

(1) You must report the information specified in paragraphs (d)(1)(i) through (x) of this section for each acid gas removal unit or nitrogen removal unit, as applicable.

(i) A unique name or ID number for the acid gas removal unit or nitrogen removal unit. For the onshore petroleum and natural gas production and the onshore petroleum and natural gas gathering and boosting industry segments, a different name or ID may be used for a single acid gas removal unit or nitrogen removal unit for each location it operates at in a given year.

(ii) Whether the acid gas removal unit or nitrogen removal unit vent was routed to a flare, and if so, whether it was routed for the entire year or only part of the year.

(iii) Whether the acid gas removal unit or nitrogen removal unit vent was routed to combustion, and if so, whether it was routed for the entire year or only part of the year.

(iv) Total feed rate entering the acid gas removal unit or nitrogen removal unit, using a meter or engineering estimate based on process knowledge or best available data, in million standard cubic feet per year.

(v) If the acid gas removal unit or nitrogen removal unit was routed to a flare or to combustion for only part of the year, the feed rate entering the acid gas removal unit or nitrogen removal unit during the portion of the year that the emissions were vented directly to the atmosphere, using a meter or engineering estimate based on process knowledge or best available data, in million standard cubic feet per year.

(vi) The calculation method used to calculate CO<sub>2</sub> and CH<sub>4</sub> emissions from the acid gas removal unit or to calculate CH<sub>4</sub> emissions from the nitrogen removal unit, as specified in § 98.233(d).

(vii) Whether any CO<sub>2</sub> emissions from the acid gas removal unit are recovered and transferred outside the facility, as specified in § 98.233(d)(11). If any CO<sub>2</sub> emissions from the acid gas removal unit were recovered and transferred outside the facility, then you must report the annual quantity of CO<sub>2</sub>, in

metric tons CO<sub>2</sub>, that was recovered and transferred outside the facility under subpart PP of this part.

(viii) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, vented directly to the atmosphere from the acid gas removal unit, calculated using any one of the calculation methods specified in § 98.233(d) and as specified in § 98.233(d)(10) and (11).

(ix) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, vented directly to the atmosphere from the acid gas removal unit or nitrogen removal unit, calculated using any one of the calculation methods specified in § 98.233(d) and as specified in § 98.233(d)(10) and (11).

(x) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(2) You must report information specified in paragraphs (d)(2)(i) through (iii) of this section, applicable to the calculation method reported in paragraph (d)(1)(iii) of this section, for each acid gas removal unit or nitrogen removal unit.

(i) If you used Calculation Method 1 or Calculation Method 2 as specified in § 98.233(d) to calculate CO<sub>2</sub> emissions from the acid gas removal unit and Calculation Method 2 as specified in § 98.233(d) to calculate CH<sub>4</sub> emissions from the acid gas removal unit or nitrogen removal unit, then you must report the information specified in paragraphs (d)(2)(i)(A) through (C) of this section, as applicable.

(A) Annual average volumetric fraction of CO<sub>2</sub> in the vent gas exiting the acid gas removal unit.

(B) Annual average volumetric fraction of CH<sub>4</sub> in the vent gas exiting the acid gas removal unit or nitrogen removal unit.

(C) Annual volume of gas vented from the acid gas removal unit or nitrogen removal unit, in cubic feet.

(D) The temperature that corresponds to the reported annual volume of gas vented from the unit, in degrees Fahrenheit. If the annual volume of gas vented is reported in actual cubic feet, report the actual temperature; if it is reported in standard cubic feet, report 60 °F.

(E) The pressure that corresponds to the reported annual volume of gas vented from the unit, in pounds per square inch absolute. If the annual volume of gas vented is reported in actual cubic feet, report the actual pressure; if it is reported in standard cubic feet, report 14.7 psia.

(ii) If you used Calculation Method 3 as specified in § 98.233(d) to calculate

CO<sub>2</sub> or CH<sub>4</sub> emissions from the acid gas removal unit or nitrogen removal unit, then you must report the information specified in paragraphs (d)(2)(ii)(A) through (M) of this section, as applicable depending on the equation used.

(A) Indicate which equation was used (Equation W-4A, W-4B, or W-4C).

(B) Annual average volumetric fraction of CO<sub>2</sub> in the natural gas flowing out of the acid gas removal unit, as specified in Equation W-4A, Equation W-4B, or Equation W-4C of this subpart.

(C) Annual average volumetric fraction of CO<sub>2</sub> content in natural gas flowing into the acid gas removal unit, as specified in Equation W-4A, Equation W-4B, or Equation W-4C of this subpart.

(D) Annual average volumetric fraction of CO<sub>2</sub> in the vent gas exiting the acid gas removal unit, as specified in Equation W-4A or Equation W-4B of this subpart.

(E) Annual average volumetric fraction of CH<sub>4</sub> in the natural gas flowing out of the acid gas removal unit or nitrogen removal unit, as specified in Equation W-4A, Equation W-4B, or Equation W-4C of this subpart.

(F) Annual average volumetric fraction of CH<sub>4</sub> content in natural gas flowing into the acid gas removal unit or nitrogen removal unit, as specified in Equation W-4A, Equation W-4B, or Equation W-4C of this subpart.

(G) Annual average volumetric fraction of CH<sub>4</sub> in the vent gas exiting the acid gas removal unit or nitrogen removal unit, as specified in Equation W-4A or Equation W-4B of this subpart.

(H) The total annual volume of natural gas flow into the acid gas removal unit or nitrogen removal unit, as specified in Equation W-4A or Equation W-4C of this subpart, in cubic feet at actual conditions.

(I) The temperature that corresponds to the reported total annual volume of natural gas flow into the acid gas removal unit or nitrogen removal unit, as specified in Equation W-4A or Equation W-4C of this subpart, in degrees Fahrenheit. If the total annual volume of natural gas flow is reported in actual cubic feet, report the actual temperature; if it is reported in standard cubic feet, report 60 °F.

(J) The pressure that corresponds to the reported total annual volume of natural gas flow into the acid gas removal unit or nitrogen removal unit, as specified in Equation W-4A or Equation W-4C of this subpart, in pounds per square inch absolute. If the total annual volume of natural gas flow

is reported in actual cubic feet, report the actual pressure; if it is reported in standard cubic feet, report 14.7 psia.

(K) The total annual volume of natural gas flow out of the acid gas removal unit or nitrogen removal unit, as specified in Equation W-4B or Equation W-4C of this subpart, in cubic feet at actual conditions.

(L) The temperature that corresponds to the reported total annual volume of natural gas flow out of the acid gas removal unit or nitrogen removal unit, as specified in Equation W-4B or Equation W-4C of this subpart, in degrees Fahrenheit. If the total annual volume of natural gas flow is reported in actual cubic feet, report the actual temperature; if it is reported in standard cubic feet, report 60 °F.

(M) The pressure that corresponds to the reported total annual volume of natural gas flow out of the acid gas removal unit or nitrogen removal unit, as specified in Equation W-4B or Equation W-4C of this subpart, in pounds per square inch absolute. If the total annual volume of natural gas flow is reported in actual cubic feet, report the actual pressure; if it is reported in standard cubic feet, report 14.7 psia.

(iii) If you used Calculation Method 4 as specified in § 98.233(d) to calculate CO<sub>2</sub> or CH<sub>4</sub> emissions from the acid gas removal unit or nitrogen removal unit, then you must report the information specified in paragraphs (d)(2)(iii)(A) through (N) of this section, as applicable to the simulation software package used.

(A) The name of the simulation software package used.

(B) Annual average natural gas feed temperature, in degrees Fahrenheit.

(C) Annual average natural gas feed pressure, in pounds per square inch.

(D) Annual average natural gas feed flow rate, in standard cubic feet per minute.

(E) Annual average acid gas content of the feed natural gas, in mole percent.

(F) Annual average acid gas content of the outlet natural gas, in mole percent.

(G) Annual average methane content of the feed natural gas, in mole percent.

(H) Annual average methane content of the outlet natural gas, in mole percent.

(I) Total annual unit operating hours, excluding downtime for maintenance or standby, in hours per year.

(J) Annual average exit temperature of the natural gas, in degrees Fahrenheit.

(K) Annual average solvent pressure, in pounds per square inch.

(L) Annual average solvent temperature, in degrees Fahrenheit.

(M) Annual average solvent circulation rate, in gallons per minute.

(N) Solvent type used for the majority of the year, from one of the following

options: Selexol™, Rectisol®, Purisol™, Fluor Solvent, Benfield™, 20 wt% MEA, 30 wt% MEA, 40 wt% MDEA, 50 wt% MDEA, and other (specify).

(e) *Dehydrators.* You must indicate whether your facility contains any of the following equipment: Glycol dehydrators for which you calculated emissions using Calculation Method 1 according to § 98.233(e)(1), glycol dehydrators for which you calculated emissions using Calculation Method 2 according to § 98.233(e)(2), and dehydrators that use desiccant. If your facility contains any of the equipment listed in this paragraph (e), then you must report the applicable information in paragraphs (e)(1) through (3) of this section.

(1) For each glycol dehydrator for which you calculated emissions using Calculation Method 1 (as specified in § 98.233(e)(1)), you must report the information specified in paragraphs (e)(1)(i) through (xviii) of this section for the dehydrator.

(i) A unique name or ID number for the dehydrator. For the onshore petroleum and natural gas production and the onshore petroleum and natural gas gathering and boosting industry segments, a different name or ID may be used for a single dehydrator for each location it operates at in a given year.

(ii) Annual average dehydrator feed natural gas flow rate, in million standard cubic feet per day.

(iii) Annual average dehydrator feed natural gas water content, in pounds per million standard cubic feet.

(iv) Annual average dehydrator outlet natural gas water content, in pounds per million standard cubic feet.

(v) Dehydrator absorbent circulation pump type (e.g., natural gas pneumatic, air pneumatic, or electric).

(vi) Annual average dehydrator absorbent circulation rate, in gallons per minute.

(vii) Type of absorbent (e.g., triethylene glycol (TEG), diethylene glycol (DEG), or ethylene glycol (EG)).

(viii) Whether stripping gas is used in dehydrator.

(ix) Whether a flash tank separator is used in dehydrator.

(x) Total time the dehydrator is operating during the year, in hours.

(xi) Annual average temperature of the wet natural gas at the absorber inlet, in degrees Fahrenheit.

(xii) Annual average pressure of the wet natural gas at the absorber inlet, in pounds per square inch gauge.

(xiii) Annual average mole fraction of CH<sub>4</sub> in wet natural gas.

(xiv) Annual average mole fraction of CO<sub>2</sub> in wet natural gas.

(xv) Well-pad ID (for the onshore petroleum and natural gas production

industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).(xvi) If a flash tank separator is used in the dehydrator, then you must report the information specified in paragraphs (e)(1)(xvi)(A) through (F) of this section for the emissions from the flash tank vent, as applicable. If flash tank emissions were routed to a regenerator firebox/fire tubes, then you must also report the information specified in paragraphs (e)(1)(xvi)(G) through (I) of this section for the combusted emissions from the flash tank vent.

(A) Whether any flash gas emissions are vented directly to the atmosphere, routed to a flare, routed to the regenerator firebox/fire tubes, routed to a vapor recovery system, used as stripping gas, or any combination.

(B) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, from the flash tank when not routed to a flare or regenerator firebox/fire tubes, calculated according to § 98.233(e)(1) and, if applicable, (e)(4).

(C) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, from the flash tank when not routed to a flare or regenerator firebox/fire tubes, calculated according to § 98.233(e)(1) and, if applicable, (e)(4).

(D) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, that resulted from routing flash gas to a regenerator firebox/fire tubes, calculated according to § 98.233(e)(5).

(E) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, that resulted from routing flash gas to a regenerator firebox/fire tubes, calculated according to § 98.233(e)(5).

(F) Annual N<sub>2</sub>O emissions, in metric tons N<sub>2</sub>O, that resulted from routing flash gas to a regenerator firebox/fire tubes, calculated according to § 98.233(e)(5).

(G) Indicate whether the regenerator firebox/fire tubes was monitored with a CEMS. If a CEMS was used, then paragraphs (e)(1)(xvi)(E) and (F) and (e)(1)(xvi)(H) and (I) of this section do not apply.

(H) Total volume of gas from the flash tank to a regenerator firebox/fire tubes, in standard cubic feet.

(I) Average combustion efficiency, expressed as a fraction of gas from the flash tank combusted by a burning regenerator firebox/fire tubes.

(xvii) Report the information specified in paragraphs (e)(1)(xvii)(A) through (F) of this section for the emissions from the still vent, as applicable. If still vent emissions were routed to a regenerator firebox/fire tubes, then you must also report the information specified in paragraphs (e)(1)(xvii)(G) through (I) of

this section for the combusted emissions from the still vent.

(A) Whether any still vent emissions are vented directly to the atmosphere, routed to a flare, routed to the regenerator firebox/fire tubes, routed to a vapor recovery system, used as stripping gas, or any combination.

(B) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, from the still vent when not routed to a flare or regenerator firebox/fire tubes, calculated according to § 98.233(e)(1), and, if applicable, (e)(4).

(C) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, from the still vent when not routed to a flare or regenerator firebox/fire tubes, calculated according to § 98.233(e)(1) and, if applicable, (e)(4).

(D) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, that resulted from routing still vent gas to a regenerator firebox/fire tubes, calculated according to § 98.233(e)(5).

(E) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, that resulted from routing still vent gas to a regenerator firebox/fire tubes, calculated according to § 98.233(e)(5).

(F) Annual N<sub>2</sub>O emissions, in metric tons N<sub>2</sub>O, that resulted from routing still vent gas to a regenerator firebox/fire tubes, calculated according to § 98.233(e)(5).

(G) Indicate whether the regenerator firebox/fire tubes was monitored with a CEMS. If a CEMS was used, then paragraphs (e)(1)(xvii)(E) and (F) and (e)(1)(xvii)(H) and (I) of this section do not apply.

(H) Total volume of gas from the still vent to a regenerator firebox/fire tubes, in standard cubic feet.

(I) Average combustion efficiency, expressed as a fraction of gas from the still vent combusted by a burning regenerator firebox/fire tubes.

(xviii) Name of the software package used.

(2) You must report the information specified in paragraphs (e)(2)(i) through (vi) of this section for all glycol dehydrators with an annual average daily natural gas throughput greater than 0 million standard cubic feet per day and less than 0.4 million standard cubic feet per day for which you calculated emissions using Calculation Method 2 (as specified in § 98.233(e)(2)) at the facility, well-pad, or gathering and boosting site.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) The total number of dehydrators at the facility, well-pad, or gathering and

boosting site for which you calculated emissions using Calculation Method 2.

(iii) Whether any dehydrator emissions were routed to a vapor recovery system. If any dehydrator emissions were routed to a vapor recovery system, then you must report the total number of dehydrators at the facility that routed to a vapor recovery system.

(iv) Whether any dehydrator emissions were routed to a control device that reduces CO<sub>2</sub> and/or CH<sub>4</sub> emissions other than a vapor recovery system or a flare or regenerator firebox/fire tubes. If any dehydrator emissions were routed to a control device that reduces CO<sub>2</sub> and/or CH<sub>4</sub> emissions other than a vapor recovery system or a flare or regenerator firebox/fire tubes, then you must specify the type of control device(s) and the total number of dehydrators at the facility that were routed to each type of control device.

(v) Whether any dehydrator emissions were routed to a flare or regenerator firebox/fire tubes. If any dehydrator emissions were routed to a flare or regenerator firebox/fire tubes, then you must report the information specified in paragraphs (e)(2)(v)(A) through (E) of this section.

(A) The total number of dehydrators routed to a flare and the total number of dehydrators routed to regenerator firebox/fire tubes.

(B) Total volume of gas from the flash tank to a regenerator firebox/fire tubes, in standard cubic feet.

(C) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, for the dehydrators routed to a regenerator firebox/fire tubes reported in paragraph (e)(2)(v)(A) of this section, calculated according to § 98.233(e)(5).

(D) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, for the dehydrators routed to a regenerator firebox/fire tubes reported in paragraph (e)(2)(v)(A) of this section, calculated according to § 98.233(e)(5).

(E) Annual N<sub>2</sub>O emissions, in metric tons N<sub>2</sub>O, for the dehydrators routed to a regenerator firebox/fire tubes reported in paragraph (e)(2)(v)(A) of this section, calculated according to § 98.233(e)(5).

(vi) For dehydrator emissions that were not routed to a flare or regenerator firebox/fire tubes, report the information specified in paragraphs (e)(2)(vi)(A) and (B) of this section.

(A) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, for emissions from all dehydrators reported in paragraph (e)(2)(ii) of this section that were not routed to a flare or regenerator firebox/fire tubes, calculated according to § 98.233(e)(2) and, if applicable, (e)(4), where emissions are added together for all such dehydrators.

(B) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, for emissions from all dehydrators reported in paragraph (e)(2)(ii) of this section that were not routed to a flare or regenerator firebox/fire tubes, calculated according to § 98.233(e)(2) and, if applicable, (e)(4), where emissions are added together for all such dehydrators.

(3) For dehydrators that use desiccant (as specified in § 98.233(e)(3)), you must report the information specified in paragraphs (e)(3)(i) through (vi) of this section for the entire facility.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Count of desiccant dehydrators that had one or more openings during the calendar year at the facility, well-pad, or gathering and boosting site for which you calculated emissions using Calculation Method 3 as specified in paragraphs (e)(3)(ii)(A) through (C) of this section.

(A) The total number of opened desiccant dehydrators.

(B) The number of opened desiccant dehydrators that used deliquescent desiccant (e.g., calcium chloride or lithium chloride).

(C) The number of opened desiccant dehydrators that used regenerative desiccant (e.g., molecular sieves, activated alumina, or silica gel).

(iii) For desiccant dehydrators at the facility, well-pad, or gathering and boosting site identified in paragraph (e)(3)(ii)(A) of this section, total physical volume of all opened dehydrator vessels.

(iv) For desiccant dehydrators at the facility, well-pad, or gathering and boosting site identified in paragraph (e)(3)(ii)(A) of this section, total number of dehydrator openings in the calendar year.

(v) For desiccant dehydrators at the facility, well-pad, or gathering and boosting site identified in paragraph (e)(3)(ii)(A) of this section, whether any dehydrator emissions were routed to a vapor recovery system. If any dehydrator emissions were routed to a vapor recovery system, then you must report the total number of dehydrators at the facility that routed to a vapor recovery system.

(vi) For desiccant dehydrators at the facility, well-pad, or gathering and boosting site identified in paragraph (e)(3)(ii)(A) of this section, whether any dehydrator emissions were routed to a control device that reduces CO<sub>2</sub> and/or CH<sub>4</sub> emissions other than a vapor recovery system or a flare or regenerator

firebox/fire tubes. If any dehydrator emissions were routed to a control device that reduces CO<sub>2</sub> and/or CH<sub>4</sub> emissions other than a vapor recovery system or a flare or regenerator firebox/fire tubes, then you must specify the type of control device(s) and the total number of dehydrators at the facility that were routed to each type of control device.

(vii) For desiccant dehydrators at the facility, well-pad, or gathering and boosting site identified in paragraph (e)(3)(ii)(A) of this section, whether any dehydrator emissions were routed to a flare or regenerator firebox/fire tubes. If any dehydrator emissions were routed to a flare or regenerator firebox/fire tubes, then you must report the information specified in paragraphs (e)(3)(vii)(A) through (E) of this section.

(A) The total number of dehydrators routed to a flare and the total number of dehydrators routed to regenerator firebox/fire tubes.

(B) Total volume of gas from the flash tank to a regenerator firebox/fire tubes, in standard cubic feet.

(C) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, for the dehydrators routed to a regenerator firebox/fire tubes reported in paragraph (e)(3)(vii)(A) of this section, calculated according to § 98.233(e)(5).

(D) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, for the dehydrators routed to a regenerator firebox/fire tubes reported in paragraph (e)(3)(vii)(A) of this section, calculated according to § 98.233(e)(5).

(E) Annual N<sub>2</sub>O emissions, in metric tons N<sub>2</sub>O, for the dehydrators routed to a regenerator firebox/fire tubes reported in paragraph (e)(3)(vii)(A) of this section, calculated according to § 98.233(e)(5).

(viii) For desiccant dehydrators at the facility, well-pad, or gathering and boosting site identified in paragraph (e)(3)(ii)(A) of this section that were not routed to a flare or regenerator firebox/fire tubes, report the information specified in paragraphs (e)(3)(viii)(A) and (B) of this section.

(A) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, for emissions from all desiccant dehydrators reported under paragraph (e)(3)(ii) of this section that are not venting to a flare or regenerator firebox/fire tubes, calculated according to § 98.233(e)(3) and, if applicable, (e)(4), and summing for all such dehydrators.

(B) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, for emissions from all desiccant dehydrators reported in paragraph (e)(3)(ii) of this section that are not venting to a flare or regenerator firebox/fire tubes, calculated according

to § 98.233(e)(3), and, if applicable, (e)(4), and summing for all such dehydrators.

(f) \* \* \*

(1) For each well for which you used Calculation Method 1 to calculate natural gas emissions from well venting for liquids unloading, report the information specified in paragraphs (f)(1)(i) through (xii) of this section. Report information separately for wells by unloading type combination (with or without plunger lifts, automated or manual unloading).

(i) Well ID number.

(ii) Well tubing diameter and pressure group ID.

(iii) Unloading type combination (with or without plunger lifts, automated or manual unloading).

(iv) [Reserved]

(v) Indicate whether the monitoring period used to determine the cumulative amount of time venting was not the full calendar year.

(vi) Cumulative amount of time the well was vented (“Tp” from Equation W-7A or W-7B of this subpart), in hours.

(vii) Cumulative number of unloadings vented directly to the atmosphere for the well.

\* \* \* \* \*

(xi) For each well tubing diameter group and pressure group combination, you must report the information specified in paragraphs (f)(1)(xi)(A) through (F) of this section for each individual well not using a plunger lift that was tested during the year.

\* \* \* \* \*

(F) Unloading type (automated or manual).

(xii) For each well tubing diameter group and pressure group combination, you must report the information specified in paragraphs (f)(1)(xii)(A) through (F) of this section for each individual well using a plunger lift that was tested during the year.

\* \* \* \* \*

(F) Unloading type (automated or manual).

(2) For each well for which you used Calculation Method 2 or 3 (as specified in § 93.233(f)) to calculate natural gas emissions from well venting for liquids unloading, you must report the information in paragraphs (f)(2)(i) through (xii) of this section. Report information separately for each calculation method and unloading type combination (with or without plunger lifts, automated or manual unloadings).

(i) Well ID number.

\* \* \* \* \*

(iii) Unloading type combination (with or without plunger lifts, automated or manual unloadings).

(iv) [Reserved]

(v) Cumulative number of unloadings vented directly to the atmosphere for the well.

\* \* \* \* \*

(ix) Average flow-line rate of gas (average of “SFR<sub>p</sub>” from Equation W-8 or W-9 of this subpart, as applicable), at standard conditions in cubic feet per hour.

(x) Cumulative amount of time that wells were left open to the atmosphere during unloading events (sum of “HR<sub>p,q</sub>” from Equation W-8 or W-9 of this subpart, as applicable), in hours.

(xi) For each well without plunger lifts, the information in paragraphs (f)(2)(xi)(A) through (D) of this section.

(A) Internal casing diameter (“CD<sub>p</sub>” from Equation W-8 of this subpart), in inches.

(B) Well depth (“WD<sub>p</sub>” from Equation W-8 of this subpart), in feet.

(C) Shut-in pressure, surface pressure, or casing pressure (“SP<sub>p</sub>” from Equation W-8 of this subpart), in pounds per square inch absolute.

(D) The most recent calendar year Calculation Method 1 was used to calculate emissions from well venting for liquids unloading for wells without plunger lifts of the same sub-basin, well tubing diameter group and pressure group combination.

(xii) For wells with plunger lifts, the information in paragraphs (f)(2)(xii)(A) through (D) of this section.

(A) Internal tubing diameter (“TD<sub>p</sub>” from Equation W-9 of this subpart), in inches.

(B) Tubing depth (“WD<sub>p</sub>” from Equation W-9 of this subpart), in feet.

(C) Flow line pressure (“SP<sub>p</sub>” from Equation W-9 of this subpart), in pounds per square inch absolute.

(D) The most recent calendar year Calculation Method 1 was used to calculate emissions from well venting for liquids unloading for the wells with plunger lifts in the same sub-basin, well tubing diameter group and pressure group combination.

(g) *Completions and workovers with hydraulic fracturing.* You must indicate whether your facility had any well completions or workovers with hydraulic fracturing during the calendar year. If your facility had well completions or workovers with hydraulic fracturing during the calendar year that vented directly to the atmosphere, then you must report information specified in paragraphs (g)(1) through (10) of this section, for each well. If your facility had well completions or workovers with hydraulic fracturing during the year that only routed to flares, then you must

report the information specified in paragraphs (g)(1) through (3) of this section, for each well. Report information separately for completions and workovers.

(1) Well ID number.

(2) Well type combination (horizontal or vertical, flared or vented, reduced emission completion or not a reduced emission completion, gas well or oil well).

(3) Number of completions or workovers for each well.

\* \* \* \* \*

(5) \* \* \*

(i) Cumulative gas flowback time, in hours, for all completions or workovers at the well from when gas is first detected until sufficient quantities are present to enable separation, and the cumulative flowback time, in hours, after sufficient quantities of gas are present to enable separation (sum of “T<sub>p,i</sub>” and sum of “T<sub>p,s</sub>” values used in Equation W-10A of § 98.233). You may delay the reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only wells in the same sub-basin and well type combination are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the total number of hours of flowback from the well during completions or workovers.

(ii) If the well is a measured well for the sub-basin and well-type combination, the flowback rate, in standard cubic feet per hour (average of “FR<sub>s,p</sub>” values used in Equation W-12A of § 98.233). You may delay the reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only wells that can be used for the measurement in the same sub-basin and well type combination are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the measured flowback rate(s) during well completion or workover for the well.

(iii) If you used Equation W-12C of § 98.233 to calculate the average gas production rate for an oil well, then you must report the information specified in paragraphs (g)(6)(iii)(A) and (B) of this section.

(A) Gas to oil ratio for the well in standard cubic feet of gas per barrel of oil (“GOR<sub>p</sub>” in Equation W-12C of § 98.233). You may delay the reporting of this data element if you indicate in the annual report that the well is a

wildcat well and/or delineation well and the only wells that can be used for the measurement in the same sub-basin and well type combination are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the gas to oil ratio for the well.

(B) Volume of oil produced during the first 30 days of production after completion of the newly drilled well or well workover using hydraulic fracturing, in barrels (“V<sub>p</sub>” in Equation W-12C of § 98.233). You may delay the reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only wells that can be used for the measurement in the same sub-basin and well type combination are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the volume of oil produced during the first 30 days of production after well completion or workover for the well.

(6) If you used Equation W-10B of § 98.233 to calculate annual volumetric total gas emissions, then you must report the information specified in paragraphs (g)(6)(i) and (ii) of this section.

(i) Vented natural gas volume, in standard cubic feet (“FV<sub>s,p</sub>” in Equation W-10B of § 98.233).

(ii) Flow rate at the beginning of the period of time when sufficient quantities of gas are present to enable separation, in standard cubic feet per hour (“FR<sub>p,i</sub>” in Equation W-10B of § 98.233).

\* \* \* \* \*

(10) Indicate whether the completion(s) or workover(s) included flared emissions that are reported according to paragraph (n) of this section in addition to the vented emissions reported under paragraphs (g)(8) and (9) of this section.

(h) \* \* \*

(1) For each well with one or more gas well completions without hydraulic fracturing and without flaring, report the information specified in paragraphs (h)(1)(i) through (vi) of this section.

(i) Well ID number.

\* \* \* \* \*

(iii) Total number of hours that gas vented directly to the atmosphere during venting for all completions without hydraulic fracturing (“T<sub>p</sub>” for completions that vented directly to the atmosphere as used in Equation W-13B).

(iv) Average daily gas production rate for all completions without hydraulic

fracturing without flaring, in standard cubic feet per hour (“V<sub>p</sub>” in Equation W-13B of § 98.233). You may delay reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only wells that can be used for the measurement in the same sub-basin and well type combination are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the measured average daily gas production rate during completions for the well.

\* \* \* \* \*

(2) For each well with one or more gas well completions without hydraulic fracturing and with flaring, report the information specified in paragraphs (h)(2)(i) through (iv) of this section.

(i) Well ID number.

\* \* \* \* \*

(iii) Total number of hours that gas vented to a flare during venting for all completions without hydraulic fracturing (the sum of all “T<sub>p</sub>” for completions that vented to a flare from Equation W-13B).

(iv) Average daily gas production rate for all completions without hydraulic fracturing with flaring, in standard cubic feet per hour (the average of all “V<sub>p</sub>” from Equation W-13B of § 98.233). You may delay reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only wells that can be used for the measurement in the same sub-basin and well type combination are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the measured average daily gas production rate during completions for the well.

(3) For each well with one or more gas well workovers without hydraulic fracturing and without flaring, report the information specified in paragraphs (h)(3)(i) through (iv) of this section.

(i) Well ID number.

\* \* \* \* \*

(4) For each well with one or more gas well workovers without hydraulic fracturing and with flaring, report the information specified in paragraphs (h)(4)(i) and (ii) of this section.

(i) Well ID number.

(ii) Number of workovers that flared gas.

(i) *Blowdown vent stacks.* You must indicate whether your facility has blowdown vent stacks. If your facility has blowdown vent stacks, then you must report whether emissions were

calculated by equipment or event type or by using flow meters or a combination of both. If you calculated emissions by equipment or event type for any blowdown vent stacks, then you must report the information specified in paragraph (i)(1) of this section considering, in aggregate, all blowdown vent stacks for which emissions were calculated by equipment or event type. If you calculated emissions using flow meters for any blowdown vent stacks, then you must report the information specified in paragraph (i)(2) of this section considering, in aggregate, all blowdown vent stacks for which emissions were calculated using flow meters. For the onshore natural gas transmission pipeline segment, you must also report the information in paragraph (i)(3) of this section. You must report the information specified in paragraphs (i)(1) through (3) of this section, as applicable, for each well-pad (for onshore production), each gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for all other applicable industry segments).

(1) *Report by equipment or event type.*

If you calculated emissions from blowdown vent stacks by the seven categories listed in § 98.233(i)(2)(iv)(A) for onshore petroleum and natural gas production, onshore natural gas processing, onshore natural gas transmission compression, underground natural gas storage, LNG storage, LNG import and export equipment, or onshore petroleum and natural gas gathering and boosting industry segments, then you must report the equipment or event types and the information specified in paragraphs (i)(1)(i) through (iv) of this section for each equipment or event type. If a blowdown event resulted in emissions from multiple equipment types, and the emissions cannot be apportioned to the different equipment types, then you may report the information in paragraphs (i)(1)(i) through (iv) of this section for the equipment type that represented the largest portion of the emissions for the blowdown event. If you calculated emissions from blowdown vent stacks by the eight categories listed in § 98.233(i)(2)(iv)(B) for the natural gas distribution or onshore natural gas transmission pipeline segments, then you must report the pipeline segments or event types and the information specified in paragraphs (i)(1)(i) through (iv) of this section for each “equipment or event type” (*i.e.*, category). If a blowdown event resulted in emissions from multiple categories, and the emissions

cannot be apportioned to the different categories, then you may report the information in paragraphs (i)(1)(i) through (iv) of this section for the “equipment or event type” (*i.e.*, category) that represented the largest portion of the emissions for the blowdown event.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

\* \* \* \* \*

(2) *Report by flow meter.* If you elect to calculate emissions from blowdown vent stacks by using a flow meter according to § 98.233(i)(3), then you must report the information specified in paragraphs (i)(2)(i) through (iii) of this section.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Annual CO<sub>2</sub> emissions from all blowdown vent stacks for which emissions were calculated using flow meters, in metric tons CO<sub>2</sub> (the sum of all CO<sub>2</sub> mass emission values calculated according to § 98.233(i)(3), for all flow meters).

(iii) Annual CH<sub>4</sub> emissions from all blowdown vent stacks at the facility, well-pad, or gathering and boosting site for which emissions were calculated using flow meters, in metric tons CH<sub>4</sub>, (the sum of all CH<sub>4</sub> mass emission values calculated according to § 98.233(i)(3), for all flow meters).

\* \* \* \* \*

(j) *Hydrocarbon liquids and produced water storage tanks.* You must indicate whether your facility sends hydrocarbon produced liquids and/or produced water to atmospheric pressure storage tanks. If your facility sends hydrocarbon produced liquids and/or produced water to atmospheric pressure storage tanks, then you must indicate which Calculation Method(s) you used to calculate GHG emissions, and you must report the information specified in paragraphs (j)(1) and (2) of this section as applicable. If you used Calculation Method 1 or Calculation Method 2 of § 98.233(j), and any atmospheric pressure storage tanks were observed to have malfunctioning dump valves during the calendar year, then you must indicate that dump valves were malfunctioning and must report the information specified in paragraph (j)(3) of this section.

(1) If you used Calculation Method 1 or Calculation Method 2 of § 98.233(j) to calculate GHG emissions, then you must report the information specified in paragraphs (j)(1)(i) through (xvi) of this section for each well-pad (for onshore petroleum and natural gas production), gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for all other applicable industry segments) and by calculation method and liquid type, as applicable. Onshore petroleum and natural gas gathering and boosting and onshore natural gas processing facilities do not report the information specified in paragraph (j)(1)(ix) of this section.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Calculation method used, and name of the software package used if using Calculation Method 1.

(iii) The total annual hydrocarbon liquids or produced water volume from gas-liquid separators and direct from wells or non-separator equipment that is sent to applicable atmospheric pressure storage tanks, in barrels. You may delay reporting of this data element for onshore production if you indicate in the annual report that wildcat wells and delineation wells are the only wells in the sub-basin with hydrocarbon liquids or produced water production flowing to gas-liquid separators or direct to atmospheric pressure storage tanks. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the total volume of hydrocarbon liquids or produced water from all wells and the well ID number(s) for the well(s) included in this volume.

(iv) The average well, gas-liquid separator, or non-separator equipment temperature, in degrees Fahrenheit.

(v) The average well, gas-liquid separator, or non-separator equipment pressure, in pounds per square inch gauge.

(vi) For atmospheric pressure storage tanks receiving hydrocarbon liquids, the average sales oil or stabilized hydrocarbon liquids API gravity, in degrees.

(vii) For atmospheric pressure storage tanks receiving hydrocarbon liquids, the flow-weighted average concentration (mole fraction) of CO<sub>2</sub> in flash gas from atmospheric pressure storage tanks (calculated as the sum of all products of the concentration of CO<sub>2</sub> in the flash gas for each storage tank times the total quantity of flash gas for that storage

tank, divided by the sum of all flash gas emissions from storage tanks).

(viii) The flow-weighted average concentration (mole fraction) of CH<sub>4</sub> in flash gas from atmospheric pressure storage tanks (calculated as the sum of all products of the concentration of CH<sub>4</sub> in the flash gas for each storage tank times the total quantity of flash gas for that storage tank, divided by the sum of all flash gas emissions from storage tanks).

(ix) The number of wells sending hydrocarbon liquids or produced water to gas-liquid separators or directly to atmospheric pressure storage tanks.

(x) Count of atmospheric pressure storage tanks specified in paragraphs (j)(1)(x)(A) through (F) of this section.

(A) The number of fixed roof atmospheric pressure storage tanks.

(B) The number of floating roof atmospheric pressure storage tanks.

(C) The number of atmospheric pressure storage tanks that vented gas directly to the atmosphere and did not control emissions using a vapor recovery system and/or one or more flares at any point during the reporting year.

(D) The number of atmospheric pressure storage tanks that routed emissions to a vapor recovery system at any point during the reporting year.

(E) The number of atmospheric pressure storage tanks that routed emissions to one or more flares at any point during the reporting year.

(F) The number of atmospheric pressure storage tanks in paragraph (j)(1)(x)(D) or (E) of this section that had an open or not properly seated thief hatch at some point during the year while the storage tank was also routing emissions to a vapor recovery system and/or a flare.

(xi) For atmospheric pressure storage tanks receiving hydrocarbon liquids, annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, that resulted from venting gas directly to the atmosphere, calculated according to § 98.233(j)(1) and (2).

(xii) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, that resulted from venting gas directly to the atmosphere, calculated according to § 98.233(j)(1) and (2).

(xiii) For the atmospheric pressure storage tanks receiving hydrocarbon liquids identified in paragraphs (j)(1)(x)(D) of this section, total CO<sub>2</sub> mass, in metric tons CO<sub>2</sub>, that was recovered during the calendar year using a vapor recovery system.

(xiv) For the atmospheric pressure storage tanks identified in paragraphs (j)(1)(x)(D) of this section, total CH<sub>4</sub> mass, in metric tons CH<sub>4</sub>, that was recovered during the calendar year using a vapor recovery system.

(xv) For the atmospheric pressure storage tanks identified in paragraph (j)(1)(x)(F) of this section, the total volume of gas vented through open or not properly seated thief hatches, in scf, during periods while the storage tanks were also routing emissions to vapor recovery systems and/or flares.

(2) If you used Calculation Method 3 to calculate GHG emissions, then you must report the information specified in paragraphs (j)(2)(i) through (iii) of this section.

(i) Report the information specified in paragraphs (j)(2)(i)(A) through (H) of this section, at the facility level, for atmospheric pressure storage tanks where emissions were calculated using Calculation Method 3 of § 98.233(j).

(A) The total annual hydrocarbon liquids throughput that is sent to all atmospheric pressure storage tanks in the facility with emissions calculated using Calculation Method 3, in barrels. You may delay reporting of this data element for onshore production if you indicate in the annual report that wildcat wells and delineation wells are the only wells in the sub-basin with hydrocarbon liquids production that send hydrocarbon liquids to atmospheric pressure storage tanks. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the total annual hydrocarbon liquids throughput from all wells and the well ID number(s) for the well(s) included in this volume.

(B) The total annual produced water throughput that is sent to all atmospheric pressure storage tanks in the facility with emissions calculated using Calculation Method 3, in barrels, specified in paragraphs (j)(2)(i)(B)(1) through (3) of this section. You may delay reporting of this data element for onshore production if you indicate in the annual report that wildcat wells and delineation wells are the only wells in the sub-basin flowing to gas-liquid separators or direct to atmospheric pressure storage tanks. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the total annual volume of produced water from all wells as specified in paragraphs (j)(2)(i)(B)(1) through (3) of this section and the well ID number(s) for the well(s) included in these volumes.

(1) Total volume of produced water with pressure less than or equal to 50 psi.

(2) Total volume of produced water with pressure greater than 50 psi and less than or equal to 250 psi.

(3) Total volume of produced water with pressure greater than 250 psi.

(C) An estimate of the fraction of hydrocarbon liquids throughput reported in paragraph (j)(2)(i)(A) of this section sent to atmospheric pressure storage tanks in the facility that controlled emissions with flares.

(D) An estimate of the fraction of hydrocarbon liquids throughput reported in paragraph (j)(2)(i)(A) of this section sent to atmospheric pressure storage tanks in the facility that controlled emissions with vapor recovery systems.

(E) An estimate of the fraction of total produced water throughput reported in paragraph (j)(2)(i)(B) of this section sent to atmospheric pressure storage tanks in the facility that controlled emissions with flares.

(F) An estimate of the fraction of total produced water throughput reported in paragraph (j)(2)(i)(B) of this section sent to atmospheric pressure storage tanks in the facility that controlled emissions with vapor recovery systems.

(G) The number of fixed roof atmospheric pressure storage tanks in the facility.

(H) The number of floating roof atmospheric pressure storage tanks in the facility.

(ii) Report the information specified in paragraphs (j)(2)(ii)(A) through (H) of this section for each well-pad (for onshore production), gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for all other applicable industry segments) with atmospheric pressure storage tanks receiving hydrocarbon liquids whose emissions were calculated using § 98.233(j)(3)(i).

(A) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(B) The number of atmospheric pressure storage tanks that did not control emissions with flares and for which emissions were calculated using Calculation Method 3.

(C) The number of atmospheric pressure storage tanks that controlled emissions with flares and for which emissions were calculated using Calculation Method 3.

(D) The number of atmospheric pressure storage tanks that had an open or not properly seated thief hatch at some point during the year while the storage tank was also routing emissions to a vapor recovery system and/or a flare.

(E) The total number of separators, wells, or non-separator equipment with annual average daily hydrocarbon liquids throughput greater than 0 barrels

per day and less than 10 barrels per day for which you used Calculation Method 3 (“Count” from Equation W–15A of this subpart).

(F) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, that resulted from venting gas directly to the atmosphere, calculated using Equation W–15A of § 98.233(j) and adjusted using the requirements described in § 98.233(j)(4), if applicable.

(G) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, that resulted from venting gas directly to the atmosphere, calculated using Equation W–15A of § 98.233(j) and adjusted using the requirements described in § 98.233(j)(4), if applicable.

(H) The total volume of gas vented through open or not properly seated thief hatches, in scf, during periods while the atmospheric pressure storage tanks were also routing emissions to vapor recovery systems and/or flares.

(iii) Report the information specified in paragraphs (j)(2)(iii)(A) through (F) of this section for each well-pad (for onshore production), gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for onshore natural gas processing) with atmospheric pressure storage tanks receiving produced water whose emissions were calculated using § 98.233(j)(3)(ii).

(A) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(B) The number of atmospheric pressure storage tanks that did not control emissions with flares and for which emissions were calculated using Calculation Method 3.

(C) The number of atmospheric pressure storage tanks that controlled emissions with flares and for which emissions were calculated using Calculation Method 3.

(D) The number of atmospheric pressure storage tanks that had an open or not properly seated thief hatch at some point during the year while the storage tank was also routing emissions to a vapor recovery system and/or a flare.

(E) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, that resulted from venting gas directly to the atmosphere, calculated using Equation W–15B of § 98.233(j) and adjusted using the requirements described in § 98.233(j)(4), if applicable.

(F) The total volume of gas vented through open or not properly seated thief hatches, in scf, during periods while the atmospheric pressure storage tanks were also routing emissions to vapor recovery systems and/or flares.

(3) If you used Calculation Method 1 or Calculation Method 2 of § 98.233(j), and any gas-liquid separator liquid dump valves did not close properly during the calendar year, then you must report the information specified in paragraphs (j)(3)(i) through (v) of this section for each well-pad (for onshore production), gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for all other applicable industry segments) by liquid type.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) The total number of gas-liquid separators whose liquid dump valves did not close properly during the calendar year.

(iii) The total time the dump valves on gas-liquid separators did not close properly in the calendar year, in hours (sum of the “T<sub>av</sub>” values used in Equation W–16 of this subpart).

(iv) For atmospheric pressure storage tanks receiving hydrocarbon liquids, annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, that resulted from dump valves on gas-liquid separators not closing properly during the calendar year, calculated using Equation W–16 of this subpart.

(v) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, that resulted from the dump valves on gas-liquid separators not closing properly during the calendar year, calculated using Equation W–16 of this subpart.

(k) *Condensate storage tanks.* You must indicate whether your facility contains any condensate storage tanks. If your facility contains at least one condensate storage tank, then you must report the information specified in paragraphs (k)(1) and (2) of this section for each condensate storage tank vent stack.

(1) For each condensate storage tank vent stack, report the information specified in (k)(1)(i) through (iv) of this section.

(i) The unique name or ID number for the condensate storage tank vent stack.

(ii) Indicate if a flare is attached to the condensate storage tank vent stack.

(iii) Indicate whether scrubber dump valve leakage occurred for the condensate storage tank vent according to § 98.233(k)(1).

(iv) Which method specified in § 98.233(k)(1) was used to determine if dump valve leakage occurred.

(2) If scrubber dump valve leakage occurred for a condensate storage tank vent stack, as reported in paragraph

(k)(1)(iii) of this section, and the vent stack vented directly to the atmosphere during the calendar year, then you must report the information specified in paragraphs (k)(2)(i) through (v) of this section for each condensate storage vent stack where scrubber dump valve leakage occurred.

(i) Which method specified in § 98.233(k)(2) was used to measure the leak rate.

\* \* \* \* \*

(l) \* \* \*

(1) For oil wells not routed to a flare, you must report the information specified in paragraphs (l)(1)(i) through (vii) of this section for each well tested.

(i) [Reserved]

(ii) Well ID number.

(iii) Number of well testing days for the tested well in the calendar year.

(iv) Average gas to oil ratio for the tested well, in cubic feet of gas per barrel of oil.

(v) Average flow rate for the tested well, in barrels of oil per day. You may delay reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only oil wells that are tested in the same basin are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the measured average flow rate for the tested well.

\* \* \* \* \*

(2) For oil wells routed to a flare, you must report the information specified in paragraphs (l)(2)(i) through (v) of this section for each well tested. All reported data elements should be specific to the well for which Equation W-17A of § 98.233 was used and for which well testing emissions were routed to flares.

(i) [Reserved]

(ii) Well ID number.

(iii) Number of well testing days for the tested well in the calendar year.

(iv) Average gas to oil ratio for the tested well, in cubic feet of gas per barrel of oil.

(v) Average flow rate for the tested well, in barrels of oil per day. You may delay reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only wells that are tested in the same basin are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the measured average flow rate for the tested well.

(3) For gas wells not routed to a flare, you must report the information

specified in paragraphs (l)(3)(i) through (vi) of this section for each well tested.

(i) [Reserved]

(ii) Well ID number.

(iii) Number of well testing days for the tested well(s) in the calendar year.

(iv) Average annual production rate for the tested well, in actual cubic feet per day. You may delay reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only wells that are tested in the same basin are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the measured average annual production rate for the tested well.

\* \* \* \* \*

(4) For gas wells routed to a flare, you must report the information specified in paragraphs (l)(4)(i) through (iv) of this section for each well tested. All reported data elements should be specific to the well for which Equation W-17B of § 98.233 was used and for which well testing emissions were routed to flares.

(i) [Reserved]

(ii) Well ID number.

(iii) Number of well testing days for the tested well in the calendar year.

(iv) Average annual production rate for the tested well, in actual cubic feet per day. You may delay reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only wells that are tested in the same basin are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the measured average annual production rate for the tested well.

(m) *Associated natural gas*. You must indicate whether any associated gas was vented or flared during the calendar year. If associated gas was vented during the calendar year, then you must report the information specified in paragraphs (m)(1) through (7) of this section for each well for which associated gas was vented. If associated gas was flared during the calendar year, then you must report the information specified in paragraphs (m)(1) through (3) of this section for each well for which associated gas was flared.

(1) Well ID number.

\* \* \* \* \*

(4) Average gas to oil ratio, in standard cubic feet of gas per barrel of oil. Do not report the GOR if you vented or flared associated gas and used a continuous flow monitor to determine

the total volume of associated gas vented or routed to the flare (*i.e.*, if you did not use Equation W-18 for the well with associated gas venting or flaring emissions).

(5) Volume of oil produced by the well, in barrels, in the calendar year only during the time periods in which associated gas was vented or flared (“V<sub>p</sub>” used in Equation W-18 of § 98.233). You may delay reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only wells from which associated gas was vented or flared in the same sub-basin are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the volume of oil produced by the well during the time periods in which associated gas venting and flaring was occurring. Do not report the volume of oil produced if you vented or flared associated gas and used a continuous flow monitor to determine the total volume of associated gas vented or routed to the flare (*i.e.*, if you did not use Equation W-18 for the well with associated gas venting or flaring emissions).

(6) Total volume of associated gas sent to sales or used on site and not sent to a vent or flare, in standard cubic feet, in the calendar year only during time periods in which associated gas was vented or flared (“SG” value used in Equation W-18 of § 98.233(m)). You may delay reporting of this data element if you indicate in the annual report that the well is a wildcat well and/or delineation well and the only wells from which associated gas was vented or flared in the same basin are wildcat wells and/or delineation wells. If you elect to delay reporting of this data element, you must report by the date specified in paragraph (cc) of this section the measured total volume of associated gas sent to sales for the well during the time periods in which associated gas venting and flaring was occurring. Do not report the volume of gas sent to sales if you vented or flared associated gas and used a continuous flow monitor to determine the total volume of associated gas vented or routed to the flare (*i.e.*, if you did not use Equation W-18).

(7) If you had associated gas emissions vented directly to the atmosphere without flaring, then you must report the information specified in paragraphs (m)(7)(i) through (viii) of this section for each well.

(i) [Reserved]

(ii) Indicate whether the associated gas volume vented from the well was

measured using a continuous flow monitor.

(iii) Indicate whether associated gas streams vented from the well were measured with continuous gas composition analyzers.

(iv) Total volume of associated gas vented from the well, in standard cubic feet.

(v) Flow-weighted average mole fraction of CH<sub>4</sub> in associated gas vented from the well.

(vi) Flow-weighted average mole fraction of CO<sub>2</sub> in associated gas vented from the well.

(vii) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, calculated according to § 98.233(m)(3) and (4).

(viii) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, calculated according to § 98.233(m)(3) and (4).

(n) *Flare stacks.* You must indicate if your facility has any flare stacks. You must report the information specified in paragraphs (n)(1) through (20) of this section for each flare stack at your facility.

(1) Unique name or ID for the flare stack. For the onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting industry segments, a different name or ID may be used for a single flare stack for each location where it operates at in a given calendar year.

(2) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(3) Unique IDs for each stream routed to the flare if you measure the flow of each stream that is routed to the flare as specified in § 98.233(n)(1)(ii) and/or you measure the gas composition for each stream routed to the flare as specified in § 98.233(n)(3)(iii) or (iv).

(4) Indicate the type of flare (*i.e.*, open ground-level flare, enclosed ground-level flare, open elevated flare, or enclosed elevated flare).

(5) Indicate the type of flare assist (*i.e.*, unassisted, air-assisted with single speed fan/blower, air-assisted with dual speed fan/blower, air-assisted with variable speed fan/blower, steam-assisted, or pressure-assisted).

(6) Indicate whether the pilot flame or combustion flame was monitored continuously, visually inspected, or both. If visually inspected, report the number of inspections during the year, and indicate whether the flare has a continuous pilot or auto igniter. If the pilot flame was monitored continuously, report the number of times the continuous monitoring device was out of service or otherwise

inoperable for a period of more than one week.

(7) Indicate whether the volume of gas was determined using a continuous flow measurement device or whether it was determined using parameter monitoring and engineering calculations (§ 98.233(n)(1)(i) for inlet gas to the flare or § 98.233(n)(1)(ii) for each stream routed to the flare). If you switched from one method to the other during the year, then indicate both methods were used.

(8) Indicate whether the gas composition was calculated using a continuous gas composition analyzer or by taking samples of the applicable gas stream(s) at least once per quarter (§ 98.233(n)(3)(i) or (iii) for the inlet gas to the flare or § 98.233(n)(3)(ii) or (iv) for the streams from each source that routes emissions to the flare). If you switched from one method to the other during the year, then indicate both methods were used.

(9) Flare-specific HHV, if you determined a flare-specific HHV based on measured composition of the inlet gas to the flare as specified in § 98.233(n)(8)(i) or if you calculated a flare-specific HHV based on the calculated flow-weighted average composition for the inlet gas to the flare as specified in § 98.233(n)(8)(iii). Each individual stream HHV, if you determined HHVs for each individual stream routed to the flare and you used these HHVs to calculate N<sub>2</sub>O emissions for each stream as specified in § 98.233(n)(8)(ii).

(10) For the onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, and onshore natural gas processing industry segments, estimated fraction of total volume flared that was received from another facility solely for flaring (*e.g.*, gas separated from liquid at a production facility that is routed to a flare that is assigned to an onshore petroleum and natural gas gathering and boosting facility).

(11) Volume of gas sent to the flare, in standard cubic feet (“V<sub>s</sub>” in Equations W–19 and W–20 of this subpart). If you determine the volume of gas for each stream routed to the flare as specified in § 98.233(n)(1)(ii), then also report the annual volume of each measured stream.

(12) Fraction of the feed gas sent to an un-lit flare based on total time when continuous monitoring of the pilot or periodic inspections indicated the flare was not lit and the flow determined by continuous measurement of flow conducted during the times when the flare was not lit (“Z<sub>u</sub>” in Equation W–19 of this subpart).

(13) Flare combustion efficiency, expressed as the fraction of gas combusted by a burning flare (§ 98.233(n)(4)). If you used multiple monitoring methods during the year, report the flow-weighted average combustion efficiency based on each tier that applied. Report the efficiency to one decimal place.

(i) If you report using the 95 percent default combustion efficiency, indicate if you are subject to part 60, subpart OOOOb of this chapter or if you are electing to comply with the flare monitoring requirements in part 60, subpart OOOOb of this chapter.

(ii) If you are not required to comply with part 60, subpart OOOOb of this chapter but you elect to comply with the monitoring requirements in § 60.5417b(d)(1)(viii) of this chapter as specified in § 98.233(n)(4), indicate whether you use a calorimeter to continuously determine net heating value (NHV) or if you have demonstrated according to the methods described in § 60.5417b(d)(1)(viii)(C) of this chapter that the NHV consistently exceeds the operating limit specified in § 60.18 of this chapter (or that it consistently exceeds 800 Btu/scf for a pressure assist flare).

(14) Annual average mole fraction of CH<sub>4</sub> in the feed gas to the flare if you measure composition of the inlet gas as specified in § 98.233(n)(3)(i) or (ii) (“X<sub>CH<sub>4</sub></sub>” in Equation W–19 of this subpart), or the annual average CH<sub>4</sub> mole fractions for each stream if you measure composition of each stream routed to the flare as specified in § 98.233(n)(3)(iii) or (iv).

(15) Annual average mole fraction of CO<sub>2</sub> in the feed gas to the flare if you measure composition of the inlet gas as specified in § 98.233(n)(3)(i) or (ii) (“X<sub>CO<sub>2</sub></sub>” in Equation W–20 of this subpart), or the annual average CO<sub>2</sub> mole fractions for each stream if you measure composition of each stream routed to the flare as specified in § 98.233(n)(3)(iii) or (iv).

(16) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub> (refer to Equation W–20 of this subpart).

(17) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub> (refer to Equation W–19 of this subpart).

(18) Annual N<sub>2</sub>O emissions, in metric tons N<sub>2</sub>O (refer to Equation W–40 of this subpart).

(19) Estimated disaggregated CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O emissions attributed to each source type as determined using engineering calculations and best available data as specified in § 98.233(n)(10) (*i.e.*, AGR vents, dehydrator vents, well venting during completions and workovers with

hydraulic fracturing, gas well venting during completions and workovers without hydraulic fracturing, hydrocarbon liquids and produced water storage tanks, well testing venting and flaring, associated gas venting and flaring, other flared sources).

(20) Indicate whether a CEMS was used to measure emissions from the flare. If a CEMS was used, then you are not required to report the CO<sub>2</sub> mole fraction in paragraph (n)(15) of this section.

(o) *Centrifugal compressors.* You must indicate whether your facility has centrifugal compressors. You must report the information specified in paragraphs (o)(1) and (2) of this section for all centrifugal compressors at your facility. For each compressor source or manifolded group of compressor sources that you conduct as found leak measurements as specified in § 98.233(o)(2) or (4), you must report the information specified in paragraph (o)(3) of this section. For each compressor source or manifolded group of compressor sources that you conduct continuous monitoring as specified in § 98.233(o)(3) or (5), you must report the information specified in paragraph (o)(4) of this section. Centrifugal compressors in onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting that calculate emissions according to § 98.233(o)(10)(iii) are not required to report information in paragraphs (o)(1) through (4) of this section and instead must report the information specified in paragraph (o)(5) of this section.

(1) *Compressor activity data.* Report the information specified in paragraphs (o)(1)(i) through (xi) of this section, as applicable, for each centrifugal compressor located at your facility.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Unique name or ID for the centrifugal compressor.

(iii) Hours in operating-mode.

(iv) Hours in standby-pressurized-mode.

(v) Hours in not-operating-depressurized-mode.

(vi) If you conducted volumetric emission measurements as specified in § 98.233(o)(1):

(A) Indicate whether the compressor was measured in operating-mode.

(B) Indicate whether the compressor was measured in standby-pressurized-mode.

(C) Indicate whether the compressor was measured in not-operating-depressurized-mode.

(vii) Indicate whether the compressor has blind flanges installed and associated dates.

(viii) Indicate whether the compressor has wet or dry seals.

(ix) If the compressor has wet seals, the number of wet seals.

(x) If the compressor has dry seals, the number of dry seals.

(xi) Power output of the compressor driver (hp).

(2) \* \* \*

(i) \* \* \*

(A) Centrifugal compressor name or ID. Use the same ID as in paragraph (o)(1)(ii) of this section.

(B) Centrifugal compressor source (wet seal, dry seal, isolation valve, or blowdown valve).

\* \* \* \* \*

(ii) \* \* \*

(A) Indicate whether the leak or vent is for a single compressor source or manifolded group of compressor sources and whether the emissions from the leak or vent are released to the atmosphere, routed to a flare, combustion, or vapor recovery system.

\* \* \* \* \*

(D) Report emissions as specified in paragraphs (o)(2)(ii)(D)(1) and (2) of this section for the leak or vent. If the leak or vent is routed to a flare, combustion, or vapor recovery system, you are not required to report emissions under this paragraph.

\* \* \* \* \*

(E) If the leak or vent is routed to flare, combustion, or vapor recovery system, report the percentage of time that the respective device was operational when the compressor source emissions were routed to the device.

\* \* \* \* \*

(5) *Onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting.* Centrifugal compressors with wet seal degassing vents in onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting that calculate emissions according to § 98.233(o)(10)(iii) must report the information specified in paragraphs (o)(5)(i) through (iv) of this section. You must report the information specified in paragraphs (o)(5)(i) through (iv) of this section, as applicable, for each well-pad (for onshore petroleum and natural gas production) or each gathering and boosting site (for onshore petroleum and natural gas gathering and boosting).

(i) Well-pad ID (for the onshore petroleum and natural gas production

industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Report the following activity data.

(A) Total number of centrifugal compressors at the facility.

(B) Number of centrifugal compressors that have wet seals.

(C) Number of centrifugal compressors that have atmospheric wet seal oil degassing vents (*i.e.*, wet seal oil degassing vents where the emissions are released to the atmosphere rather than being routed to flares, combustion, or vapor recovery systems).

(iii) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, from centrifugal compressors with atmospheric wet seal oil degassing vents.

(iv) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, from centrifugal compressors with atmospheric wet seal oil degassing vents.

(p) *Reciprocating compressors.* You must indicate whether your facility has reciprocating compressors. You must report the information specified in paragraphs (p)(1) and (2) of this section for all reciprocating compressors at your facility. For each compressor source or manifolded group of compressor sources that you conduct as found leak measurements as specified in § 98.233(p)(2) or (4), you must report the information specified in paragraph (p)(3) of this section. For each compressor source or manifolded group of compressor sources that you conduct continuous monitoring as specified in § 98.233(p)(3) or (5), you must report the information specified in paragraph (p)(4) of this section. Reciprocating compressors in onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting that calculate emissions according to § 98.233(p)(10)(iii) are not required to report information in paragraphs (p)(1) through (4) of this section and instead must report the information specified in paragraph (p)(5) of this section.

(1) *Compressor activity data.* Report the information specified in paragraphs (p)(1)(i) through (viii) of this section, as applicable, for each reciprocating compressor located at your facility.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Unique name or ID for the reciprocating compressor.

(iii) Hours in operating-mode.

(iv) Hours in standby-pressurized-mode.

(v) Hours in not-operating-depressurized-mode.

(vi) If you conducted volumetric emission measurements as specified in § 98.233(p)(1):

(A) Indicate whether the compressor was measured in operating-mode.

(B) Indicate whether the compressor was measured in standby-pressurized-mode.

(C) Indicate whether the compressor was measured in not-operating-depressurized-mode.

(vii) Indicate whether the compressor has blind flanges installed and associated dates.

(viii) Power output of the compressor driver (hp).

(2) \* \* \*

(ii) \* \* \*

(A) Indicate whether the leak or vent is for a single compressor source or manifolded group of compressor sources and whether the emissions from the leak or vent are released to the atmosphere, routed to a flare, combustion, or vapor recovery system.

\* \* \* \* \*

(D) Report emissions as specified in paragraphs (p)(2)(ii)(D)(1) and (2) of this section for the leak or vent. If the leak or vent is routed to a flare, combustion, or vapor recovery system, you are not required to report emissions under this paragraph.

\* \* \* \* \*

(E) If the leak or vent is routed to a flare, combustion, or vapor recovery system, report the percentage of time that the respective device was operational when the compressor source emissions were routed to the device.

(3) \* \* \*

(ii) For each compressor mode-source combination where a reporter emission factor as calculated in Equation W-28 was used to calculate emissions in Equation W-27, report the information specified in paragraphs (p)(3)(ii)(A) through (D) of this section.

\* \* \* \* \*

(5) *Onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting.* Reciprocating compressors in onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting that calculate emissions according to § 98.233(p)(10)(iii) must report the information specified in paragraphs (p)(5)(i) through (iv) of this section. You must report the information specified in paragraphs (p)(5)(i) through (iv) of this section, as applicable, for each well-pad (for onshore petroleum and natural gas production) or each gathering and boosting site (for onshore petroleum and natural gas gathering and boosting).

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Report the following activity data.

(A) Total number of reciprocating compressors at the facility.

(B) Number of reciprocating compressors that have rod packing emissions vented directly to the atmosphere (*i.e.*, rod packing vents where the emissions are released to the atmosphere rather than being routed to flares, combustion, or vapor recovery systems).

(iii) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, from reciprocating compressors with rod packing emissions vented directly to the atmosphere.

(iv) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, from reciprocating compressors with rod packing emissions vented directly to the atmosphere.

(q) *Equipment leak surveys.* For any components subject to or complying with the requirements of § 98.233(q), you must report the information specified in paragraphs (q)(1) and (2) of this section. You must report the information specified in paragraphs (q)(1) and (2) of this section, as applicable, for each well-pad (for onshore production), gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for all other applicable industry segments). Natural gas distribution facilities with emission sources listed in § 98.232(i)(1) must also report the information specified in paragraph (q)(3) of this section.

(1) You must report the information specified in paragraphs (q)(1)(i) through (ix) of this section.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Except as specified in paragraph (q)(1)(iii) of this section, the number of complete equipment leak surveys performed during the calendar year.

(iii) Natural gas distribution facilities performing equipment leak surveys across a multiple year leak survey cycle must report the number of years in the leak survey cycle.

(iv) Except for natural gas distribution facilities, indicate whether any of the leak detection surveys used in calculating emissions per § 98.233(q)(2) were conducted for compliance with any of the standards in paragraphs (q)(1)(iv)(A) through (E) of this section. Report the indication per well-pad,

gathering and boosting site, or facility, not per component type, as applicable.

(A) The well site or compressor station fugitive emissions standards in § 60.5397a of this chapter.

(B) The well site, centralized production facility, or compressor station fugitive emissions standards in § 60.5397b of this chapter.

(C) The well site, centralized production facility, or compressor station fugitive emissions standards in an applicable approved state plan or applicable Federal plan in part 62 of this chapter.

(D) The standards for equipment leaks at onshore natural gas processing plants in § 60.5400b of this chapter.

(E) The standards for equipment leaks at onshore natural gas processing plants in an applicable approved state plan or applicable Federal plan in part 62 of this chapter.

(v) For facilities in onshore petroleum and natural gas production, onshore petroleum and natural gas gathering and boosting, onshore natural gas transmission compression, underground natural gas storage, LNG storage, and LNG import and export equipment, indicate whether you elected to comply with § 98.233(q) according to § 98.233(q)(1)(iv) for any equipment components at your well-pad, gathering and boosting site, or facility.

(vi) Report each type of method described in § 98.234(a) that was used to conduct leak surveys.

(vii) Report whether emissions were calculated using Calculation Method 1 (leaker factor emission calculation methodology) and/or using Calculation Method 2 (leaker measurement methodology).

(viii) For facilities in onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting, report the number of major equipment (as listed in Table W-1) by service type for which leak detection surveys were conducted and emissions calculated according to § 98.233(q).

(ix) For facilities in onshore petroleum and natural gas production and onshore petroleum and natural gas gathering and boosting, report the number of major equipment (as listed in Table W-1) in vacuum service as defined in § 98.238.

(2) You must indicate whether your facility contains any of the component types subject to or complying with § 98.233(q) that are listed in § 98.232(c)(21), (d)(7), (e)(7) or (8), (f)(5) through (8), (g)(4), (g)(6) or (7), (h)(5), (h)(7) or (8), (i)(1), or (j)(10) for your facility's industry segment. For each component type and leak detection

method combination that is located at your well-pad, gathering and boosting site, or facility, you must report the information specified in paragraphs (q)(2)(i) through (ix) of this section. If a component type is located at your well-pad, gathering and boosting site, or facility and no leaks were identified from that component, then you must report the information in paragraphs (q)(2)(i) through (ix) of this section but report a zero (“0”) for the information required according to paragraphs (q)(2)(vi) through (ix) of this section. If you used Calculation Method 1 (leaker factor emission calculation methodology) for some complete leak surveys and used Calculation Method 2 (leaker measurement methodology) for some complete leak surveys, you must report the information specified in paragraphs (q)(2)(i) through (ix) of this section separately for component surveys using Calculation Method 1 and Calculation Method 2.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Component type.

(iii) Leak detection method used for the screening survey (e.g., Method 21 as specified in § 98.234(a)(2)(i); Method 21 as specified in § 98.234(a)(2)(ii); and OGI and other leak detection methods as specified in § 98.234(a)(1), (3), or (5)).

(iv) Emission factor or measurement method used (e.g., default emission factor; site-specific emission factor developed according to § 98.233(q)(4); or direct measurement according to § 98.233(q)(3)).

(v) Total number of components surveyed by type and leak detection method in the calendar year.

(vi) Total number of the surveyed component types by leak detection method that were identified as leaking in the calendar year (“ $x_p$ ” in Equation W-30 of this subpart for the component type or the number of leaks measured for the specified component type according to the provisions in § 98.233(q)(3)).

(vii) Average time the surveyed components are assumed to be leaking and operational, in hours (average of “ $T_{pz}$ ” from Equation W-30 of this subpart for the component type or average duration of leaks for the specified component type determined according to the provisions in § 98.233(q)(3)(ii)).

(viii) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, for the component type as calculated using Equation W-30 or

§ 98.233(q)(3)(vii) (for surveyed components only).

(ix) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, for the component type as calculated using Equation W-30 or § 98.233(q)(3)(vii) (for surveyed components only).

\* \* \* \* \*

(r) *Equipment leaks by population count.* If your facility is subject to the requirements of § 98.233(r), then you must report the information specified in paragraphs (r)(1) through (3) of this section, as applicable. You must report the information specified in paragraphs (r)(1) through (3) of this section, as applicable, for each well-pad (for onshore petroleum and natural gas production), gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for all other applicable industry segments).

(1) You must indicate whether your facility contains any of the emission source types required to use Equation W-32A of § 98.233. You must report the information specified in paragraphs (r)(1)(i) through (vi) of this section separately for each emission source type required to use Equation W-32A that is located at your facility. For each well-pad and gathering and boosting site at onshore petroleum and natural gas production facilities and onshore petroleum and natural gas gathering and boosting facilities you must report the information specified in paragraphs (r)(1)(i) through (vi) of this section separately by equipment type and service type.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Emission source type. Onshore petroleum and natural gas production facilities and onshore petroleum and natural gas gathering and boosting facilities must report the equipment type and service type.

(iii) Total number of the emission source type at the well-pad, gathering and boosting site, or facility, as applicable (“Count<sub>e</sub>” in Equation W-32A of this subpart).

(iv) Average estimated time that the emission source type was operational in the calendar year, in hours (“ $T_e$ ” in Equation W-32A of this subpart).

(v) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, for the emission source type.

(vi) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, for the emission source type.

\* \* \* \* \*

(3) You must indicate whether your facility contains any emission source

types in vacuum service as defined in § 98.238. If your facility contains equipment in vacuum service, you must report the information specified in paragraphs (r)(3)(i) through (iii) of this section separately for each emission source type in vacuum service that is located at your well-pad, gathering and boosting site, or facility, as applicable.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) Emission source type.

(iii) Total number of the emission source type at the well-pad, gathering and boosting site, or facility, as applicable.

(s) *Offshore petroleum and natural gas production.* You must report the information specified in paragraphs (s)(1) through (3) of this section for your facility.

(1) For facilities that report to BOEM’s emissions inventory, the BOEM Facility ID(s) that correspond(s) to this facility.

(2) If you adjusted emissions according to § 98.233(s)(1)(i) or (s)(2)(i), report the information specified in paragraphs (s)(2)(i) and (ii) of this section.

(i) Facility operating hours for the year of the most recent BOEM emissions inventory.

(ii) Facility operating hours for the current year.

(3) For each emission source type listed in the most recently published BOEM emissions inventory, report the information specified in paragraphs (s)(3)(i) through (iii) of this section.

(i) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>.

(ii) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>.

(iii) Annual N<sub>2</sub>O emissions, in metric tons N<sub>2</sub>O.

\* \* \* \* \*

(x) \* \* \*

(1) Well-pad ID.

\* \* \* \* \*

(y) *Other large release events.* You must indicate whether there were any other large release events from your facility during the reporting year and indicate whether your facility was notified of a potential super-emitter release under the provisions of § 60.5371b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter. If there were any other large release events, you must report the total number of other large release events from your facility that occurred during the reporting year and, for each

other large release event, report the information specified in paragraphs (y)(1) through (10) of this section. If you received a notification of a potential super-emitter release from a third-party for this facility or a super-emitter release notification under the provisions of § 60.5371b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter, you must also report the information specified in paragraph (y)(11) of this section.

(1) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(2) Unique release event identification number (e.g., Event 1, Event 2).

(3) The latitude and longitude of the release in decimal degrees to at least four digits to the right of the decimal point.

(4) The approximate start date, start time, and duration (in hours) of the release event, and an indication of how the start date and time were determined (determined based on pressure monitor, temperature monitor, other monitored process parameter (specify), assigned based on last monitoring or measurement survey showing no large release, or used the 182-day default maximum duration).

(5) A general description of the event. Include:

(i) Identification of the equipment involved in the release.

(ii) A description of how the release occurred, from one of the following categories: maintenance event, fire/explosion, gas well blowout, oil well blowout, gas well release, oil well release, pressure relief, large leak, and other (specify).

(iii) An indication of whether the release exceeded a threshold in § 98.233(y)(1)(i) or in § 98.233(y)(1)(ii).

(iv) A description of the technology or method used to identify the release.

(v) An indication of whether the release was identified under the provisions of § 60.5371b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter or a third-party notification and, if the release was identified under the provisions of § 60.5371b of this chapter or an applicable approved state plan or applicable Federal plan in part 62 of this chapter or a third-party notification, a unique notification ID number for the notification as assigned in paragraph (y)(11)(i) of this section.

(vi) An indication of whether a portion of the natural gas released was combusted during the release, and if so,

the fraction of the natural gas released that was estimated to be combusted and the assumed combustion efficiency for the combusted natural gas.

(6) The total volume of gas released during the event in standard cubic feet.

(7) The volume fraction of CO<sub>2</sub> in the gas released during the event.

(8) The volume fraction of CH<sub>4</sub> in the gas released during the event.

(9) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, from the release event that occurred during the reporting year.

(10) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, from the release event that occurred during the reporting year and the maximum CH<sub>4</sub> emissions rate, in kilograms per hour, determined for any period of the event according to the provisions of § 98.233(y)(2)(i).

(11) Report the total number of super-emitter release notifications received from a third party for this facility during the reporting year and, for each such super-emitter release notification, report the information specified in paragraphs (y)(11)(i) through (vi) of this section.

(i) Unique notification identification number (e.g., Notification\_01, Notification\_02). If a unique notification number was provided with a notification received under the provisions of § 60.5371b of this chapter, an applicable approved state plan, or applicable Federal plan in part 62 of this chapter, report the number associated with the event provided in the notification.

(ii) The latitude and longitude of the release as provided in the notification.

(iii) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only) to which the notification was attributed.

(iv) An indication of whether the super-emitter release notification was received under the provisions of § 60.5371b of this chapter, an applicable approved state plan, or applicable Federal plan in part 62 of this chapter, or from another third-party. If the notification was received from another third-party, report the following information about the notifier and data received, if known.

(A) The name of the person and/or company that provided the notification.

(B) The method used during by the notifier to quantify the emissions (satellite detection; remote-sensing equipment on aircraft; mobile monitoring platform; other, specify; or unknown).

(C) The date(s) and time(s) the measurement was made.

(D) The measured methane emission rate and uncertainty bounds (in kilograms per hour).

(v) Based on any assessment or investigation triggered by the notification, indicate if the emissions were from normal operations, a planned maintenance event, leaking equipment, malfunctioning equipment or device, or undetermined cause.

(vi) An indication of whether the emissions identified via the notification are included in annual emissions reported for under this subpart and, if so, the source type under which those emissions are reported. If the emissions were reported following the requirements of § 98.233(y) as an other large release event, report the unique release event identification number assigned to the other large release event as reported in paragraph (y)(2) of this section. If the emissions identified via the notification are not included in annual emissions reported under this subpart, you must provide the reason for not including the emissions related to this notification (the emissions could not be verified or corroborated during site inspection or facility data records; the location of the emissions as provided in the notification do not belong to the facility; the information was determined not to be credible, explain; other, specify).

(z) *Combustion equipment at onshore petroleum and natural gas production facilities, onshore petroleum and natural gas gathering and boosting facilities, and natural gas distribution facilities.* If your facility is required by § 98.232(c)(22), (i)(7), or (j)(12) to report emissions from combustion equipment, then you must indicate whether your facility has any combustion units subject to reporting according to paragraph (a)(1)(xx), (a)(8)(vi), or (a)(9)(xiii) of this section. If your facility contains any combustion units subject to reporting according to paragraph (a)(1)(xx), (a)(8)(vi), or (a)(9)(xiii) of this section, then you must report the information specified in paragraphs (z)(1) and (2) of this section, as applicable. You must report the information specified in paragraphs (z)(1) and (2) of this section, as applicable, for each well-pad (for onshore petroleum and natural gas production), gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for all other applicable industry segments).

(1) Indicate whether the combustion units include: External fuel combustion units with a rated heat capacity less than or equal to 5 million Btu per hour; or, internal fuel combustion units that are not compressor-drivers, with a rated

heat capacity less than or equal to 1 mmBtu/hr (or the equivalent of 130 horsepower). If the facility contains external fuel combustion units with a rated heat capacity less than or equal to 5 million Btu per hour or internal fuel combustion units that are not compressor-drivers, with a rated heat capacity less than or equal to 1 million Btu per hour (or the equivalent of 130 horsepower), then you must report the information specified in paragraphs (z)(1)(i) through (iii) of this section for each unit type.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) The type of combustion unit.

(iii) The total number of combustion units.

(2) Indicate whether the combustion units include: External fuel combustion units with a rated heat capacity greater than 5 million Btu per hour; internal fuel combustion units that are not compressor-drivers, with a rated heat capacity greater than 1 million Btu per hour (or the equivalent of 130 horsepower); or, internal fuel combustion units of any heat capacity that are compressor-drivers. For each type of combustion unit at your facility, you must report the information specified in paragraphs (z)(2)(i) through (iv) and (z)(2)(viii) through (x) of this section, except for internal fuel combustion units that are not compressor-drivers, with a rated heat capacity greater than 1 million Btu per hour (or the equivalent of 130 horsepower) or internal fuel combustion units of any heat capacity that are compressor-drivers that combust natural gas meeting the criteria in § 98.233(z)(1) or (2), which must report the information specified in paragraphs (z)(2)(i) through (x) of this section. Information must be reported for each combustion unit type, fuel type, and method for determining the CH<sub>4</sub> emission factor combination, as applicable.

(i) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(ii) The type of combustion unit including external fuel combustion units with a rated heat capacity greater than 5 million Btu per hour; internal fuel combustion units that are not compressor-drivers, with a rated heat capacity greater than 1 million Btu per hour (or the equivalent of 130

horsepower); or internal fuel combustion units of any heat capacity that are compressor-drivers.

(iii) The type of fuel combusted.

(iv) The quantity of fuel combusted in the calendar year, in thousand standard cubic feet, gallons, or tons.

(v) The equipment type, including reciprocating 2-stroke-lean burn, reciprocating 4-stroke lean-burn, reciprocating 4-stroke rich-burn, and gas turbine.

(vi) The method used to determine the methane emission factor, including the default emission factor from Table W-7 of subpart W, OEM data, or performance tests in § 98.234(i).

(vii) The value of the CH<sub>4</sub> emission factor (kg CH<sub>4</sub>/mmBtu).

(viii) Annual CO<sub>2</sub> emissions, in metric tons CO<sub>2</sub>, calculated according to § 98.233(z)(1) through (3).

(ix) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, calculated according to § 98.233(z)(1) through (3).

(x) Annual N<sub>2</sub>O emissions, in metric tons N<sub>2</sub>O, calculated according to § 98.233(z)(1) through (3).

(aa) *Industry segment-specific information.* Each facility must report the information specified in paragraphs (aa)(1) through (11) of this section, for each applicable industry segment, determined using a flow meter that meets the requirements of § 98.234(b) for quantities that are sent to sale or through the facility and determined by using best available data for other quantities. If a quantity required to be reported is zero, you must report zero as the value.

(1) For onshore petroleum and natural gas production, report the data specified in paragraphs (aa)(1)(i) and (iv) of this section.

(i) Report the information specified in paragraphs (aa)(1)(i)(A) through (D) of this section for the basin as a whole, unless otherwise specified.

\* \* \* \* \*

(B) The quantity of natural gas produced from producing wells that is sent to sale in the calendar year, in thousand standard cubic feet.

(C) The quantity of crude oil produced from producing wells that is sent to sale in the calendar year, in barrels.

(D) The quantity of condensate produced from producing wells that is sent to sale in the calendar year, in barrels.

(ii) \* \* \*

(D) The number of producing wells at the end of the calendar year (exclude only those wells permanently shut-in and plugged).

(E) The number of producing wells acquired during the calendar year.

(F) The number of producing wells divested during the calendar year.

(G) The number of wells completed during the calendar year.

(H) The number of wells permanently shut-in and plugged during the calendar year.

\* \* \* \* \*

(iii) Report the information specified in paragraphs (aa)(1)(iii)(A) through (E) of this section for each well located in the facility.

(A) Well ID number.

(B) Well-pad ID.

(C) For each well permanently shut-in and plugged during the calendar year, the quantity of natural gas produced that is sent to sale in the calendar year, in thousand standard cubic feet.

(D) For each well permanently shut-in and plugged during the calendar year, the quantity of crude oil produced that is sent to sale in the calendar year, in barrels.

(E) For each well permanently shut-in and plugged during the calendar year, the quantity of condensate produced that is sent to sale in the calendar year, in barrels.

(iv) Report the information specified in paragraphs (aa)(1)(iv)(A) through (F) of this section for each well-pad located in the facility.

(A) A unique name or ID number for the well-pad.

(B) Sub-basin ID.

(C) The latitude and longitude of the well-pad representing the geographic centroid or center point of the well-pad in decimal degrees to at least four digits to the right of the decimal point.

(D) For each well-pad with a well that was permanently shut-in and plugged during the calendar year, report the quantity of gas produced from all producing wells on the well-pad that is sent to sale in the calendar year, in thousand standard cubic feet.

(E) For each well-pad with a well that was permanently shut-in and plugged during the calendar year, report the quantity of crude oil produced from all producing wells on the well-pad that is sent to sale in the calendar year for sales, in barrels.

(F) For each well-pad with a well that was permanently shut-in and plugged during the calendar year, report the quantity of condensate produced from all producing wells on the well-pad that is sent to sale in the calendar year, in barrels.

(2) For offshore production, report the quantities specified in paragraphs (aa)(2)(i) through (vi) of this section.

(i) The quantity of natural gas produced from producing wells that is sent to sale in the calendar year, in thousand standard cubic feet.

(ii) The quantity of crude oil produced from producing wells that is sent to sale in the calendar year, in barrels.

(iii) The quantity of condensate produced from producing wells that is sent to sale in the calendar year, in barrels.

(iv) For each well permanently shut-in and plugged during the calendar year, the quantity of natural gas produced that is sent to sale in the calendar year, in thousand standard cubic feet.

(v) For each well permanently shut-in and plugged during the calendar year, the quantity of crude oil produced that is sent to sale in the calendar year, in barrels.

(vi) For each well permanently shut-in and plugged during the calendar year, the quantity of condensate produced that is sent to sale in the calendar year, in barrels.

(3) For natural gas processing, if your facility fractionates NGLs and also reports as a supplier to subpart NN of this part, you must report the information specified in paragraphs (aa)(3)(ii) and (aa)(3)(v) through (ix) of this section. Otherwise, report the information specified in paragraphs (aa)(3)(i) through (ix) of this section.

(i) The quantity of natural gas received at the gas processing plant for processing in the calendar year, in thousand standard cubic feet.

\* \* \* \* \*

(viii) Indicate whether the facility reports as a supplier to subpart NN of this part.

(ix) The quantity of residue gas leaving that has been processed by the facility and any gas that passes through the facility to sales without being processed by the facility.

(4) \* \* \*

(i) The quantity of natural gas transported through the compressor station in the calendar year, in thousand standard cubic feet.

\* \* \* \* \*

(5) \* \* \*

(ii) The quantity of natural gas withdrawn from storage and sent to sale in the calendar year, in thousand standard cubic feet.

\* \* \* \* \*

(6) For LNG import equipment, report the quantity of LNG imported that is sent to sale in the calendar year, in thousand standard cubic feet.

(7) For LNG export equipment, report the quantity of LNG exported that is sent to sale in the calendar year, in thousand standard cubic feet.

(8) \* \* \*

(ii) The quantity of LNG withdrawn from storage and sent to sale in the

calendar year, in thousand standard cubic feet.

\* \* \* \* \*

(10) For onshore petroleum and natural gas gathering and boosting facilities, report the quantities specified in paragraphs (aa)(10)(i) through (v) of this section.

\* \* \* \* \*

(ii) The quantity of natural gas transported through the facility to a downstream endpoint such as a natural gas processing facility, a natural gas transmission pipeline, a natural gas distribution pipeline, a storage facility, or another gathering and boosting facility in the calendar year, in thousand standard cubic feet.

\* \* \* \* \*

(iv) The quantity of all hydrocarbon liquids transported to a downstream endpoint such as a natural gas processing facility, a natural gas transmission pipeline, a natural gas distribution pipeline, a storage facility, or another gathering and boosting facility in the calendar year, in barrels.

(v) Report the information specified in paragraphs (aa)(10)(v)(A) through (E) of this section for each gathering and boosting site located in the facility.

(A) A unique name or ID number for the gathering and boosting site.

(B) Gathering and boosting site type (gathering compressor station, centralized oil production site, gathering pipeline, or other fence-line site).

(C) State.

(D) For gathering compressor stations, centralized oil production sites, and other fence-line sites, county.

(E) For gathering compressor stations, centralized oil production sites, and other fence-line sites, the latitude and longitude of the gathering and boosting site representing the geographic centroid or center point of the site in decimal degrees to at least four digits to the right of the decimal point.

(11) \* \* \*

(ii) The quantity of natural gas withdrawn from underground natural gas storage and LNG storage (regasification) facilities owned and operated by the onshore natural gas transmission pipeline owner or operator that are not subject to this subpart in the calendar year, in thousand standard cubic feet.

(iii) The quantity of natural gas added to underground natural gas storage and LNG storage (liquefied) facilities owned and operated by the onshore natural gas transmission pipeline owner or operator that are not subject to this subpart in the calendar year, in thousand standard cubic feet.

(iv) The quantity of natural gas transported through the facility and transferred to third parties such as LDCs or other transmission pipelines, in thousand standard cubic feet.

\* \* \* \* \*

(bb) *Missing data.* For any missing data procedures used, report the information in § 98.3(c)(8) and the procedures used to substitute an unavailable value of a parameter, except as provided in paragraphs (bb)(1) and (2) of this section.

\* \* \* \* \*

(cc) *Delay in reporting for wildcat wells and delineation wells.* If you elect to delay reporting the information in paragraph (g)(5)(i) or (ii), (g)(5)(iii)(A) or (B), (h)(1)(iv), (h)(2)(iv), (j)(1)(iii), (j)(2)(i)(A), (l)(1)(v), (l)(2)(v), (l)(3)(iv), (l)(4)(iv), or (m)(5) or (6) of this section, you must report the information required in that paragraph no later than the date 2 years following the date specified in § 98.3(b) introductory text.

(dd) *Drilling mud degassing.* You must indicate whether there were mud degassing operations at your facility, and if so, which methods (as specified in § 98.233(dd)) were used to calculate emissions. For wells for which your facility performed mud degassing operations and used Calculation Method 1, then you must report the information specified in paragraph (dd)(1) of this section. For wells for which your facility performed mud degassing operations and used Calculation Method 2, then you must report the information specified in paragraph (dd)(2) of this section.

(1) For each well for which you used Calculation Method 1 to calculate natural gas emissions from mud degassing, report the information specified in paragraphs (dd)(1)(i) through (vii) of this section.

(i) Well ID number.

(ii) Approximate total depth below surface, in feet.

(iii) Total time that drilling mud is circulated in the well, in minutes.

(iv) The composition of the drilling mud: water-based, oil-based, or synthetic.

(v) If the well is not a representative well, Well ID number of the representative well used to derive the CH<sub>4</sub> emission rate used to calculate CH<sub>4</sub> emissions for this well.

(vi) If the well is a representative well, report the information specified in paragraphs (dd)(1)(vi)(A) through (D) of this section.

(A) Average mud rate, in gallons per minute.

(B) Concentration of natural gas in the drilling mud (X<sub>n</sub> in Equation W-41), in parts per million.

(C) Measured mole fraction for CH<sub>4</sub> in natural gas entrained in the drilling mud (GHG<sub>CH<sub>4</sub></sub> in Equation W-41).

(D) Calculated CH<sub>4</sub> emissions rate in standard cubic per minute (ER<sub>s,CH<sub>4</sub></sub> in Equation W-42).

(vii) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, from well drilling mud degassing, calculated according to § 98.233(dd)(1).

(2) For each well for which you used Calculation Method 2 to calculate natural gas emissions from mud degassing, report the information specified in paragraphs (dd)(2)(i) through (iv) of this section.

(i) Well ID number.

(ii) Total number of drilling days.

(iii) The composition of the drilling mud: water-based, oil-based, or synthetic.

(iv) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, from drilling mud degassing, calculated according to § 98.233(dd)(2).

(ee) *Crankcase vents*. You must indicate whether your facility performs any crankcase venting from reciprocating internal combustion engines or gas turbines. If your facility contains at least one crankcase vent on an applicable engine, you must report the information specified in paragraphs (ee)(1) through (4) of this section for each well-pad (for onshore petroleum and natural gas production), gathering and boosting site (for onshore petroleum and natural gas gathering and boosting), or facility (for all other applicable industry segments).

(1) Well-pad ID (for the onshore petroleum and natural gas production industry segment only) or gathering and boosting site ID (for the onshore petroleum and natural gas gathering and boosting industry segment only).

(2) Total number of crankcase vents at the well-pad, gathering and boosting site, or facility, as applicable (“Count” in Equation W-45 of this subpart).

(3) Average estimated time that the reciprocating internal combustion engines or gas turbines with crankcase venting were operational in the calendar year, in hours (“T” in Equation W-45 of this subpart).

(4) Annual CH<sub>4</sub> emissions, in metric tons CH<sub>4</sub>, calculated according to § 98.233(ee)(1).

■ 16. Amend § 98.238 by:

■ a. Removing the definition for “Acid gas removal vent emissions” and adding the definition for “Acid gas removal unit (AGR) vent emissions” in alphabetical order;

■ b. Adding definitions for “Atmospheric pressure storage tank,” “Automated liquids unloading,” and “Centralized oil production site” in alphabetical order;

■ c. Revising the definitions for “Compressor mode” and “Compressor source”;

■ d. Adding definitions for “Crankcase venting,” “Drilling mud,” and “Drilling mud degassing” in alphabetical order;

■ e. Removing the second definition for “Facility with respect to natural gas distribution for purposes of reporting under this subpart and for the corresponding subpart A requirements”;

■ f. Revising the definitions for “Flare stack emissions” and “Forced extraction of natural gas liquids”;

■ g. Adding the definition for “Gathering and boosting site” in alphabetical order;

■ h. Revising the definitions for “Gathering and boosting system” and “Gathering and boosting system owner or operator”; and

■ i. Adding definitions for “Gathering compressor station,” “Gathering pipeline site,” “In vacuum service,” “Manual liquids unloading,” “Mud rate,” “Nitrogen removal unit (NRU),” “Nitrogen removal unit vent emissions,” “Other large release event,” “Produced water,” “Routed to combustion,” “Well blowout,” and “Well release” in alphabetical order.

The additions and revisions read as follows:

§ 98.238 Definitions.

\* \* \* \* \*

*Acid gas removal unit (AGR) vent emissions* mean the acid gas separated from the acid gas absorbing medium (e.g., an amine solution) and released with methane and other light hydrocarbons to the atmosphere or a flare.

\* \* \* \* \*

*Atmospheric pressure storage tank* means a vessel (excluding sumps) operating at atmospheric pressure that is designed to contain an accumulation of crude oil, condensate, intermediate hydrocarbon liquids, or produced water and that is constructed entirely of non-earthen materials (e.g., wood, concrete, steel, plastic) that provide structural support. Atmospheric pressure storage tanks include both fixed roof tanks and floating roof tanks. Floating roof tanks include tanks with either an internal floating roof or an external floating roof.

*Automated liquids unloading* means an unloading that is performed without manual interference. Examples of automated liquids unloadings include a timing and/or pressure device used to optimize intermittent shut-in of the well before liquids choke off gas flow or to open and close valves, continually operating equipment that does not require presence of an operator such as rod pumping units, automated and

unmanned plunger lifts, or other unloading activities that do not entail a physical presence at the well-pad.

\* \* \* \* \*

*Centralized oil production site* means any permanent combination of one or more hydrocarbon liquids storage tanks located on one or more contiguous or adjacent properties that does not also contain a permanent combination of one or more compressors that are part of the onshore petroleum and natural gas gathering and boosting facility that gathers hydrocarbon liquids from multiple well-pads. A *centralized oil production site* is a type of gathering and boosting site for purposes of reporting under § 98.236.

\* \* \* \* \*

*Compressor mode* means the operational and pressurized status of a compressor. For both centrifugal compressors and reciprocating compressors, “mode” refers to either: Operating-mode, standby-pressurized-mode, or not-operating-depressurized-mode.

*Compressor source* means the source of certain venting or leaking emissions from a centrifugal or reciprocating compressor. For centrifugal compressors, “source” refers to blowdown valve leakage through the blowdown vent, unit isolation valve leakage through an open blowdown vent without blind flanges, wet seal oil degassing vents, and dry seal vents. For reciprocating compressors, “source” refers to blowdown valve leakage through the blowdown vent, unit isolation valve leakage through an open blowdown vent without blind flanges, and rod packing emissions.

\* \* \* \* \*

*Crankcase venting* means the process of venting or removing blow-by from the void spaces of an internal combustion engine outside of the combustion cylinders to prevent excessive pressure build-up within the engine. This does not include ingestive systems that vent blow-by into the engine where it is returned to the combustion process.

\* \* \* \* \*

*Drilling mud* means a mixture of clays and additives with water, oil, or synthetic materials. While drilling, the drilling mud is continuously pumped through the drill string and out the bit to cool and lubricate the drill bit, and move cuttings through the wellbore to the surface.

*Drilling mud degassing* means the practice of safely removing pockets of free gas entrained in the drilling mud once it is outside of the wellbore.

\* \* \* \* \*

*Flare stack emissions* means CO<sub>2</sub> in gas routed to a flare, CO<sub>2</sub> from partial combustion of hydrocarbons in gas routed to a flare, CH<sub>4</sub> emissions resulting from the incomplete combustion of hydrocarbons in gas routed to a flare, and N<sub>2</sub>O resulting from operation of a flare.

*Forced extraction of natural gas liquids* means removal of ethane or higher carbon number hydrocarbons existing in the vapor phase in natural gas, by removing ethane or heavier hydrocarbons derived from natural gas into natural gas liquids by means of a forced extraction process. Forced extraction processes include but are not limited to refrigeration, absorption (lean oil), cryogenic expander, and combinations of these processes. Forced extraction does not include in and of itself; natural gas dehydration, the collection or gravity separation of water or hydrocarbon liquids from natural gas at ambient temperature or heated above ambient temperatures, the condensation of water or hydrocarbon liquids through passive reduction in pressure or temperature, a Joule-Thomson valve, a dew point depression valve, or an isolated or standalone Joule-Thomson skid.

*Gathering and boosting site* means a single gathering compressor station as defined in this section, centralized oil production site as defined in this section, gathering pipeline site as defined in this section, or other fence-line site within the onshore petroleum and natural gas gathering and boosting industry segment.

*Gathering and boosting system* means a single network of pipelines, compressors and process equipment, including equipment to perform natural gas compression, dehydration, and acid gas removal, that has one or more connection points to gas and oil production or one or more other gathering and boosting systems and a downstream endpoint, typically a gas processing plant, transmission pipeline, LDC pipeline, or other gathering and boosting system.

*Gathering and boosting system owner or operator* means any person that holds a contract in which they agree to transport petroleum or natural gas from one or more onshore petroleum and natural gas production wells or one or more other gathering and boosting systems to a natural gas processing facility, another gathering and boosting system, a natural gas transmission

pipeline, or a distribution pipeline, or any person responsible for custody of the petroleum or natural gas transported.

*Gathering compressor station* means any permanent combination of one or more compressors located on one or more contiguous or adjacent properties that are part of the onshore petroleum and natural gas gathering and boosting facility that move natural gas at increased pressure through gathering pipelines or into or out of storage. A *gathering compressor station* is a type of gathering and boosting site for purposes of reporting under § 98.236.

*Gathering pipeline site* means all of the gathering pipelines within a single state. A *gathering pipeline site* is a type of gathering and boosting site for purposes of reporting under § 98.236.

*In vacuum service* means equipment operating at an internal pressure which is at least 5 kilopascals (kPa) (0.7 psia) below ambient pressure.

*Manual liquids unloading* means an unloading when field personnel attend to the well at the well-pad, for example to manually plunge a well at the site using a rig or other method, to open a valve to direct flow to an atmospheric tank to clear the well, or to manually shut-in the well to allow pressure to build in the well-bore. Manual unloadings may be performed on a routine schedule or on “as needed” basis.

*Mud rate* means the pumping rate of the mud by the mud pumps, usually measured in gallons per minute (gpm).

*Nitrogen removal unit (NRU)* means a process unit that separates nitrogen from natural gas using various separation processes (e.g., cryogenic units, membrane units, etc.)

*Nitrogen removal unit vent emissions* means the nitrogen gas separated from the natural gas and released with methane and other gases to the atmosphere, flare, or other combustion unit.

*Other large release event* means any planned or unplanned uncontrolled release to the atmosphere of gas, liquids, or mixture thereof, from wells and/or other equipment that result in emissions for which there are no methodologies in § 98.233 other than under § 98.233(y) to

appropriately estimate these emissions. *Other large release events* include, but are not limited to, well blowouts, well releases, pressure relief valve releases from process equipment other than hydrocarbon liquids storage tanks, storage tank cleaning and other maintenance activities, and releases that occur as a result of an accident, equipment rupture, fire, or explosion. *Other large release events* also include failure of equipment or equipment components such that a single equipment leak or release has emissions that exceed the emissions calculated for that source using applicable methods in § 98.233(a) through (s), (w), (x), (dd), or (ee) by the threshold in § 98.233(y)(1)(ii).

\* \* \* \* \*

*Produced water* means the water (brine) brought up from the hydrocarbon-bearing strata during the extraction of oil and gas, and can include formation water, injection water, and any chemicals added downhole or during the oil/water separation process.

\* \* \* \* \*

*Routed to combustion* means, for onshore petroleum and natural gas production facilities, natural gas distribution facilities, and onshore petroleum and natural gas gathering and boosting facilities, that emissions are routed to stationary or portable fuel combustion equipment specified in § 98.232(c)(22), (i)(7), or (j)(12), as applicable. For all other industry segments in this subpart, *routed to combustion* means that emissions are routed to a stationary fuel combustion unit subject to subpart C of this part (General Stationary Fuel Combustion Sources).

\* \* \* \* \*

*Well blowout* means a complete loss of well control for a long duration of time resulting in an emissions release.

\* \* \* \* \*

*Well release* means a short duration of uncontrolled emissions release from a well followed by a period of controlled emissions release in which control techniques were successfully implemented.

\* \* \* \* \*

17. Remove table W-1A, table W-1B, table W-1C, table W-1D, and table W-1E to subpart W of part 98 and add table W-1 to subpart W of part 98 in numerical order to read as follows:

TABLE W-1 TO SUBPART W OF PART 98—DEFAULT WHOLE GAS POPULATION EMISSION FACTORS

Industry segment	Source type/component	Emission factor (scf whole gas/hour/unit)
<b>Population Emission Factors—Pneumatic Device Vents and Pneumatic Pumps, Gas Service<sup>1</sup></b>		
• Onshore petroleum and natural gas production .....	Continuous Low Bleed Pneumatic Device Vents <sup>2</sup> .....	6.8
• Onshore petroleum and natural gas gathering and boosting	Continuous High Bleed Pneumatic Device Vents <sup>2</sup> .....	21
	Pneumatic Pumps <sup>3</sup> .....	13.3
• Onshore natural gas processing .....	Continuous Low Bleed Pneumatic Device Vents <sup>2</sup> .....	6.8
• Onshore natural gas transmission compression .....	Continuous High Bleed Pneumatic Device Vents <sup>2</sup> .....	30
• Underground natural gas storage .....		
• Natural gas distribution		
<b>Population Emission Factors—Major Equipment, Gas Service<sup>1</sup></b>		
• Onshore petroleum and natural gas production .....	Wellhead .....	8.87
	Separator .....	9.65
• Onshore petroleum and natural gas gathering and boosting.	Meters/Piping .....	7.04
	Compressor .....	13.8
	Dehydrator .....	8.09
	Heater .....	5.22
	Storage Vessel .....	1.83
<b>Population Emission Factors—Major Equipment, Crude Service</b>		
Onshore petroleum and natural gas production .....	Wellhead .....	4.13
	Separator .....	4.77
	Meters/Piping .....	12.4
	Compressor .....	13.8
	Dehydrator .....	8.09
	Heater .....	3.2
	Storage Vessel .....	1.91
<b>Population Emission Factors—Gathering Pipelines, by Material Type<sup>4</sup></b>		
Onshore petroleum and natural gas gathering and boosting	Protected Steel .....	0.93
	Unprotected Steel .....	8.2
	Plastic/Composite .....	0.28
	Cast Iron .....	8.4

<sup>1</sup> For multi-phase flow that includes gas, use the gas service emission factors.

<sup>2</sup> Emission factor is in units of “scf whole gas/hour/device.”

<sup>3</sup> Emission factor is in units of “scf whole gas/hour/pump.”

<sup>4</sup> Emission factors are in units of “scf whole gas/hour/mile of pipeline.”

■ 18. Revise table W-2 to subpart W of part 98 to read as follows:

TABLE W-2 TO SUBPART W OF PART 98—DEFAULT WHOLE GAS LEAKER EMISSION FACTORS

Equipment components	Emission factor (scf whole gas/hour/component)		
	If you survey using Method 21 as specified in § 98.234(a)(2)(i)	If you survey using Method 21 as specified in § 98.234(a)(2)(ii)	If you survey using any of the methods in § 98.234(a)(1), (3), or (5)
<b>Leaker Emission Factors—Onshore Petroleum and Natural Gas Production and Onshore Petroleum and Natural Gas Gathering and Boosting—All Components, Gas Service<sup>1</sup></b>			
Valve .....	9.6	5.5	16
Flange .....	6.9	4.0	11
Connector (other) .....	4.9	2.8	7.9
Open-Ended Line <sup>2</sup> .....	6.3	3.6	10
Pressure Relief Valve .....	7.8	4.5	13
Pump Seal .....	14	8.3	23
Other <sup>3</sup> .....	9.1	5.3	15
<b>Leaker Emission Factors—Onshore Petroleum and Natural Gas Production—All Components, Oil Service</b>			
Valve .....	5.6	3.3	9.2
Flange .....	2.7	1.6	4.4
Connector (other) .....	5.6	3.2	9.1

TABLE W-2 TO SUBPART W OF PART 98—DEFAULT WHOLE GAS LEAKER EMISSION FACTORS—Continued

Equipment components	Emission factor (scf whole gas/hour/component)		
	If you survey using Method 21 as specified in § 98.234(a)(2)(i)	If you survey using Method 21 as specified in § 98.234(a)(2)(ii)	If you survey using any of the methods in § 98.234(a)(1), (3), or (5)
Open-Ended Line .....	1.6	0.93	2.6
Pump <sup>4</sup> .....	3.7	2.2	6.0
Other <sup>3</sup> .....	2.2	1.0	2.9

<sup>1</sup> For multi-phase flow that includes gas, use the gas service emission factors.

<sup>2</sup> The open-ended lines component type includes blowdown valve and isolation valve leaks emitted through the blowdown vent stack for centrifugal and reciprocating compressors.

<sup>3</sup> "Others" category includes any equipment leak emission point not specifically listed in this table, as specified in § 98.232(c)(21) and (j)(10).

<sup>4</sup> The pumps component type in oil service includes agitator seals.

- 19. Remove table W-3A and table W-3B to subpart W of part 98 and add table W-3 to subpart W of part 98 in numerical order to read as follows:

TABLE W-3 TO SUBPART W OF PART 98—DEFAULT TOTAL HYDROCARBON POPULATION EMISSION FACTORS

Industry segment	Source type/component	Emission factor (scf total hydrocarbon/hour/component)
<b>Population Emission Factors—Storage Wellheads, Gas Service</b>		
Underground natural gas storage .....	Connector .....	0.01
	Valve .....	0.1
	Pressure Relief Valve .....	0.17
	Open-Ended Line .....	0.03

- 20. Remove table W-4A and table W-4B to subpart W of part 98 and add table W-4 to subpart W of part 98 in numerical order to read as follows:

TABLE W-4 TO SUBPART W OF PART 98—DEFAULT TOTAL HYDROCARBON LEAKER EMISSION FACTORS

Equipment components	Emission factor (scf total hydrocarbon/hour/component)		
	If you survey using Method 21 as specified in § 98.234(a)(2)(i)	If you survey using Method 21 as specified in § 98.234(a)(2)(ii)	If you survey using any of the methods in § 98.234(a)(1), (3), or (5)
<b>Leaker Emission Factors—Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression—Compressor Components, Gas Service</b>			
Valve <sup>1</sup> .....	14.84	9.51	24.2
Connector .....	5.59	3.58	9.13
Open-Ended Line .....	17.27	11.07	28.2
Pressure Relief Valve .....	39.66	25.42	64.8
Meter .....	19.33	12.39	31.6
Other <sup>2</sup> .....	4.1	2.63	6.70
<b>Leaker Emission Factors—Onshore Natural Gas Processing, Onshore Natural Gas Transmission Compression—Non-Compressor Components, Gas Service</b>			
Valve <sup>1</sup> .....	6.42	4.12	10.5
Connector .....	5.71	3.66	9.3
Open-Ended Line .....	11.27	7.22	18.4
Pressure Relief Valve .....	2.01	1.29	3.28
Meter .....	2.93	1.88	4.79
Other <sup>2</sup> .....	4.1	2.63	6.70
<b>Leaker Emission Factors—Underground Natural Gas Storage—Storage Station, Gas Service</b>			
Valve <sup>1</sup> .....	14.84	9.51	24.2
Connector (other) .....	5.59	3.58	9.13
Open-Ended Line .....	17.27	11.07	28.2
Pressure Relief Valve .....	39.66	25.42	64.8
Meter and Instrument .....	19.33	12.39	31.6
Other <sup>2</sup> .....	4.1	2.63	6.70

TABLE W-4 TO SUBPART W OF PART 98—DEFAULT TOTAL HYDROCARBON LEAKER EMISSION FACTORS—Continued

Equipment components	Emission factor (scf total hydrocarbon/hour/component)		
	If you survey using Method 21 as specified in § 98.234(a)(2)(i)	If you survey using Method 21 as specified in § 98.234(a)(2)(ii)	If you survey using any of the methods in § 98.234(a)(1), (3), or (5)
<b>Leaker Emission Factors—Underground Natural Gas Storage—Storage Wellheads, Gas Service</b>			
Valve <sup>1</sup> .....	4.5	3.2	7.35
Connector (other than flanges) .....	1.2	0.7	1.96
Flange .....	3.8	2.0	6.21
Open-Ended Line .....	2.5	1.7	4.08
Pressure Relief Valve .....	4.1	2.5	6.70
Other <sup>2</sup> .....	4.1	2.5	6.70

<sup>1</sup> Valves include control valves, block valves and regulator valves.

<sup>2</sup> Other includes any potential equipment leak emission point in gas service that is not specifically listed in this table, as specified in § 98.232(e)(8) for onshore natural gas transmission compression, and as specified in § 98.232(f)(6) and (8) for underground natural gas storage.

- 21. Remove table W-5A and table W-5B to subpart W of part 98 and add table W-5 to subpart W of part 98 in numerical order to read as follows:

TABLE W-5 TO SUBPART W OF PART 98—DEFAULT METHANE POPULATION EMISSION FACTORS

Industry segment	Source type/component	Emission factor (scf methane/hour/component)
<b>Population Emission Factors—LNG Storage Compressor, Gas Service</b>		
LNG storage .....	Vapor Recovery Compressor <sup>1</sup> .....	4.17
LNG import and export equipment .....		
<b>Population Emission Factors—Below Grade Transmission-Distribution Transfer Station Components and Below Grade Metering-Regulating Station<sup>2</sup> Components, Gas Service<sup>3</sup></b>		
Natural gas distribution .....	Below Grade T-D Transfer Station .....	0.30
	Below Grade M&R Station .....	0.30
<b>Population Emission Factors—Distribution Mains, Gas Service<sup>4</sup></b>		
Natural gas distribution .....	Unprotected Steel .....	5.1
	Protected Steel .....	0.57
	Plastic .....	0.17
	Cast Iron .....	6.9
<b>Population Emission Factors—Distribution Services, Gas Service<sup>5</sup></b>		
Natural gas distribution .....	Unprotected Steel .....	0.086
	Protected Steel .....	0.0077
	Plastic .....	0.0016
	Copper .....	0.03
<b>Population Emission Factors—Interconnect, Direct Sale, or Farm Tap Station Stations<sup>2,3</sup></b>		
Onshore natural gas transmission pipeline .....	Transmission Company Interconnect M&R Station .....	166
	Direct Sale or Farm Tap Station .....	1.3
<b>Population Emission Factors—Transmission Pipelines, Gas Service<sup>4</sup></b>		
Onshore natural gas transmission pipeline .....	Unprotected Steel .....	0.74
	Protected Steel .....	0.041
	Plastic .....	0.061
	Cast Iron .....	27

<sup>1</sup> Emission Factor is in units of “scf methane/hour/compressor.”

<sup>2</sup> Excluding customer meters.

<sup>3</sup> Emission Factor is in units of “scf methane/hour/station.”

<sup>4</sup> Emission Factor is in units of “scf methane/hour/mile.”

<sup>5</sup> Emission Factor is in units of “scf methane/hour/number of services.”

- 22. Remove table W-6A and table W-6B to subpart W of part 98 and add table W-6 to subpart W of part 98 and add table numerical order to read as follows:

TABLE W-6 TO SUBPART W OF PART 98—DEFAULT METHANE LEAKER EMISSION FACTORS

Equipment components	Emission factor (scf methane/hour/component)		
	If you survey using Method 21 as specified in § 98.234(a)(2)(i)	If you survey using Method 21 as specified in § 98.234(a)(2)(ii)	If you survey using any of the methods in § 98.234(a)(1), (3), or (5)
<b>Leaker Emission Factors—LNG Storage and LNG Import and Export Equipment—Storage Components and Terminals Components, LNG Service</b>			
Valve .....	1.19	0.23	1.94
Pump Seal .....	4.00	0.73	6.54
Connector .....	0.34	0.11	0.56
Other <sup>1</sup> .....	1.77	0.99	2.9
<b>Leaker Emission Factors—LNG Storage and LNG Import and Export Equipment—Storage Components and Terminals Components, Gas Service</b>			
Valve <sup>2</sup> .....	14.84	9.51	24.2
Connector .....	5.59	3.58	9.13
Open-Ended Line .....	17.27	11.07	28.2
Pressure Relief Valve .....	39.66	25.42	64.8
Meter and Instrument .....	19.33	12.39	31.6
Other <sup>3</sup> .....	4.1	2.63	6.70
<b>Leaker Emission Factors—Natural Gas Distribution—Transmission-Distribution Transfer Station<sup>4</sup> Components, Gas Service</b>			
Connector .....	1.69		2.76
Block Valve .....	0.557		0.91
Control Valve .....	9.34		15.3
Pressure Relief Valve .....	0.27		0.44
Orifice Meter .....	0.212		0.35
Regulator .....	0.772		1.26
Open-ended Line .....	26.131		42.7

<sup>1</sup> "Other" equipment type for components in LNG service should be applied for any equipment type other than connectors, pumps, or valves.

<sup>2</sup> Valves include control valves, block valves and regulator valves.

<sup>3</sup> "Other" equipment type for components in gas service should be applied for any equipment type other than valves, connectors, flanges, open-ended lines, pressure relief valves, and meters and instruments, as specified in § 98.232(g)(6) and (7) and § 98.232(h)(7) and (8).

<sup>4</sup> Excluding customer meters.

- 23. Revise table W-7 to subpart W of part 98 to read as follows:

TABLE W-7 TO SUBPART W OF PART 98—DEFAULT METHANE EMISSION FACTORS FOR INTERNAL COMBUSTION EQUIPMENT

Internal combustion equipment type	Emission factor (kg CH <sub>4</sub> /mmBtu)
Reciprocating Engine, 2-stroke lean-burn .....	0.658
Reciprocating Engine, 4-stroke lean-burn .....	0.522
Reciprocating Engine, 4-stroke rich-burn .....	0.045
Gas Turbine .....	0.004



# FEDERAL REGISTER

---

Vol. 88

Tuesday,

No. 146

August 1, 2023

---

Part III

## Environmental Protection Agency

---

40 CFR Part 745

Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels; Proposed Rule

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 745

[EPA-HQ-OPPT-2023-0231; FRL-8524-01-OCSPP]

RIN 2070-AK91

### Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Addressing childhood lead exposure is a priority for the Environmental Protection Agency (EPA). This rule addresses health concerns for all affected communities, including children living in communities with environmental justice concerns, who have significantly higher blood lead levels (BLLs) than other children. As part of EPA's efforts to reduce childhood lead exposure, and in accordance with a U.S. Court of Appeals for the Ninth Circuit 2021 opinion, EPA is proposing to lower the dust-lead hazard standards (DLHS) from 10 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) and 100  $\mu\text{g}/\text{ft}^2$  for floors and window sills to any reportable level as analyzed by a laboratory recognized by EPA's National Lead Laboratory Accreditation Program. This is a non-numeric value that the Agency refers to as greater than zero  $\mu\text{g}/\text{ft}^2$  and may vary based on laboratory or test. While EPA's DLHS do not compel property owners or occupants to evaluate their property for lead-based paint (LBP) hazards nor take control actions, if an LBP activity such as an abatement is performed, then EPA's regulations set requirements for doing so. EPA is also proposing to change the dust-lead clearance levels (DLCL), which are the values used to determine when abatement work can be considered complete, from 10  $\mu\text{g}/\text{ft}^2$ , 100  $\mu\text{g}/\text{ft}^2$  and 400  $\mu\text{g}/\text{ft}^2$  for floors, window sills, and window troughs to 3  $\mu\text{g}/\text{ft}^2$ , 20  $\mu\text{g}/\text{ft}^2$ , and 25  $\mu\text{g}/\text{ft}^2$ , respectively. Under this proposal, the DLHS for floors and window sills would not be the same as the DLCL for floors and window sills (*i.e.*, the DLHS and DLCL would be decoupled). Accordingly, dust-lead hazards could remain after an abatement due to the different statutory direction that Congress provided EPA with respect to the DLCL. Additionally, EPA is proposing to change the definition of abatement so that the recommendation for action applies when dust-lead loadings are at or above the DLCL, as

well as several other amendments, including revising the definition of target housing to conform with the statute.

**DATES:** Comments must be received on or before October 2, 2023. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before August 31, 2023.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2023-0231, through the Federal eRulemaking Portal at <https://www.regulations.gov>. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>.

#### FOR FURTHER INFORMATION CONTACT:

*For technical information contact:* Claire Brisse, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-9004; email address: [brisse.claire@epa.gov](mailto:brisse.claire@epa.gov). Hearing- or speech-impaired persons may reach the telephone numbers for the contacts through TTY by calling the toll-free Federal Communications Commission's Telecommunications Relay Service at 711.

*For general information contact:* The TSCA Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

###### A. Does this action apply to me?

You may be potentially affected by this action if you conduct lead-based paint (LBP) activities in accordance with 40 CFR 745.227; if you operate a training program required to be accredited under 40 CFR 745.225; if you are a firm or individual who must be certified to conduct LBP activities or renovations in accordance with 40 CFR 745.226; or if you own, manage, and/or conduct abatement, rehabilitations or maintenance activities in most pre-1978 housing that is covered by a Federal

housing assistance program in accordance with 24 CFR part 35. You may also be affected by this action if you operate a laboratory that is recognized by EPA's National Lead Laboratory Accreditation Program (NLLAP) in accordance with 40 CFR 745.90, 745.223, 745.227, and 745.327. You may also be affected by this action, in accordance with 40 CFR 745.107 and 24 CFR 35.88, as the seller or lessor of target housing, which is most pre-1978 housing. See 40 CFR 745.103 and 24 CFR 35.86. You may also be affected by this action if you are a resident of target housing, even if you would not be subject to the proposed requirements of this action. Due to the change in the definition of "target housing," you may also be affected if you are a firm or individual who must be certified to perform renovations in target housing or child-occupied facilities (COFs) in accordance with 40 CFR part 745, subpart E.

The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Building construction (NAICS code 236), *e.g.*, single-family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS code 238), *e.g.*, plumbing, heating, and air-conditioning contractors, painting, and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass, and glazing contractors.
- Real estate (NAICS code 531), *e.g.*, lessors of residential buildings and dwellings, residential property managers, and property owners, as well as those property owners that receive assistance through Federal housing programs.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), *e.g.*, elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), *e.g.*, training providers.
- Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), *e.g.*, dust sampling technicians.
- Lead abatement professionals (NAICS code 562910), *e.g.*, firms and supervisors engaged in LBP activities.

- Testing laboratories (NAICS code 541380) that analyze dust wipe samples for lead.
- Federal agencies that own residential property (NAICS code 92511, 92811).

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

EPA is proposing this rule under the authority of sections 401, 402, 403, 404, and 406 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, as amended by Title X of the Housing and Community Development Act of 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or "Title X") (Pub. L. 102–550) (Ref. 1) and section 237(c) of Title II of Division K of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, 131 Stat. 789), as well as sections 1004 and 1018 of Title X (42 U.S.C. 4851b, 4852d), as amended by section 237(b) of Title II of Division K of the Consolidated Appropriations Act, 2017.

Regarding the dust-lead hazard standards (DLHS), TSCA section 403 (15 U.S.C. 2683) mandates EPA to identify LBP hazards for purposes of administering Title X and TSCA Title IV. Under TSCA section 401, LBP hazards are defined as conditions of LBP and lead-contaminated dust and soil that "would result in adverse human health effects," (15 U.S.C. 2681(10)) and lead-contaminated dust is defined as "surface dust in residential dwellings" that contains lead in excess of levels determined "to pose a threat of adverse health effects . . ." (15 U.S.C. 2681(11)).

As relevant to the dust-lead clearance levels (DLCL), TSCA section 402 (15 U.S.C. 2682) directs EPA to regulate LBP activities, which include risk assessments, inspections, and abatements. TSCA section 401 (15 U.S.C. 2681) defines abatements as "measures designed to permanently eliminate lead-based paint hazards" and the term includes "all . . . cleanup . . . and post[-]abatement clearance testing activities" (15 U.S.C. 2681(1)). EPA's statutory authority for setting the DLCL was laid out differently in Title X and TSCA Title IV than those for the DLHS. As a result, distinct from the DLHS, EPA is further directed, in promulgating the DLCL regulations, to "tak[e] into account reliability, effectiveness, and safety" (15 U.S.C. 2682(a)(1)).

Pertaining to the other amendments presented in Unit IV.F. of this preamble, TSCA section 406 (15 U.S.C. 2686) requires EPA, in consultation with the Secretary of the U.S. Department of Housing and Urban Development (HUD) and with the Secretary of the U.S.

Department of Health and Human Services (HHS) to "publish, and from time to time revise, a lead hazard information pamphlet to be used in connection with this subchapter and section 4852d of title 42." TSCA section 406 (15 U.S.C. 2686) also requires EPA's regulations to require any person performing for compensation a renovation of target housing to provide the pamphlet to the owner and occupant prior to commencing the renovation. Additionally, section 1018 of Title X (42 U.S.C. 4852d) mandates that the Lead Warning Statement to be provided in contracts for the purchase or sale of target housing include, among other language, the following text: ". . . The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards" (emphasis added). TSCA section 401 (15 U.S.C. 2681(17)) and section 1004 of Title X (42 U.S.C. 4851b), as amended by section 237(b) and (c) of Title II of Division K of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, 131 Stat. 789), define target housing as "any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing) . . ." In this context, "elderly" refers to 62 years of age or more (40 CFR 745.103).

*C. What action is the Agency taking?*

In 2019, EPA promulgated a final rule to lower the DLHS to 10 µg/ft<sup>2</sup> for floors and 100 µg/ft<sup>2</sup> for window sills (the 2019 DLHS Rule) (Ref. 2). In 2021, EPA promulgated a final rule to lower the DLCL to 10 µg/ft<sup>2</sup> for floors and 100 µg/ft<sup>2</sup> for window sills (the 2021 DLCL Rule) (Ref. 3). The 2019 DLHS Rule and the 2021 DLCL Rule continued a long-standing practice of setting the same levels for the DLHS and the DLCL and basing those levels in part on consideration of factors such as laboratory capacity and capabilities.

In keeping with an opinion issued by the U.S. Court of Appeals for the Ninth Circuit in 2021 (described in Unit I.D.) that instructed EPA to consider only health factors when setting the DLHS, EPA is now proposing to change the DLHS from 10 µg/ft<sup>2</sup> for floors and 100 µg/ft<sup>2</sup> for window sills, as established in the 2019 DLHS Rule, to any reportable level of dust-lead analyzed by a NLLAP-recognized laboratory. The Agency refers to this level as greater than zero

(GTZ). It is not a specific numeric level set by EPA but rather the numerically reportable level as analyzed by a NLLAP-recognized laboratory, which is sometimes referred to as a "non-numeric" value. However, that term, as used in this document, refers only to the GTZ level and should not be confused with non-numeric standards such as work practice standards. EPA believes GTZ and the standard of "any reportable level" is an appropriate DLHS based on health effects, given there is no identified level of lead in blood that does not cause adverse cognitive impacts in children, and this more protective approach is consistent with the statutory language in TSCA Section 401 that defines what a "LBP hazard" is (*i.e.*, as conditions of LBP and lead-contaminated dust and soil that "would result in adverse human health effects"), and with the results from the Technical Support Document (TSD). There is no evidence of a threshold below which there are not harmful effects from lead exposure, including neurobehavioral and cognitive effects on children (Refs. 4 and 5). The proposed GTZ approach represents a shift in the LBP activities program to a more inclusive DLHS, identifying dust-lead hazards in the context of TSCA Title IV as any condition that causes exposure to lead from lead-contaminated dust in target housing and child-occupied facilities. If finalized as proposed, the GTZ approach will be inclusive of any reportable level of dust-lead and will not distinguish between severe, less severe, or negligible risks. Additional discussion on GTZ can be found in Unit IV.A.1.

Additionally, EPA is proposing to revise the DLCL, set by the 2021 DLCL Rule, from 10 µg/ft<sup>2</sup> to 3 µg/ft<sup>2</sup> for dust-lead for floors, from 100 µg/ft<sup>2</sup> to 20 µg/ft<sup>2</sup> dust-lead for window sills and from 400 µg/ft<sup>2</sup> to 25 µg/ft<sup>2</sup> dust-lead for window troughs, following a consideration of reliability, effectiveness, and safety, including non-health factors such as laboratory capabilities/capacity and achievability after an abatement. EPA is also requesting comment on an alternative DLCL option of 5 µg/ft<sup>2</sup> dust-lead for floors, 40 µg/ft<sup>2</sup> dust-lead for window sills, and 100 µg/ft<sup>2</sup> for window troughs. If finalized as proposed, the DLHS for floors and window sills would not be the same as the DLCL for floors and window sills (*i.e.*, the DLHS and DLCL would be decoupled), acknowledging the different statutory direction that Congress provided EPA with respect to the DLCL. Although EPA has in the past promulgated rules setting the DLHS and

DLCL to be the same values, an opinion by the U.S. Court of Appeals for the Ninth Circuit in May 2021 instructed EPA to consider only health factors when setting the DLHS and affirmed that EPA could consider non-health factors (e.g., laboratory capabilities/capacity, and achievability after an abatement) when setting the DLCL.

The proposed DLCL would not impose retroactive requirements on regulated entities that have previously performed post-abatement dust wipe testing using the current DLCL of 10 µg/ft<sup>2</sup> for floors, 100 µg/ft<sup>2</sup> for window sills, and 400 µg/ft<sup>2</sup> for troughs, or the previous DLCL of 40 µg/ft<sup>2</sup> for floors, 250 µg/ft<sup>2</sup> for window sills, and 400 µg/ft<sup>2</sup> for troughs (Ref. 6). They would apply to post-abatement clearance sampling and analysis conducted after the compliance date for that portion of the regulations (i.e., one year after publication of the final rule). Additionally, while EPA's DLHS do not compel property owners or occupants to evaluate their property for LBP hazards or take control actions (40 CFR 745.61(c)), if an LBP activity such as an abatement is performed, then EPA's regulations set requirements for doing so (40 CFR 745.220(d)). This rule, if finalized, would change the LBP activities regulations' definition of abatement to be any measure or set of measures designed to eliminate LBP hazards, in the case of dust-lead hazards, to a level below the new proposed DLCL, and would require an additional statement in the final abatement reports that states that LBP hazards (particularly dust-lead hazards) remain after an abatement if clearance testing has found that they do remain.

EPA is also proposing several other amendments, including: conforming changes to the definition of "target housing;" conforming the age requirements throughout the LBP regulations to under six years old; requiring that application payments, applications, and notices be submitted electronically; updating the Disclosure Rule warning statement (Ref. 7); as well as correcting an incorrect reference to the lead-hazard control pamphlet; and deleting obsolete regulatory text where language is out of date or no longer applicable. EPA is also considering adding incorporations by reference of two voluntary consensus standards already included in a relevant definition.

EPA is requesting comment on the changes described in this proposal, in particular the reliability, effectiveness, and safety of the primary and alternative DLCL options, and all other amendments discussed in Unit IV.

#### *D. Why is the Agency taking this action?*

Lead exposure has the potential to impact individuals of all ages, but it is especially harmful to young children because the developing brain can be particularly sensitive to environmental contaminants (Refs. 4 and 8). Because of this, reducing childhood lead exposure is a priority for both EPA and the Federal Government. In December 2018, the President's Task Force on Environmental Health Risks and Safety Risks to Children released the *Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts* (Federal Lead Action Plan) (Ref. 9) to enhance the Federal Government's efforts to identify and reduce lead exposure while ensuring children impacted by such exposure are getting the support and care they need to prevent or mitigate any associated health effects. The Federal Lead Action Plan is helping Federal agencies to work strategically and collaboratively to reduce exposure to lead and improve children's health. On October 27, 2022, EPA released the *Strategy to Reduce Lead Exposures and Disparities in U.S. Communities* (Lead Strategy). The Lead Strategy lays out Agency and government-wide approaches to strengthen public health protections, address legacy lead contamination for communities with the greatest exposures and promote environmental justice. It describes how the Agency will utilize the full suite of EPA authorities, expertise, and resources to continue to reduce lead exposure. This proposed rule, which revises the DLHS and the DLCL (among other proposed regulatory changes), is an action that EPA committed to undertake in the Lead Strategy (Ref. 10).

In 2019, EPA re-evaluated the DLHS (Ref. 2). Based on that evaluation, the final rule revised the DLHS from 40 µg/ft<sup>2</sup> and 250 µg/ft<sup>2</sup> to 10 µg/ft<sup>2</sup> and 100 µg/ft<sup>2</sup> for floors and window sills, respectively. However, public health advocates filed a lawsuit in the U.S. Court of Appeals for the Ninth Circuit (the Court) seeking judicial review of the 2019 DLHS Rule as insufficiently protective. On May 14, 2021, the Court issued its opinion on the 2019 DLHS Rule. The Court held that "the 2019 Rule lowers the lead hazard level but not to a level sufficient to protect health as Congress has directed, because the EPA has looked to factors in addition to health." *A Cmty. Voice v. U.S. Env't Prot. Agency*, 997 F.3d 983, 992 (9th Cir. 2021). The remedy the Court granted was a remand without vacatur (of the lowered DLHS), and the Court instructed EPA to consider only health

factors when setting the DLHS (Ref. 11). This proposed rule is being issued to reconsider the DLHS and DLCL in light of the 2021 Court Opinion, which directed EPA to "reconsider the DLHS . . . [and] the dust-lead clearance levels . . . in the same proceeding" and affirmed that EPA could consider non-health factors when setting the DLCL. *A Cmty. Voice*, 997 F.3d at 995. This 2021 Court Opinion led EPA to undertake a major shift from its approach in the 2019 and 2021 final rules to the residential LBP hazard control and the LBP activities program because the Opinion found that EPA did not have the authority, when setting the DLHS, to consider non-health factors. Consistent with the 2021 Court Opinion, EPA is proposing to revise the DLHS in this rulemaking based on only health considerations. See Unit IV for more information on the proposed revisions to the DLHS and DLCL.

Additionally, Executive Order 13990, entitled *Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis*, directed agencies to, among other things, review certain regulations promulgated between January 20, 2017, and January 20, 2021 (Ref. 12). The 2019 DLHS and 2021 DLCL final rules were among those specifically designated for review in accordance with Executive Order 13990 (Ref. 13). As a result, the Agency was tasked with immediately considering whether the final rules were aligned with the identified national objectives from Executive Order 13990, such as listening to the science, improving public health and protecting our environment, and limiting exposure to dangerous chemicals. As a result of its own review in response to Executive Order 13990 and the 2021 Court Opinion, EPA has reconsidered the 2019 DLHS and 2021 DLCL final rules. If finalized as proposed, EPA believes this rule will result in a reduction of exposure to dust-lead (beyond the 2019 and 2021 rules).

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

EPA has prepared an Economic Analysis (EA), which is available in the docket, of the potential incremental impacts associated with this rulemaking (Ref. 14). The analysis focused specifically on the subset of target housing and child-occupied facilities affected by this rule. Although the DLHS and DLCL do not compel specific actions under the LBP Activities Rule to address identified LBP hazards, the DLHS and DLCL are directly incorporated by reference into certain requirements mandated by HUD in the

housing subject to HUD's Lead Safe Housing Rule (LSHR). As such, the analysis estimates incremental costs and benefits for two categories of events: (1) where dust-wipe testing occurs to comply with HUD's Lead-Safe Housing Rule and (2) where dust wipe testing occurs in response to blood lead testing that detects a blood lead level (BLL) above state or Federal action levels. The following is a brief outline of the estimated incremental impacts of this rulemaking.

#### 1. Benefits

This rule would result in reduced exposure to lead, yielding benefits to residents of pre-1978 housing from avoided adverse health effects. For the subset of adverse health effects that were quantified (*i.e.*, the effect of avoided IQ decreases on lifetime earnings as an indicator of improved cognitive function), the estimated monetized and annualized benefits are \$1.069 billion to \$4.684 billion per year using a 3% discount rate, and \$231 million to \$1.013 billion per year using a 7% discount rate. These benefits calculations are sensitive to the discount rate used and the range in the estimated number of lead hazard reduction events triggered by children with tested BLLs above state or Federal action levels. With respect to the latter, the wide range is driven largely by uncertainty about the BLLs at which action might be taken, since in many states the action level is currently higher than the Federal blood lead reference value.

Additionally, there are unquantified benefits. These additional benefits include avoided adverse health effects in children, including decreased attention-related behavioral problems, decreased cognitive performance, reduced post-natal growth, delayed puberty, and decreased kidney function. These additional unquantified benefits also include avoided adverse health effects in adults, including cardiovascular mortality and impacts on reproductive function and outcomes.

#### 2. Costs

This rule is estimated to result in quantified costs of \$536 million to \$784 million per year. These costs are expected to accrue to landlords, owners and operators of child-occupied facilities, residential remodelers, and abatement firms. Real estate agents and brokers may incur negligible costs related to the target housing definition amendment. The cost calculations are highly sensitive to the range in the estimated number of lead hazard reduction events triggered by children

with elevated BLLs. In the events affected by this rule, incremental costs can be incurred for specialized cleaning used to reduce dust-lead loadings (*i.e.*, quantity of lead per unit of surface area) to below the clearance levels. In some instances, floors will also be sealed, overlaid, or replaced, or window sills will be sealed or repainted. Additional costs may result from the retesting of lead dust levels. Because of the lower laboratory reporting limits necessary for testing lead dust levels under this rule, incremental laboratory test costs are likely to increase. Additional potential impacts to HUD programs and their beneficiaries are discussed in Unit V.

#### 3. Small Entity Impacts

This rule would directly impact approximately 39,000 small businesses of which 87% to 91% have cost impacts less than 1% of revenues, 9% to 12% have impacts between 1% and 3%, and 1% have impacts greater than 3% of revenues. These small entities include landlords, owners and operators of child-occupied facilities, residential remodelers, abatement firms, and real estate agents and brokers.

#### 4. Environmental Justice

EPA is proposing this rulemaking under TSCA Title IV, as explained in Unit I.B. This rule would address lead exposure, as discussed throughout this proposal. EPA prepared an Economic Impact Analysis for this rulemaking that assessed whether there are disproportionate effects to communities from lead exposure. EPA identified an existing concern: children living in communities with environmental justice concerns have significantly higher BLLs than other children (Ref. 15). This rule addresses health concerns for all affected communities, including those identified with environmental justice concerns. As identified in EPA's Economic Impact Analysis, this rule would reduce identified disproportionate impacts to communities with environmental justice concerns. The primary and alternative regulatory options under consideration are expected to affect housing units receiving Federal assistance under HUD's LSHR and housing units with a child with a blood lead level above a Federal, state, or local blood lead threshold. Because, in general, only lower income households are eligible to receive Federal housing assistance, the occupants of housing subject to the LSHR (and thus benefitting from the proposed regulation) are considered an overburdened community. Additional details on any identified disproportionate impacts to

communities with environmental justice concerns are contained in Unit IX.J. of this preamble and Section 8.6 of the economic impact analysis.

#### 5. Children's Environmental Health

Consistent with Executive Order 13045, EPA evaluated the health and safety effects of this action on children. Children are disproportionately impacted by lead exposure. Children can have greater exposures than adults because they crawl on floors and often put their hands and other objects (that can have lead from dust on them) into their mouths and are more susceptible than adults to adverse health effects due to their rapid anatomical growth and physiological differences in lead uptake and metabolism. This rule protects children from these disproportionate environmental health risks.

This action is subject to EPA's Policy on Children's Health (<https://www.epa.gov/children/childrens-health-policy-and-plan>) because the rule has considerations for human health and early life exposures. Accordingly, we have evaluated the environmental health or safety effects of dust-lead exposure on children. The results of this evaluation are contained in the EA and the TSD, where the health impacts of lead exposure on children are discussed more fully (Refs. 14 and 16). The documents referenced above are available in the public docket for this action.

The primary purpose of this rule is to reduce exposure to dust-lead hazards in target housing where children reside and in child-occupied facilities. EPA's analysis indicates that there will be approximately 217,432 to 436,642 children under age six per year affected by the rule (Ref. 14). Proposing GTZ for the DLHS is a more protective approach, supported by the modeled results from the TSD and that the current state of the science does not support identifying a threshold of dust-lead exposure below which there would be no adverse human health effects. Additionally, the proposed DLCL of 3/20/25  $\mu\text{g}/\text{ft}^2$  for floors, window sills and troughs respectively, is the lowest option under consideration and according to the TSD it is estimated to be the most protective of children's IQ when compared to the other options evaluated for this proposed rulemaking.

#### 6. Effects on State, Local, and Tribal Governments

EPA has concluded that this action has federalism implications because it imposes substantial direct compliance costs on public housing authorities that state or local governments may be

obligated to offset. These compliance costs result from application of EPA's standards in HUD's LSHR. While some HUD funding for LBP projects exists, the Federal Government may not provide the funds necessary to pay the entirety of the costs. These costs to public housing authorities—estimated at \$143 million for the primary option—cover additional lead hazard reduction activities, cleaning, and dust-lead testing to ensure that public housing units are in compliance with the LSHR. EPA also estimates annual compliance costs of approximately \$904 thousand to public school districts that operate a child-occupied facility built before 1978. Additionally, states that have authorized LBP Activities programs must demonstrate that they have DLHS and DLCL at least as protective as the levels at 40 CFR 745.65 and 40 CFR 745.227. However, authorized states are under no obligation to continue to administer the LBP Activities program, and if they do not wish to adopt the new DLHS and DLCL they can relinquish their authorization. In the absence of a state authorization, EPA will administer these requirements. EPA provides a preliminary federalism summary impact statement, which is found in Unit IX.E.

Additionally, this action contains a Federal mandate under the Unfunded Mandates Reform Act (UMRA), 2 U.S.C. 1531–1538, that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA has prepared a written statement as required under section 202 of UMRA, which is summarized in Unit IX.D. and included in the public docket (Ref. 17). This action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that exceed the inflation-adjusted cost significance threshold or uniquely affect small governments.

This action would not have substantial direct effects (as specified in Executive Order 13175) on one or more federally recognized Indian Tribes. This action neither creates an obligation for Tribes to administer LBP Activities programs nor alters EPA's authority to administer these programs. However, through a live consultation on this rulemaking the Agency will solicit input from Tribal officials from the four Indian Tribes currently with authorized programs during the public comment period. EPA will ensure that the consultation materials are accessible to Tribal officials so that they may view it later as they consider submitting feedback during the public comment period. The consultation will also be

open to any Tribal officials who would like to participate. If a Tribal official is interested in attending the consultation on behalf of an Indian Tribe, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Additionally, this rule would not have any significant or unique effects on small governments. See Unit IX. for more information on the Executive Orders.

## II. Background

### A. Health Effects of Lead

Lead exposure has the potential to impact individuals of all ages, but it is especially harmful to young children because the developing brain can be particularly sensitive to environmental contaminants (Refs. 4, 5, and 8). Ingestion of lead-contaminated dust is a major contributor to BLLs in children, particularly those who reside in homes built prior to 1978 (Refs. 17 and 18). Throughout early childhood, floor dust contamination is a source of lead exposure with the potential to affect children's BLLs (Ref. 20). Infants, toddlers, and young children are more highly exposed to lead through dust on floors and other surfaces at home and in child-care facilities than older children and adults because they crawl on floors and often put their hands and other objects that can have lead from dust on them into their mouths. This is the main pathway of childhood exposure to lead (Ref. 4).

Lead exposure in young children can cause neurocognitive decrements, such as reduction in intelligence as measured by IQ. Depending on the exposure and other factors, the effect may persist into adolescence and adulthood (Refs. 4, 8 and 20). In children, lead exposure can also cause adverse developmental, neurobehavioral, hematological, and immunological effects, as well as sensory effects such as hearing loss (Refs. 4, 5, and 8). In adults, lead exposure can cause adverse cardiovascular, hematological, renal, neurocognitive, neurobehavioral, immunological, and reproductive effects (Refs. 4, 5, and 8). Lead is also classified as "reasonably anticipated to be a human carcinogen by the National Toxicology Program (NTP) (Ref. 21) and the EPA has concluded that lead exposure has a "likely causal relationship" with carcinogenesis (Ref. 4). In addition to the harmful effects experienced by the mother, lead can be transferred to the fetus during pregnancy and there is evidence that suggests adverse effects on the developing fetus including inhibited

fetal growth (Refs. 4 and 5). Given young children's disproportionate exposure to dust-lead in target housing, this rulemaking principally considers their exposure and associated adverse health effects.

The best available science informs EPA's understanding of the relationships between exposures to dust-lead, BLLs, and adverse human health effects. These relationships are summarized in the Integrated Science Assessment (ISA) for Lead, finalized in June 2013 (known as the 2013 Lead ISA) (Ref. 4), and the Agency for Toxic Substances and Disease Registry (ATSDR) Toxicological Profile for Lead, which was released by the Department of Health and Human Services in August 2020 ("ATSDR Tox Profile for Lead") (Ref. 8). The 2013 Lead ISA is a synthesis and evaluation of scientific information on the health and environmental effects of lead, including cognitive function decrements in children (Ref. 4). The 2013 Lead ISA, as well as NIEHS' 2012 National Toxicology Program (NTP) monograph on lead, summarize the scientific evidence regarding potential health effects associated with low-level lead exposure and acknowledge uncertainties in the data (Refs. 4 and 5). Based on the epidemiological studies and the evidence available at that time, the EPA stated in the 2013 ISA that harmful effects on children's cognition as measured by IQ were observed in groups with mean BLLs as low as 2 µg/dL, and further that "A threshold for cognitive function decrements is not discernable from the available evidence (*i.e.*, examination of early childhood blood Pb or concurrent blood Pb in the range of < 1 to 10 µg/dL)." (Ref. 4). Additionally, the Federal Lead Action Plan, which was written by the President's Task Force on Environmental Health Risks and Safety Risks to Children, consisting of 17 Federal departments and offices, states that "Lead exposure to children can result from multiple sources and can cause irreversible and life-long health effects. No safe blood lead level in children has been identified." (Refs. 9 and 22).

For further information regarding lead and its health effects, see the TSD for this rulemaking and the 2013 ISA for lead (Refs. 4 and 16).

### B. Federal Actions To Reduce Lead Exposures

Title X of the Housing and Community Development Act (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or "Title X"), codified primarily at 42

U.S.C. 4822 and 4851 *et seq.* (Ref. 1), was a Federal response to the national crisis of childhood lead exposure and assigned responsibilities to Federal agencies with the overall goal of developing a “national strategy to build the infrastructure necessary to eliminate lead-based paint hazards in all housing as expeditiously as possible” (42 U.S.C. 4851(a)(1)). Subtitle B of Title X (106 Stat. 3912 through 3924), addressing lead exposure reduction, added Title IV to TSCA (codified at 15 U.S.C. 2681 *et seq.*) (Ref. 23).

Since the establishment of Title X, EPA and HUD have promulgated both joint and separate regulatory actions in an effort to eliminate LBP hazards. Those actions include requirements for disclosure of known LBP or any known LBP hazards (Ref. 7), training and certification requirements for contractors performing LBP activities (Ref. 24), the establishment of standards that identify lead-based paint hazards and post-abatement clearance levels (*i.e.*, the DLHS and DLCL) (Refs. 2, 3 and 6), regulations covering renovation or remodeling activities (Refs. 25, 26 and 27), provisions for interested states, territories, and Tribes to apply for and receive authorization to administer their own LBP Activities and renovation, repair and painting (RRP) programs, and requirements to control LBP and LBP hazards in federally-assisted target housing (Ref. 28). Additional description of and background on Federal actions to reduce lead exposure to can be found in the 2021 DLCL rulemaking (Ref. 3).

In addition, EPA has developed a Lead Strategy to lay out an all-of-EPA plan to strengthen public health protections and address legacy lead contamination for communities with the greatest exposures and promote environmental justice (<https://www.epa.gov/lead/final-strategy-reduce-lead-exposures-and-disparities-us-communities>). EPA plans to continue its work to equally protect people of all races, ethnic groups, income levels, disabilities, and life stages, including young children and pregnant women, who are the most vulnerable to the toxic effects of lead. The proposed actions in this notice are part of those efforts, as dust-lead from lead-based paint remains one of the leading causes of lead exposure in the United States (Ref. 10).

### C. Applicability and Uses of DLHS and DLCL

The DLHS and DLCL reconsidered in this regulation support EPA’s lead-based paint (LBP) activities program (*i.e.*, inspections, risk assessments, and abatements) and disclosure program,

both of which apply to target housing (*i.e.*, most pre-1978 housing) and COFs (pre-1978 non-residential properties where under the current regulation, children 6 years of age or under spend a significant amount of time such as daycare centers and kindergartens) (codified at 40 CFR part 745, subpart L). The statutory definition of target housing was amended by Congress in 2017, and EPA is planning to make the necessary conforming regulatory changes, including changing the age to under six years of age, within this rulemaking; see Unit IV.F.1. for more information. Apart from COFs, no other public or commercial buildings are covered by this proposal.

The DLHS and DLCL are incorporated into requirements for risk assessment and post-abatement work. When conducted, LBP activities must be performed by a certified individual or firm (40 CFR 745.220) in accordance with the work practices outlined in the 1996 LBP Activities Rule (40 CFR 745.227). EPA administers the LBP activities program only where states (including the District of Columbia and the Commonwealth of Puerto Rico), territories, or Tribes are not authorized by EPA to operate their own lead abatement programs (see 40 CFR part 745, subpart Q). Currently the states in which the LBP program is administered by EPA are Alaska, Arizona, Florida, Idaho, Montana, Nevada, New Mexico, New York, South Carolina, South Dakota, and Wyoming. In addition, EPA administers the LBP program in the territories of American Samoa, Guam, Northern Marianas, and the U.S. Virgin Islands, as well as most Tribal Lands. All other states have EPA-authorized LBP programs. Additionally, the Cherokee Nation, Upper Sioux Community, Lower Sioux Indian Community, and the Bois Forte Band of Chippewa have EPA-authorized LBP programs.

To administer the disclosure program, EPA and HUD jointly developed regulations (known as the Disclosure Rule under section 1018 of Title X (42 U.S.C. 4852d)) requiring a seller or lessor of most pre-1978 housing to disclose the presence of any known LBP and/or LBP hazards, such as soil-lead hazards or dust-lead hazards, to the purchaser or lessee (24 CFR part 35, subpart A; 40 CFR part 745, subpart F). Under these regulations, the seller or lessor also must provide the purchaser or lessee any available records or reports “pertaining to” LBP and/or LBP hazards (40 CFR 745.107(a)(4); 24 CFR 35.88(a)(4)). Leases of target housing are exempt from disclosure requirements in limited circumstances, such as where

the housing has been found to be LBP free by a certified inspector (24 CFR 35.82; 40 CFR 745.101). For more information on how the DLHS and DLCL revisions impact various EPA and HUD programs, see Unit V.A. and Unit V.B.

### 1. Dust-Lead Hazard Standards

The DLHS support and implement major provisions of TSCA Title IV and provide the basis for risk assessors to determine whether dust-lead hazards are present during a risk assessment or a lead hazard screen. A risk assessment may be required by the LSHR where dust wipe testing occurs to comply with the LSHR (*e.g.*, for certain properties receiving Federal assistance) or by other law or regulation where dust-lead testing occurs in response to the discovery of a child with a BLL that exceeds a Federal, state, or local threshold. Additional information on the LSHR and the subparts which require risk evaluation is discussed in the EA (Ref. 14). The objective of a risk assessment is to determine, and then report the existence, nature, severity, and location of LBP hazards in residential dwellings and COFs through an on-site investigation, which includes both a visual assessment and a collection of environmental samples. The environmental samples include, among other things, dust wipe samples (taken using documented methodologies as defined in 40 CFR 745.227(a)(3)) from floors and window sills. Those samples are required to be analyzed by a laboratory that is recognized under NLLAP, which is an EPA program that defines the minimum requirements and abilities that laboratories must meet to attain EPA recognition as an accredited testing laboratory (the standards for the program are laid out in the Laboratory Quality System Requirements) (Ref. 29). A risk assessor compares the results of the dust wipe samples to the current DLHS. If the dust-lead loadings from the samples are at or above the applicable DLHS, then a dust-lead hazard is present (40 CFR 745.227(d)).

Ultimately, the risk assessor prepares a risk assessment report for the property owner or manager, which lists any LBP hazards (including a dust-lead hazard) that were found and includes any recommendations for next steps, such as acceptable options for controlling the hazards via interim controls and/or abatement. These options are intended to allow the property owner to make an informed decision about what actions to take to protect the health of current and future residents. Under EPA’s rule, a risk assessment/risk assessment report does not compel or require action;

rather it simply provides property owners with recommendations as appropriate (40 CFR 745.227(d)).

A lead hazard screen also includes a visual inspection and collection of environmental samples, although it is not as comprehensive as a risk assessment or conducted as often. A lead hazard screen may be used to determine if a full risk assessment is necessary. During a lead hazard screen, a risk assessor checks for deteriorated LBP and collects two composite dust samples (in residential dwellings), one from floors and one from window sills (more composite dust samples are required in multi-family dwellings or COFs). Samples are taken using documented methodologies. The risk assessor prepares a lead hazard screen report but is not required to include determinations about the LBP hazards or recommendations for interim controls and/or abatement but could include information on whether a follow-up risk assessment is warranted (40 CFR 745.227(c)).

Both risk assessments and lead hazard screens can only be performed by risk assessors certified according to the procedures in 40 CFR 745.226.

## 2. Dust-Lead Clearance Levels

The DLCL are incorporated into the post-abatement work practices outlined in the LBP Activities Rule and represent “the amount of lead in dust on a surface following completion of an abatement activity” (40 CFR 745.227, 745.223) (Ref. 24). TSCA section 401 defines abatements as, “measures designed to permanently eliminate lead-based paint hazards,” (15 U.S.C. 2681(1)), while interim controls are “designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards,” (40 CFR 745.83 and 745.223). Abatement and/or interim controls could be recommended in a risk assessment report to inform the property owner about potential future action(s) they could take. After an abatement is complete, a risk assessor or inspector determines whether there are any “visible amounts of dust, debris or residue,” which will need to be removed before clearance sampling takes place (40 CFR 745.227(e)(8)). Once the area is free of visible dust, debris, and residue, and one hour or more after final post-abatement cleaning ceases, clearance sampling for dust-lead (via dust wipe samples) can take place and will be conducted “using documented methodologies that incorporate adequate quality control procedures” (40 CFR 745.227(e)(8)). Only a properly trained and certified risk assessor or inspector can conduct clearance

sampling. An NLLAP-recognized laboratory must analyze the dust wipe samples and a risk assessor or inspector must compare the results from window sills, floors, and window troughs to the appropriate DLCL.

Every post-abatement sample must test below the DLCL in order to fulfill the post-abatement work practices of the LBP Activities Rule. If a single sample is equal to or greater than the corresponding DLCL, then the abatement fails clearance and the components represented by the failing sample must be re-cleaned and retested (40 CFR 745.227(e)(8)). After all dust wipe samples show dust-lead loadings below the DLCL, an abatement report is prepared (in accordance with the requirements in 40 CFR 745.227(e)(10)), copies of any reports required under the LBP Activities Rule are provided to the building owner (and to potential lessees and purchasers under the LBP Disclosure Rule by those building owners or their agents), and all required records are retained by the abatement firm or by the individuals who developed each report for no fewer than three years (40 CFR 745.227(i)).

### *D. Limitations of DLHS and DLCL*

The DLHS are intended to identify dust-lead hazards during risk assessments, while the DLCL are part of post-abatement work practices, ensuring that clearance is achieved. Both regulatory values have several key limitations. Since the DLHS and DLCL were established and revised for the purposes of Title X and TSCA Title IV only, they do not apply to housing and COFs built during or after 1978, nor do they apply to pre-1978 housing that does not meet the definition of target housing (40 CFR 745.61 and 745.223). If one chooses to apply the DLHS or the DLCL to situations beyond the scope of Title X and TSCA Title IV, care must be taken to ensure that the action taken in such settings is appropriate, and that the action is adequate to provide any necessary protection for children or other individuals exposed.

These standards cannot be used to identify that housing is free from all risks from exposure to lead including but not limited to dust-lead, soil-lead, or lead in drinking water, as risks are dependent on many factors. For instance, the physical condition of a property that contains LBP may change over time, resulting in an increase in risk. Plus, EPA’s DLHS do not require the owners of properties covered by this proposal to evaluate their properties for the presence of dust-lead hazards, nor to take action if dust-lead hazards are identified (although these standards can

be incorporated into certain requirements mandated by state, Tribal and local governments, as well as other Federal agencies). Additionally, consistent with the 2021 Court Opinion which instructed EPA to consider only health factors when setting the DLHS and affirmed that EPA could consider other factors (*i.e.*, reliability, effectiveness, and safety) when setting the DLCL, EPA is proposing that the DLCL would be greater than the DLHS based on its consideration of other factors (*e.g.*, laboratory capabilities/capacity, and achievability after an abatement). As a result, and given the change in the definition of abatement discussed in Unit IV.D. of this preamble, there may be dust-lead left behind that meets the definition of an LBP hazard after an abatement is considered complete, due to dust-lead levels that are reportable but are less than the proposed DLCL. Also, as has been the case historically, achieving the DLCL after an abatement does not mean that the home is free from all exposure to lead, including from other media such as soil-lead or lead in drinking water. EPA will continue coordinating with other Federal agencies to encourage best practices for owners and occupants of post-abatement properties to conduct ongoing maintenance that will help to continue to lower dust-lead levels, as well as work collectively as an Agency to reduce overall lead exposure through all pathways.

### *E. Litigation Overview*

As previously discussed, EPA revised the DLHS to 10 µg/ft<sup>2</sup> for floors and 100 µg/ft<sup>2</sup> for window sills in a final rule in July 2019 (Ref. 2). Later that same year, multiple organizations, including A Community Voice, California Communities Against Toxics, Healthy Homes Collaborative, New Jersey Citizen Action, New York City Coalition to End Lead Poisoning, Sierra Club, United Parents Against Lead National, and We Act for Environmental Justice, petitioned the U.S. Court of Appeals for the Ninth Circuit to review the 2019 DLHS Rule (Ref. 30).

In response to the Petition for Review, on May 14, 2021, the Court remanded the 2019 DLHS Rule without vacatur and directed EPA to revisit it in conjunction with a reconsideration of the DLCL (Ref. 11). In its opinion accompanying the remand, the Court instructed EPA to consider only health factors when setting the DLHS and affirmed that EPA could continue to consider non-health factors when setting the DLCL. Specifically, the 2021 Court Opinion held that EPA’s 2019 DLHS Rule “looked to other factors,

including feasibility and efficacy,” when setting the DLHS, instead of “set[ting] the hazard standards at the point at which the level [of] dust-lead creates hazards to human health” *A Cmty. Voice*, 997 F.3d at 989 and 990. The Court also held that “TSCA [Title] IV gives the EPA latitude to consider ‘reliability, effectiveness, and safety’” when promulgating regulations “[w]ith respect to implementation, including abatement,” thus enabling consideration of practicability when setting the DLCL. *Id.* at 995. The Court explained that “[t]his is in line with the overall statutory scheme that differentiates between identification of hazards and implementation of remedial measures.” *Id.* The Court also explained elsewhere in the 2021 Court Opinion that, if an agency relies on uncertainty for regulatory action or inaction, the agency must “provide reasons why uncertainty justifies their actions” *Id.* at 993. Consistent with the 2021 Court Opinion, EPA is proposing to revise the DLHS in this rulemaking based only on health considerations.

In addition, the Court held that EPA violated TSCA Title IV by leaving the soil-lead hazard standards (SLHS) at the values set in 2001, reasoning that EPA had an ongoing duty to update the standards. The SLHS identify lead-contaminated soil at target housing and pre-1978 COFs that would result in adverse human health effects. Soils that contain lead at levels determined to be hazardous to human health are considered contaminated. Lead inspectors, risk assessors, and abatement professionals use the SLHS to determine if soil-lead hazards are present and to inform options for reducing risk. Due to resource considerations and to act as expeditiously as possible to revise the DLHS and DLCL, EPA will address the SLHS in a separate rulemaking. (For more background on resource constraints under TSCA, please see Congressional testimony from EPA leadership (Refs. 31 and 32)). EPA listed this SLHS rulemaking in the Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions under RIN 2070-AL12 as a long-term action, indicating the Agency’s commitment to meet the statutory requirement of addressing the SLHS revision but indicating that the Agency does not expect to propose this action in the next 12 months (Ref. 33). EPA has however, initiated work on the SLHS rulemaking and, as this rulemaking on the DLHS and DLCL progresses and as resources allow, EPA intends to work further on the technical analysis for SLHS in preparation for the

SLHS rulemaking. The Agency also intends to build off of the technical analysis utilized for this rulemaking for the SLHS rulemaking, mirroring where possible so as to reduce resource constraints and considerations.

The Court also held that, to be consistent with its health-only interpretation of an LBP hazard (*i.e.*, soil, dust), the definition of LBP must “encompass all levels of lead in paint that lead to adverse human health effects.” *A Cmty. Voice*, 997 F.3d at 992. The Court stated that “EPA ha[d] not explained why uncertainty justifies its decision to leave the definition of lead-paint as-is.” *Id.* at 993. The Court also noted that much knowledge has been gained since Congress adopted the 1992 definition and that the U.S. Consumer Product Safety Commission (CPSC) has adopted a regulation that bans the production of paint with lead content of over 0.009 percent by weight. The CPSC standard, however, applies to *new* paint while TSCA is concerned with the hazards posed by *existing* paint in pre-1978 structures and different information and considerations are relevant in that context. The definition of LBP (1.0 milligrams per square centimeter or more than 0.5 percent by weight) is incorporated throughout the LBP regulations, and application of this definition is central to how the LBP program functions. In the 2019 DLHS Rule, EPA discussed the Agency’s need for more information to establish a statistically valid causal relationship between concentrations of lead at low levels in paint and dust lead loadings that cause lead exposure. Additionally, information is still needed to quantify the direct ingestion of paint through consumption of paint chips or through teething on painted surfaces. Finally, it is important to understand how capabilities among various LBP testing technologies would be affected under a possible revision to the definition, such as field portable X-ray fluorescent devices which are the primary tools for lead inspections and risk assessments. They are calibrated to the current definition of LBP, and so EPA needs to fully understand the repercussions such a revision to the definition may have on these portable field technologies to ensure the technological feasibility.

EPA plans to sponsor a technical workshop to obtain additional information needed to address data gaps related to the definition of LBP that were outlined in the 2019 DLHS Rule. In preparation for the LBP technical workshop, the Agency performed a literature review for sources relevant to the definition of LBP, consulted other Federal agencies, and refreshed

materials done for the 2019 rulemaking. With this information the data gaps have been refined to add further specificity, which allows for a more targeted scope for both continued investigation and for the technical workshop. The more specific data gaps that EPA continues to investigate include empirical data on the relationship between low levels of lead in paint and dust-lead, as well as data on the common exposure scenarios that may inform this relationship (for example, dust-lead generation during a renovation scenario versus slowly deteriorating paint). Currently the available empirical data and modeling approaches for estimating the relationship between lead content in on-the-wall paint and lead in related environmental media, including dust, are applicable at or above the current LBP definition. EPA believes that to use the available empirical data and modeling approaches to estimate dust-lead loadings at low levels of lead in paint (particularly levels that are lower than the current definition by an order of magnitude or more) will introduce significant uncertainty to any estimations. Data and models applicable to lower levels of lead in paint are needed to develop an approach to estimate dust-lead from low levels of lead in paint, which will allow EPA to estimate incremental blood lead changes and associated health effect changes that may occur due to low levels of lead in paint. For the ingestion exposure pathway, EPA is exploring possible modeling solutions as well as seeking quantitative measures of ingestion and exposure (such as data on duration and frequency of consumption, and common paint chip characteristics). Studies on this subject have documented this behavior as a risk factor for exposure to lead from LBP, however the studies have not provided quantitative estimates of paint ingestion, which are needed to quantify exposure. Lastly, EPA continues to investigate constraints to the field measurement options for low levels of lead in paint. Different technologies have different limitations in accuracy, processing time, detection limits, accessibility, and destructiveness among other factors. These practical considerations are important to consider in understanding how a change in the definition may affect the ability of the regulated community to use certain technologies, potentially impacting the residents of target housing and occupants of COFs. On top of these data gaps, EPA is exploring the relationship between the two different units used in the current definition (milligram per

square centimeter and percent by weight) to inform whether and how to develop a conversion between the two. The search for relevant information to develop the conversion and exploration of the uncertainty involved with such a conversion is underway. EPA intends the technical workshop to explore these issues and position the Agency to reconsider the definition of LBP in light of the most current scientific information. EPA will collaborate with HUD on the technical workshop regarding these lead-based paint definition data needs.

Similar to the SLHS rulemaking, due to resource considerations and EPA's interest in acting as expeditiously as possible to revise the DLHS and DLCL and to hold the aforementioned LBP technical workshop, EPA will address the definition of lead-based paint in a separate rulemaking. EPA has listed this rulemaking on the definition of LBP in the Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions under RIN 2070-AL11 as a long-term action, indicating the Agency's commitment to meet the statutory requirement of addressing the definition of LBP revision but that the Agency does not expect to propose this action in the next 12 months (Ref. 33).

Rulemakings such as those necessary for revisions to SLHS and the definition of LBP are complex, highly resource-intensive activities that usually occur as part of options development and decision-making. A rulemaking's development generally entails scientific, economic, legal, and other technical analyses. For many rulemakings, this includes research and data gathering, which itself can sometimes necessitate exercising other information collection tools and following appropriate procedural requirements (e.g., Paperwork Reduction Act). To develop a rulemaking, EPA also often consults with governments and key stakeholders. Federal law may require such consultations based on anticipated regulatory impacts (e.g., the Unfunded Mandates Reform Act and the Regulatory Flexibility Act). Additionally, various executive orders may also require the Agency to engage in such consultations.

A rulemaking package often requires the development of complex supporting documents including an EA and a TSD, similar to those included alongside this reconsideration rulemaking (Refs. 14 and 16). A complete TSD includes several components which may require internal and external stakeholder dialogue and scientific peer review, including model and input data revisions, health and exposure metrics

of interest, environmental fate and exposure mechanisms for either soil or the definition of LBP, characterization of uncertainties in modeling, and literature reviews (which have not been done for soil since before the 2001 LBP Rule was finalized). If existing models and analytical methods are insufficient to conduct the analysis to support the rulemaking, then they must be developed as part of the technical work done in support of the rulemaking effort. Developing new models can take a considerable length of time and novel analyses may require peer-review, further extending the rulemaking timeline. The magnitude and effort of an SLHS TSD would mirror previous DLHS and DLCL TSDs; see the technical documents prepared in support of the 2019 DLHS Final Rule, the 2021 DLCL Final Rule, or this reconsideration rulemaking (Refs. 16, 19, and 34).

An EA includes various components such as a description of the need for Federal regulation; a profile of affected industries and populations; an overview of existing Federal, state and local regulations; a specification of the baseline state of the world and estimate of the number of events affected by the regulation; thorough analysis on the consequences of regulatory policy being considered and how regulated entities will respond; quantification and monetization of the regulation's costs, benefits, and net benefits; a description of unquantified or qualitative benefit descriptions; and an assessment of uncertainty surrounding estimates. An EA also includes various additional analyses related to statutory compliance and Executive orders, including but not limited to RFA/SBREFA (Small Business Impacts), UMRA (Unfunded State, Local, or Tribal Mandates), PRA (Paperwork Reduction), Executive Order 12898 (Environmental Justice), Executive Order 13045 (Protection of Children), Executive Order 13132 (Federalism), Executive Order 13175 (Coordination with Tribal Governments), and Executive Order 13211 (Energy Effects). A rulemaking also involves preparing **Federal Register** documents to present, generally, the preamble to and regulatory text of the proposed and final rule. Such published documents reflect the culmination of the development and review of the complex supporting documents and the resulting decision-making, which includes internal steps at the Agency to reach office wide agreement, as well as external to the Agency, such as holding potential public consultations, completing interagency review and convening a Small Business Advocacy

Review (SBAR) Panel as necessary. These processes can also take many months or years. The proposed and final rules also present statutory and Executive Order review analyses. The Agency may also need to publish **Federal Register** documents to extend or reopen public comment periods—or even to announce new public comment periods related to a Notice of Data Availability or a supplemental Notice of Proposed Rulemaking—should new information become available, or the Agency determine that it needs to alter its proposal before taking final action.

The current rulemaking on the DLHS and DLCL is one more step toward complete implementation of TSCA Title IV. Given existing resource constraints and the additional complications for the SLHS and the definition of LBP discussed earlier in this section, EPA does not believe that either the SLHS or the definition of LBP could have been reconsidered on this current rulemaking's timeline. Instead, EPA will reconsider the SLHS and the definition of LBP as important next steps. Courts "have recognized that, under the 'pragmatic' one-step-at-a-time doctrine, 'agencies have great discretion to treat a problem partially' and 'regulat[e] in a piecemeal fashion.'" *Transportation Div. of the Int'l Ass'n of Sheet Metal, Air, Rail & Transportation Workers v. Fed. R.R. Admin.*, 10 F.4th 869, 875 (D.C. Cir. 2021) (quoting *Ctr. for Biological Diversity v. EPA*, 722 F.3d 401, 409–10 (D.C. Cir. 2013)); cf. *Massachusetts v. EPA*, 549 U.S. 497, 524 (2007) (recognizing that "[a]gencies, like legislatures, do not generally resolve massive problems in one fell regulatory swoop"). EPA intends to conduct rulemakings on the SLHS and the definition of LBP, as identified in the Spring 2023 Unified Agenda of Regulatory and Deregulatory Actions, to address the issues identified by the Ninth Circuit in its May 2021 opinion (Refs. 11 and 33).

### III. Technical Analyses

In its evaluation of options for reconsidering the DLHS and DLCL, EPA estimated children's BLL and associated IQ decrements. Estimated BLL and IQ decrements provide the means to quantify the effects that long-term exposure to the analyzed dust-lead loading levels can have on young children. The TSD (Ref. 16) and EA (Ref. 14) accompanying this proposed rulemaking estimated the expected impacts of the candidate DLHS and DLCL options on BLLs and associated IQ decrements of exposed children in target housing. See Unit IV. on the

approaches for developing the options for DLHS and DLCL.

The TSD uses both mechanistic and empirical models to predict the possible BLLs of children in target housing exposed to homogenous candidate values for dust-lead levels (e.g., candidate options for the DLHS) and characterizes the probabilistic variability due to biological response and variation in other sources of lead exposure at each possible candidate dust-lead level. The first approach used mechanistic modeling that includes use of age-specific ingestion rates, activity patterns, and background exposures. The second approach used empirical data that includes co-reported dust-lead and BLL measurements in the homes of children; these dust-lead and BLL data are used to develop an empirical relationship to estimate BLLs for each candidate dust-lead level. Both approaches (mechanistic and empirical) are compared to increase our confidence in the estimates of the relationship between dust-lead loadings and BLL (Section 6.3 of the TSD). The various components of the model and input parameters used in this rulemaking have been the subject of multiple Science Advisory Board Reviews, workshops and publications in the peer reviewed literature focused on dust-lead (Refs. 18, 35, 36, 37, 38, and 39). Specifically, the mechanistic blood lead modeling for this rulemaking reflects the application of an extensively peer-reviewed model by EPA (the Stochastic Human Exposure and Dose Simulation—Integrated Exposure Uptake Biokinetic model coded in R, referred to as R-SHEDS-IEUBK) using updated data sources and tailored to the dust-lead target housing scenario, described in depth in Appendix E of the TSD.

Detailed discussion of the limitations and uncertainties in blood lead modeling at the low BLL and exposure levels considered for this rulemaking can be found in Section 8 of the TSD (Ref. 16). In brief, IEUBK, as a standalone biokinetic model, was evaluated for performance in groups for which the geometric mean BLL is as low as 2.3 µg/dL. Some of the groups at the lowest levels of dust lead exposure modeled for this rulemaking had mean estimated BLL lower than this value (between 0.81 and 1.12 µg/dL depending upon age), which are outside the range for which the underlying biokinetic model (IEUBK) was evaluated. In order to address this concern, EPA conducted an evaluation of the R-SHEDS-IEUBK model used in this analysis with a dataset for which the geometric mean BLL in children aged 1 to 2 years old is 1.09 µg/dL. This

evaluation found that the R-SHEDS-IEUBK model had good agreement with the reference dataset at low percentiles, as well as at the median and at the 95th percentile. See Table 8–2 and Appendix D in the TSD (Ref. 16).

In contrast to the TSD, which estimates the health risk and exposure associated with dust-lead loading candidates for a hypothetical subpopulation of children in target housing without consideration to how many children are actually affected by the rule, the EA estimates benefits that accrue to only the subpopulation which would be impacted by the DLHS and DLCL revisions. Rather than assuming all households living in target housing are impacted by the regulatory change, the EA instead estimates benefits solely for instances when dust-lead levels would be tested. These instances of dust wipe testing are henceforth referred to as “triggering events.” For the subpopulation of children who are affected by these events, the EA estimates quantified benefits from avoided IQ losses. The EA uses real world data to characterize (1) variability in the housing stock that is affected, (2) how surface-by-surface dust-lead loadings change due to the DLHS/DLCL, (3) the number of children living in affected housing units, and (4) resultant changes in BLLs and IQ that are expected. In modeling the relationships between dust-lead loadings and BLL/IQ, the EA presents results based on both the empirical and mechanistic approaches laid out in the TSD. EPA considered several methods to impute the relationship between BLL and IQ below the lowest BLLs observed in the underlying empirical data, and a range of IQ loss results based on the methods considered are presented in the EA (see TSD section 5 and EA section 6.4). The IQ loss estimates presented in Unit IV. and in Section 7 of the TSD result from a linearization method, which resulted in the most conservative estimates of IQ loss.

Both the TSD and the EA present probabilistic distributions of estimated change in BLL or IQ decrement for young children up to the age of six. However, these distributions represent subpopulations of exposed children characterized in differing ways. The TSD presents the expected response for a hypothetical exposure, accounting for varying sources of background exposure (e.g., food, soil, water) and biological variability. The EA estimates expected results from triggering events, recognizing exposure to the hypothetical conditions in the TSD are rare as dust-lead levels across target housing are generally quite low and

existing abatements/interim controls typically overshoot the clearance levels considerably. Thus, the distributions of BLLs and IQ decrements presented in the TSD represent the impact of children’s exposures to hypothetical dust-lead levels while the EA estimates distributions of BLLs and IQ decrements across all children living in housing that would be directly impacted by this proposed rule.

The analyses that EPA developed and presented in the TSD and EA for this rule were specifically designed to estimate BLLs and associated effects on IQ that might accrue to the subpopulation, *i.e.*, children living in pre-1978 housing. EPA notes that its different program offices estimate exposures for different populations, different media, and under different statutory requirements and thus different models or parameters may be a better fit for their purposes. As such, the approach and modeling parameters chosen for this rulemaking should not necessarily be construed as appropriate for, or consistent with, those of other EPA programs.

#### IV. Proposed Rule

As explained in Unit II.E., the 2021 Court Opinion of the U.S. Court of Appeals for the Ninth Circuit held that EPA must reconsider the DLHS in conjunction with the DLCL (Ref. 11). Accordingly, EPA is proposing to change the DLHS from 10 µg/ft<sup>2</sup> and 100 µg/ft<sup>2</sup> for floors and window sills to a non-numeric value called GTZ or any reportable level of dust-lead analyzed by an NLLAP-recognized laboratory. Lowering the DLHS (independent of the DLCL revisions) provides the regulatory benefit of additional disclosure of LBP hazards in target housing and COFs. This results in an estimated increase in individuals who are aware of the presence of dust-lead and the various actions that can be taken to minimize dust-lead hazards and take actions to protect themselves from exposure. See Unit IV.A.1. for additional information describing the proposed DLHS of “any reportable level.” EPA is also proposing to revise the DLCL from 10 µg/ft<sup>2</sup>, 100 µg/ft<sup>2</sup> and 400 µg/ft<sup>2</sup> for floors, window sills, and troughs to 3 µg/ft<sup>2</sup>, 20 µg/ft<sup>2</sup>, and 25 µg/ft<sup>2</sup>, and requesting comment on an alternative DLCL option of 5 µg/ft<sup>2</sup>, 40 µg/ft<sup>2</sup>, and 100 µg/ft<sup>2</sup>.

##### A. Dust-Lead Hazard Standards Approach

In the 2001 LBP Hazards Rule EPA discussed the dilemma the Agency faced when establishing a dust-lead hazard, especially the challenges associated with choosing “which [BLLs]

are truly hazardous” and how to interpret the statutory criteria from TSCA Section 401 (*i.e.*, “would result in adverse human health effects” (15 U.S.C. 2681(10)) given the uncertainties that existed (Ref. 6). As a result, EPA took a pragmatic approach to setting the DLHS and focused on the potential for risk reduction, cost-benefit balancing and other relevant factors, establishing the standards at 40  $\mu\text{g}/\text{ft}^2$  and 250  $\mu\text{g}/\text{ft}^2$  for floors and sills, respectively. As an aside, at that time the Agency did not establish a DLHS for troughs as it found that window sills and troughs were highly correlated and concluded that testing both surfaces would not improve a risk assessor’s ability to characterize risk. Building off the precedent established in 2001, the 2019 DLHS Rule “evaluated the relationship between dust-lead levels and children’s health, and . . . the application of those standards in lead risk reduction programs.” In addition, when establishing the 2019 DLHS, EPA also assessed laboratory capabilities, resources for addressing LBP hazards and consistency across the Federal Government (Ref. 2). At that time EPA reasonably believed it had the discretion to set the DLHS based on both risk reduction and whether the standards were achievable, especially given the existing programs in place to reduce LBP hazards and revised the DLHS to 10  $\mu\text{g}/\text{ft}^2$  and 100  $\mu\text{g}/\text{ft}^2$  for floors and sills, respectively (Ref. 2).

Ultimately, the 2021 Court Opinion, which is discussed in Unit II.E., led EPA to undertake a major shift in its approach to residential LBP hazard control and the LBP activities program because the Opinion found that EPA did not have the authority, when setting the DLHS, to consider non-health factors (*e.g.*, laboratory capabilities, resources for addressing LBP hazards, consistency across the Federal Government, or cost-benefit balancing). Consistent with the 2021 Court Opinion, EPA is proposing to revise the DLHS in this rulemaking based only on health considerations. EPA intends health-only considerations in this DLHS context to refer to the effects of lead on health after exposure to dust-lead loadings, considering the statutory definition’s focus on “any condition that causes exposure to lead from lead-contaminated dust . . . that would result in adverse human health effects” (15 U.S.C. 2681(10)). These health-only considerations do not include broader public health concerns (such as health trade-offs and policy impacts on public housing).

#### 1. Rationale for Selecting the Proposed DLHS

EPA is proposing a non-numeric DLHS that is any reportable level of dust-lead for floors and window sills as analyzed by an NLLAP-recognized laboratory. Proposing a DLHS for floors and window sills only, is consistent with current practice and regulatory history which has not included a hazard standard specifically for troughs.

“Reportable level” is not defined in EPA’s 40 CFR 745 or EPA’s current guidance for NLLAP-recognized laboratories, titled Laboratory Quality System Requirements (or LQSR 3.0). EPA is proposing to define “reportable level” in the regulations to mean the lowest analyte concentration (or amount) that does not contain a “less than” qualifier and that is reported with confidence for a specific method by an NLLAP-recognized laboratory. In other words, EPA interprets “any reportable level” of dust-lead to be any level greater than or equal to the lowest value a laboratory can reliably report to a client or the regulated community (*i.e.*, any reportable level of dust-lead in a laboratory sample result report that does not contain a “less than” (“<”) qualifier).

Under the LQSR, an NLLAP-recognized laboratory must demonstrate it can achieve a quantitation limit equal to or less than 50% of the lowest action level for dust wipe samples (more discussion on the “action level” is found in Unit IV.A.1.c). In addition, a report of zero concentration is not permitted and laboratories must establish a method of limiting the lower reported values to a positive finite lead level that is appropriate for the technology being used. Measured lead levels below this positive finite value must be reported with a qualifier “less than” (“<”) this positive finite value (Ref. 29).

Based on these current minimum standards for NLLAP-recognized laboratories and previous laboratory stakeholder input, EPA expects that the lowest reportable level will be equivalent to the laboratory’s quantitation limit in some cases, but could be lower depending on laboratory capabilities. Ultimately, the proposed DLHS of “any reportable level” is not dependent on the DLCL or quantitation limit, but rather is based on the capabilities of individual laboratories. EPA is requesting comment on the appropriateness of this interpretation and of the proposed definition of “reportable level.”

EPA refers to this non-numeric DLHS approach as GTZ. Given the statutory

language in TSCA Section 401 that defines what a “LBP hazard” is (*i.e.*, as conditions of LBP and lead-contaminated dust and soil that “would result in adverse human health effects”), EPA believes that it cannot set the DLHS at zero because zero does not identify a level of exposure to dust-lead loadings that would cause adverse health effects. Rather EPA believes the proposed standard of “any reportable level” is an appropriate DLHS based on dust-lead exposure related health factors only, and in accordance with the 2021 Court Opinion by taking into consideration the modeling data outlined in TSD and the current state of the science on lead exposure and children’s BLL. The proposed GTZ approach represents a shift in the LBP activities program to a more inclusive and protective DLHS, compared to the current 2019 and 2021 levels. If finalized as proposed, the GTZ approach will be inclusive of any reportable level of dust-lead and will not distinguish between severe, less severe, or negligible risks.

As discussed further in Unit IV.A.2 *Other DLHS Options EPA Considered*, two other approaches were also considered for revising the DLHS, including a numeric standard based entirely on the modeling data laid out in the TSD (summarized in TSD Table 2–2), and an approach that would use the background dust-lead levels of housing built in or after 1978 (called post-1977 background). EPA seeks comment on its proposed and potential alternative approaches to updating the DLHS.

#### a. GTZ Rationale: Modeled Discussion

The GTZ approach is primarily supported by the modeling results provided in the TSD and discussed further in Unit IV.A.3. In the TSD (which is introduced in Unit III) EPA estimated BLL and related changes in IQ (a measure of cognitive function) in young children. The results show that as dust-lead levels in housing decrease below the current standard (*i.e.*, 10  $\mu\text{g}/\text{ft}^2$  and 100  $\mu\text{g}/\text{ft}^2$  for floors and window sills), so do children’s BLL and IQ decrement from lead exposure. When modeling GTZ, EPA used estimated dust-lead loadings ranging from 0.7 to 2.2  $\mu\text{g}/\text{ft}^2$  for floors and 0.8 to 4.4  $\mu\text{g}/\text{ft}^2$  for window sills. These are assumed values for a GTZ DLHS paired with the proposed or alternative DLCL, and account for the lower reporting thresholds that EPA estimates laboratories will realistically attain under this proposal. EPA collected information on real-world laboratory reporting limits from stakeholder outreach conversations as well as

publicly available sources. GTZ values listed above are based on the average of reporting limits at laboratories that currently report numeric dust wipe loadings at levels 50% below the proposed DLCL options. For the details of these calculations, see Sections 4.1 and 2.4.6 of the EA (Ref. 14). EPA also used a hypothetical dust-lead loading value of zero. Details about how the TSD results are interpreted are described in Unit IV.A.2., and the modeled results themselves, which are supportive of the GTZ approach, are described in Unit IV.A.3.

#### b. GTZ Rationale: No Threshold Has Been Identified

According to TSCA Title IV, the DLHS should identify the level of dust-lead exposure that “would result in adverse human health effects” (15 U.S.C. 2681(10)). GTZ is a more protective approach compared to the current regulatory landscape and all the options that were considered for this rulemaking (except post-77 background). GTZ also acknowledges that the current state of scientific evidence does not identify a BLL threshold below which there is no association of adverse effects on children’s cognition. Depending on the exposure and other factors, the effects on IQ associated with childhood lead exposure may persist into adolescence and adulthood (Refs. 4 and 8). EPA also favored such an approach for the DLHS under TSCA Title IV in part because a more protective approach to DLHS, such as GTZ, aligns with the Congressional purpose for disclosure elsewhere under Title X (notably, as implemented in the Lead Disclosure Rule) and because Congress used the word “hazard” in the “lead-based paint hazard” term, even though the definition uses more risk-like language by introducing consideration of the level of *exposure* that would result in adverse health effects.

EPA’s 2013 Lead ISA stated that harmful effects on children’s cognition as measured by IQ were observed in groups with mean BLLs as low as 2 µg/dL, and further that despite there being some uncertainty in epidemiological studies on lead exposure and BLLs (especially for older children and adults) that “A threshold for cognitive function decrements is not discernable from the available evidence (*i.e.*, examination of early childhood blood Pb or concurrent blood Pb in the range of <1 to 10 µg/dL).” (Ref. 4)). This statement was based on a synthesis of the extensive literature examining the relationship between BLL and cognitive function, including a landmark pooled

cohort study meta-analysis by Lanphear et al. (Refs. 40 and 41), the results of which have been confirmed by repeated re-analysis (Refs. 42 and 43). While the 2013 ISA went on to state that “the current evidence does not preclude the possibility of a threshold for neurodevelopmental effects in children existing with lower blood levels than those currently examined”, the Federal Lead Action Plan articulated the U.S. Government position that “no safe blood lead level in children has been identified.” (Ref. 9). Further, the analysis that supports this rule examined the 95th percentile of children’s modeled BLLs and the associated IQ losses (Ref. 16), which for all options considered is at or above the group mean BLLs for which IQ loss is observed in the literature examined in the ISA (Ref. 4 and 16).

EPA understands the limitations of the epidemiological analyses, the lack of scientific studies evaluating low BLLs and acknowledges that a threshold could exist that is currently unidentified; but ultimately in its assessment of the available scientific research findings in the 2013 ISA for lead, the Agency observed that there is no evidence of a threshold below which there are no harmful health effects from lead exposure. EPA continues to acknowledge the aforementioned uncertainties and notes that science is constantly evolving and, as additional data become available (*e.g.*, exposure and health impacts), then EPA may undertake a new rulemaking to propose changing the standards in the future to reflect any new data or information about an acceptable threshold of effects on cognition in children.

Additionally, the Centers for Disease Control and Prevention (CDC) acknowledges that “[s]cientific evidence suggests that there is no known safe [BLL], because even small amounts of lead can be harmful to a child’s developing brain” (Ref. 44). When the original DLHS and DLCL were proposed and finalized in 1998 and 2001 the CDC had set a “level of concern” for children’s BLL at ≥10 µg/dL (Refs. 45 and 46). In 1991, when that level was established as a level that should prompt public health actions, the CDC concurrently recognized that a BLL of 10 µg/dL did not define a threshold for the harmful effects of lead (Ref. 45). One goal for the level was that “all lead poisoning prevention activities should be to reduce children’s BLLs below 10 µg/dL” (Ref. 45). Accordingly, in the 1998 proposal EPA stated that, “[a]lthough the scientific community has not been able to identify a threshold of exposure below which adverse health

effects do not occur, the evidence of health effects below 10 µg/dL is not sufficiently strong to warrant concern” (Ref. 47). In the final rule in 2001, EPA determined the lowest candidate DLHS by using a 1 to 5% probability of an individual child developing a BLL of 10 µg/dL (Ref. 6).

In the 2019 DLHS Rule, EPA recognized that “[a]lthough health risks to young children decrease with decreasing dust-lead levels, no non-zero lead level, including background levels, can be shown to eliminate health risk entirely.” At that time, EPA also recognized the CDC’s 2012 decision to discontinue its use of a 10 µg/dL blood lead “level of concern” and to introduce a population-based blood lead reference value (BLRV) to identify children exposed to more lead than most other children in the United States (Ref. 48). The BLRV represents the 97.5th percentile of the U.S. population BLL distribution in children ages 1 to 5 from the National Health and Nutrition Examination Surveys (NHANES). This means that by definition 2.5 percent of children ages 1 to 5 in the NHANES survey have a BLL greater than the BLRV. This metric was established in part because “no safe blood lead level in children ha[d] been identified,” (Ref. 48). In 2012 the BLRV was 5 µg/dL, based on young children’s BLL in the 2007–2010 NHANES, and in 2021 it was lowered to 3.5 µg/dL based on the children’s lower BLLs observed in the 2015–2018 NHANES (Ref. 46). The BLRV is not based on a health endpoint, but rather is a statistical point in the distribution of children’s BLLs in the U.S. used as a screening tool to identify children who have higher levels of lead in their blood compared with most children.

Establishing a health-based only standard for dust-lead hazard, as well as clearance levels that consider other factors (*i.e.*, take into account reliability, effectiveness, and safety), is similar to EPA’s implementation of some other programs governing lead exposure. For example, under the Safe Drinking Water Act (SDWA), EPA is required to establish a maximum contaminant level goal (MCLG) at a level at which, in the Administrator’s judgement, “no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety.” Section 1412(b)(4). EPA established a health-based MCLG of zero for lead in drinking water. National Primary Drinking Water Regulations include either an enforceable maximum contaminant level (MCL) or treatment technique requirements, EPA can set a treatment technique requirement in lieu

of an MCL if “it is not economically or technologically feasible to ascertain the level of the contaminant.” SDWA Section 1412(b)(7)(A). In addition to the MCLG, EPA established treatment technique requirements for lead taking into account several factors (56 FR 26460). Unlike many other drinking water contaminants, lead is generally not present in source water but enters drinking water from corrosion of plumbing materials that contain lead including lead service lines and premise plumbing. Occurrence of lead in drinking water is variable within a system and across systems due to factors such as amount of lead in any individual site’s plumbing, physical and chemical characteristics of the water, and consumer use patterns. Additionally, sources of lead can be beyond the control of the water system to replace, such as premise plumbing. Water systems can adjust or add treatment to control the corrosivity of the water to reduce lead leaching from lead pipes and premise plumbing. EPA is required to consider technical feasibility and costs when establishing the treatment technique, which is analogous to EPA’s development of the clearance levels that also include non-health-based factors. Under EPA’s treatment technique rule for lead in drinking water, EPA established a non-health-based action level which, if exceeded, requires water systems to take actions to reduce elevated levels of lead in drinking water.

Because of the 2021 Court Opinion remanding the DLHS for reconsideration based only on health factors, the results of the analysis in the TSD, and the lack of a discernible threshold in the evidence for the association of blood lead with harmful effects on cognition in young children, EPA proposes to change the DLHS to any reportable level of lead analyzed by an NLLAP-recognized laboratory.

#### c. LQSR Action Level

Given that GTZ is a non-numeric value, if finalized as proposed, the DLCL, rather than the DLHS, would become the “action level” as described in the Laboratory Quality System Requirements (LQSR 3.0), as well as for when a risk assessor would recommend an abatement (see Unit IV.D. for more information on EPA’s proposed change to the definition of abatement). According to the current LQSR, NLLAP-recognized laboratories that analyze dust wipe samples for lead must show that they can achieve a quantitation limit “equal to or less than . . . 50% of the lowest action level [*i.e.*, regulatory

limit] for dust wipe samples” (Ref. 29). The quantitation limit must also be “at least 2 times but no greater than 10 times the method detection limit” (Ref. 29). Therefore, due to the non-numeric nature of the proposed DLHS of “any reportable level,” these current testing requirements will rely on the numerical DLCL to establish the quantitation limit that any laboratory (that wishes to maintain or obtain NLLAP recognition) must be able to demonstrate. Note however, that the proposed DLHS of “any reportable level” is still considered distinct from the DLCL and the quantitation limit.

#### 2. Other DLHS Approaches EPA Considered

EPA considered two other approaches for revising the DLHS: a numeric standard based on the probability of exceedance of one or more IQ or BLL metrics as determined by the Agency, and an approach that would use the background dust-lead levels of housing built in 1978 and beyond as the DLHS (known as “post-1977 background”). The three approaches (*i.e.*, GTZ, numeric standard, and post-1977 background) take different analytical paths to revising the DLHS based only on health considerations. EPA is proposing the GTZ approach, given the discussion laid out in Unit IV.A.1. but welcomes comment on the other two approaches outlined in both the preamble and in the TSD (Ref. 16).

##### a. Numeric Standard Approach

In addition to the GTZ approach, EPA also explored a “numeric standard” approach, meaning that the Agency would propose a numerical DLHS with a rationale based solely on the interpretation of the TSD results. To do so, the Agency would need to establish a health or exposure metric of interest (*i.e.*, target BLL or IQ change) that would be acceptably protective of human health. Estimated BLL and IQ decrements in children exposed to hypothetical dust-lead loading values are included in the TSD for every DLHS candidate considered for all three approaches (*i.e.*, GTZ, numeric standard and post-1977 background), as well as the primary and alternative DLCL options. These values are estimated to help EPA analyze the impacts of this proposed rulemaking on the health (*i.e.*, IQ decrement) and dust-lead exposure of the subpopulation in question (*i.e.*, young children in pre-1978 buildings and COFs) and to inform a costs and benefits analysis in the EA.

In 2001 and 2019, EPA expressed the challenges of meeting the statutory

criterion for defining an LBP hazard (15 U.S.C. 2681(10)) because it requires EPA to choose a cutoff for when unacceptable risk exists. EPA noted in 2001, even if the science and environmental-lead prevalence data were perfect, there would likely be no agreement on the level, or certainty, of risk that is envisioned in the phrase “would result in adverse human health effects.” Thus, EPA explained that it “would not be appropriate to base a [LBP] hazard standard on any specific probability of exceeding any specific [BLL].” (Refs. 2 and 6). EPA continues to agree with the challenges highlighted in 2001 and 2019.

When choosing health or exposure metrics to evaluate the DLHS approaches based on the TSD results, the Agency has considered three factors: (1) the CDC’s BLRV (which is a not a health-based end point but rather is a statistical measure of relative exposure), (2) responsiveness to feedback received previously from various scientific bodies, and (3) Agency precedent. The TSD considers BLL and IQ changes in two ways: relative to aggregate/total lead exposure (which includes exposure from other media: soil, diet, water, and air in addition to dust) and relative to incremental/dust-only lead exposure (Ref. 16). For example, in 2001 the lowest DLHS candidate was identified by using a 1 to 5% probability of an individual child developing a BLL of 10 µg/dL (Ref. 6), which represented total BLL, inclusive of exposure to lead through other media.

In the TSD analyses for this proposal, EPA compared BLL in young children, with an emphasis on 2-year-old children because this is the age of greatest modeled exposure, from aggregate or total exposure from all media (*i.e.*, dust, soil, diet, water, and air) to the CDC BLRV of 3.5 µg/dL. This BLL value is not-health based and does not represent a toxicity threshold (and is subject to change over time, since the CDC BLRV changes as the BLLs in the population change); however, CDC explains that it can still be used as a tool to “(1) help determine whether medical or environmental follow-up actions should be initiated for an individual child and (2) prioritize communities with the most need for primary prevention of exposure and evaluate the effectiveness of prevention efforts” (Ref. 46). Importantly, even at zero dust-lead, children are already estimated to have a 5.7% probability of exceeding the BLRV given the impact of background lead exposures from other media (*e.g.*, soil, diet, water, and air) (Ref. 16).

TABLE 1—PERCENT EXCEEDANCE VALUES FOR ZERO, AGE: 2 YR OLD (30 MONTHS)

Approach	Floor (µg/ft <sup>2</sup> )	Sill (µg/ft <sup>2</sup> )	Probability			
			Total BLL >3.5 µg/dL	Total BLL >5 µg/dL	Dust only BLL >1 µg/dL	Dust only BLL >2.5 µg/dL
Zero <sup>1</sup> .....	0	0	5.7%	2.2%	0.0%	0.0%

<sup>1</sup> The exceedance values for zero dust-lead are provided for comparison with the DLHS candidates; it is not a candidate value.

In 2011, EPA’s Scientific Advisory Board (SAB) and in 2012 the Children’s Health Protection Advisory Committee (CHPAC) both expressed support for an incremental BLL approach that focuses on dust-lead exposure only. In 2011 SAB reviewed EPA’s *Approach for Developing Lead Dust Hazard Standards for Residences (November 2010 Draft)* and *Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings (November 2010 Draft)* and provided feedback that there are several key advantages to the incremental approach (e.g., reducing uncertainty from estimating exposures from other

media) and provided that a change in BLL “of 1 or 2 µg/dL at the 90th percentile” could be an example of a target risk level. Similarly, CHPAC expressed support for using an incremental approach and preferred levels such that an adverse change in BLL is “no greater than 1 or 2.5 µg/dL” (Ref. 49).

As a result, EPA also estimated what dust-lead levels (considering only the dust-lead component in the multi-media exposure modeling) would result in incremental BLL change ranging between 1 and 2.5 µg/dL based on exposure assumptions described in the TSD (Ref. 16).

For this reconsideration rulemaking the Agency considered the estimated total/aggregate IQ change (i.e., the estimated total or aggregate IQ change from modeled BLL including all modeled sources of lead exposure) at age six and compared it to a threshold of 1 to 2 points. IQ changes due to background exposures to lead in other media (e.g., soil, diet, water, and air) are estimated to already have a 48.7% probability to exceed 2 points for children in target housing without also considering additional dust-lead exposure (Ref. 16).

TABLE 2—PERCENT EXCEEDANCE VALUES FOR ZERO, AGE: 6 YR OLD (72 MONTHS)

Approach	Floor (µg/ft <sup>2</sup> )	Sill (µg/ft <sup>2</sup> )	Probability			
			Total IQ >1pt	Total IQ >2pt	Dust only IQ >1pt	Dust only IQ >2pt
Zero <sup>1</sup> .....	0	0	88.9%	48.7%	0.0%	0.0%

<sup>1</sup> The exceedance values for zero dust-lead are provided for comparison with the DLHS candidates; it is not a candidate value.

In addition to total/aggregate IQ change, EPA determined BLLs that were estimated to result in an incremental loss of 1 to 2 IQ points from exposure to only dust-lead (i.e., exclusive of lead in other media such as soil, diet, water, and air). This metric is explicitly health-based, in that it is an estimated health effect. There is EPA precedence for using the metric of an incremental change in IQ with a range of values of 1 to 2 points to inform national standards decisions. This includes the 2008 and 2016 decisions on the primary national ambient air quality standard (NAAQS) for lead, which was informed by consideration of air-related IQ decrement estimates based on an evidence-based framework, with a focus on the at-risk subpopulation of children living near sources who are likely to be most highly exposed (Ref. 50). In their review of various technical documents supporting both the 2008 and 2016 NAAQS reviews, the Clean Air Scientific Advisory Committee (CASAC) supported using an incremental 1 to 2 point IQ decrement approach for consideration during development of the air standard (Refs. 50 and 51).

As reported in the TSD, EPA evaluated several numeric DLHS candidates that the Agency thought were appropriate given the health and exposure metrics of interest, and the uncertainty of the model at low loading values. The numeric DLHS candidates were 1/10 µg/ft<sup>2</sup> (i.e., 1 µg/ft<sup>2</sup> for floors and 10 µg/ft<sup>2</sup> for sills), 2/20 µg/ft<sup>2</sup>, 3/30 µg/ft<sup>2</sup>, and 5/40 µg/ft<sup>2</sup> and those values were compared to the specified BLL and IQ metrics to estimate the probability of exceeding the BLL or IQ targets. For example, a 2-year-old living in pre-1978 housing exposed to 3 µg/ft<sup>2</sup> on floors and 30 µg/ft<sup>2</sup> on window sills would have a 4.8% probability of exceeding, for example, 5 total µg/dL BLL. Under this numeric standard approach, EPA would plan to use the threshold of 5% probability of exceedance for a child from the sub-population of interest (i.e., young children living in pre-1978 housing and COFs). This is similar to the 1 to 5% probability that was used in 2001 for the lowest DLHS candidate (Ref. 6).

Due to the aforementioned complexities with identifying a cutoff of risk or specific IQ/BLL metrics of

interest that would be acceptable for purposes of setting the DLHS, as well as the reasons for favoring GTZ, EPA is not proposing the numeric standard approach for the DLHS as the Agency’s preferred option. For specific discussion on the modeled numeric DLHS candidates and IQ/BLL metrics, see Unit IV.A.3. EPA welcomes comment on this numeric standard approach including the IQ/BLL metrics under consideration (i.e., the target values of interest) and the use of a 5% probability of exceedance.

b. Post-1977 Background Approach

EPA also considered an approach to revise the DLHS that would align target housing dust-lead levels with dust-lead levels in housing built after lead-based paint was banned. This approach would result in lowering the DLHS to the dust-lead background levels of housing built after 1977 (known as “post-1977 background”), which are presumably not from LBP. In 1978, the CPSC banned lead in paint and similar surface-coating materials for consumer use in excess of 0.06% and revised the level in 2009 to 0.009% following the Consumer Product Safety Improvement Act of

2008 (Pub. L. 110–314). As a result of CPSC’s 1978 lead paint ban, the focus of EPA’s LBP activities program is target housing which includes most pre-1978 housing and COFs.

Post-1977 background dust-lead values were calculated from a weighted geometric mean of the dust-lead loadings from the American Healthy Homes Survey II and were found to be 0.2 µg/ft² for floors and 0.8 µg/ft² for window sills (Refs. 14 and 52). Setting the DLHS at the post-1977 background dust-lead levels would allow EPA to focus on dust-lead hazards above what is expected in housing without LBP (*i.e.*, after CPSC established a maximum level of lead in paint for consumer products, including home paints). Establishing DLHS for target housing and COFs in this way, using post-1977 background dust-lead levels, would address disparities in the dust-lead levels that children in target housing may be exposed to and the corresponding disparate health risks. This approach would also align with the focus of Title X on lead hazards in housing constructed before 1978. Using this approach, DLHS would be established at 0.2 µg/ft² for floors and 0.8 µg/ft² for window sills as the dust-lead levels that would result in adverse human health effects. However, there are questions about whether the post-1977 background approach would as directly address the 2021 Court Opinion as the GTZ approach. Due to those concerns and the reasons for favoring GTZ, EPA is not proposing the post-1977 background approach for the DLHS as the Agency’s preferred option.

As statistical points in a distribution of environmental data, the calculation of the average background value is highly influenced by the way in which data/measurements below the analytical detection limit are treated. Further discussion on deriving these candidates can be found in the TSD Section 2.3. The TSD models the health and exposure outcomes based on these candidate DLHS of 0.2 µg/ft² for floors and 0.8 µg/ft² for window sills, as described in Unit IV.A.3. EPA welcomes comment on this background approach, and its appropriateness given the description above, 2021 Court Opinion and the statutory authority.

3. Modeled Results for All Three DLHS Approaches

The TSD that accompanies this proposal evaluated the DLHS candidates of all three approaches (*i.e.*, GTZ, numeric standard, and post-1977 background). Estimates for BLLs of children exposed to the DLHS dust-lead loadings were evaluated for children at each age up to age six, including age two (generally, age two is the age of greatest modeled exposure), and lead-related reduction in IQ at age six was estimated from the lifetime average BLL (average of BLLs across the period prior to age six). This approach is consistent with the study from which the BLL concentration-IQ response function was drawn. This study related IQ quantified at about six years of age to each child’s lifetime average BLLs (based on blood Pb measurements taken from six months up to age of the IQ test (Refs. 40 and 41)). In the following discussion, both the model results for two-year BLL and the estimates of IQ change at six-years, are represented, referring to them as the results for “young children” for brevity. EPA considered numerous dust-lead loadings, including: 0.7/0.8 µg/ft², (*i.e.*, 0.7 µg/ft² for floors and 0.8 µg/ft² for window sills) which is the GTZ option partnered with the primary DLCL option (3/20/25 µg/ft² for floors, window sills, and window troughs respectively) and 2.2/4.4 µg/ft², which is the GTZ partnered with the alternative DLCL option (5/40/100 µg/ft²). Other modeled dust-lead loadings are 0.2/0.8 µg/ft², which is the post-1977 background dust-lead level, 1/10 µg/ft², 2/20 µg/ft², 3/30 µg/ft², 5/40 µg/ft², and 10/100 µg/ft², which is the 2019 DLHS. Zero was also provided for comparison purposes with the DLHS candidates and is not itself a candidate value. More information on the TSD and the health/exposure metrics (*i.e.*, IQ and BLL decrements) that were analyzed can be found in Unit III. and Unit IV.A.2.a.

DLHS candidates associated with GTZ, post-1977 background, and the numeric standard (1/10 µg/ft²) approaches are associated with the lowest BLLs when compared to the other numeric DLHS candidates (2/20 µg/ft², 3/30 µg/ft² and 5/40 µg/ft² and the current DLHS of 10/100 µg/ft² for floors and window sills). The TSD

modeling results for young children exposed to dust-lead associated with the loading candidates from the GTZ approach (which range from 0.7 to 2.2 µg/ft² for floors and 0.8 to 4.4 µg/ft² for window sills depending on which DLCL it is coupled with, see Unit IV.A.1.a. for more information) show that young children would have a 0.0 to 10.6% probability of exceeding an incremental BLL of 1 to 2.5 µg/dL (Tables 7–2 and 7–3 in the TSD). However, the results for GTZ partnered with the primary DLCL option (0.7/0.8 µg/ft²), and post-1977 background (0.2/0.8 µg/ft²) are the only two DLHS candidates that keep both the percentage of exceedance of incremental BLL of 1 to 2.5 µg/dL below 5% probability (which is the threshold of interest EPA identified).

When comparing the three DLHS approaches to total BLL, the modeling includes exposure from other media such as soil, diet, water, and air. Importantly, even at zero dust-lead, children would still have a 5.7% probability of exceeding the BLRV given the impact of these other exposures. Thus, none of the considered DLHS candidates resulted in less than 5% probability of exposed children’s BLL exceeding the CDC BLRV. However, the TSD modeling results did show that for young children exposed to dust-lead loadings using the GTZ approach, the post-1977 background approach or the numeric DLHS candidate of 1/10 µg/ft² would have approximately a 7.3 to 9.1% probability of exceeding a total BLL of 3.5 µg/dL, the CDC’s BLRV. This is lower than the 10.3 to 13.9% probability when exposed to other numeric DLHS candidates (2/20 µg/ft², 3/30 µg/ft² and 5/40 µg/ft² for floors and window sills) and the 18.0% probability when exposed to the current DLHS of 10 µg/ft² for floors and 100 µg/ft² for window sills. Therefore, while no DLHS option results in a less than 5.7% probability of exposed children’s BLL exceeding the CDC BLRV given their likely exposures to other sources of lead, the options with the lowest levels (GTZ, post-1977 background, and 1/10 µg/ft²) result in exposed children experiencing about a two to three times less likelihood of exceeding the CDC BLRV compared to the current DLHS.

TABLE 3—PERCENT EXCEEDANCE VALUES FOR DLHS CANDIDATES, AGE: 2 YR OLD (30 MONTHS)

Approach	Floor (µg/ft²)	Sill (µg/ft²)	Probability			
			Total BLL >3.5 µg/dL (%)	Total BLL >5 µg/dL (%)	Dust only BLL >1 µg/dL (%)	Dust only BLL >2.5 µg/dL (%)
Zero <sup>1</sup> .....	0	0	5.7	2.2	0.0	0.0

TABLE 3—PERCENT EXCEEDANCE VALUES FOR DLHS CANDIDATES, AGE: 2 YR OLD (30 MONTHS)—Continued

Approach	Floor (µg/ft²)	Sill (µg/ft²)	Probability			
			Total BLL >3.5 µg/dL (%)	Total BLL >5 µg/dL (%)	Dust only BLL >1 µg/dL (%)	Dust only BLL >2.5 µg/dL (%)
Post-1977 Background .....	0.2	0.8	7.3	2.8	1.0	0.0
GTZ With 3/20 DLCL .....	0.7	0.8	8.2	3.0	3.7	0.1
Numeric .....	1	10	9.1	3.3	6.6	0.5
GTZ With 5/40 DLCL .....	2.2	4.4	10.1	3.9	10.6	1.0
Numeric .....	2	20	10.3	4.1	12.5	1.2
Numeric .....	3	30	11.8	4.8	17.2	2.0
Numeric .....	5	40	13.9	5.5	23.0	3.2
Current Standard .....	10	100	18.0	7.5	36.7	6.5

<sup>1</sup> The exceedance values for zero dust-lead are provided for comparison with the DLHS candidates; it is not a candidate value.

DLHS candidates associated with GTZ and post-1977 background are also estimated to be associated with the lowest IQ decrements when compared to the other DLHS candidates (GTZ partnered with the alternative DLCL, 1/10 µg/ft², 2/20 µg/ft², 3/30 µg/ft² and 5/40 µg/ft², and the current DLHS of 10/100 µg/ft² for floors and window sills). GTZ partnered with the primary DLCL option (0.7/0.8 µg/ft²), and post-1977 background (0.2/0.8 µg/ft²) are the only two DLHS candidates estimated to have a 0.6 to 2.5% probability of exceeding 2 points of incremental IQ loss from dust-exposure, keeping the percentage of exceedance of 2 points of IQ loss below 5% probability.

TABLE 4—PERCENT EXCEEDANCE VALUES FOR DLHS CANDIDATES, AGE: 6 YR OLD (72 MONTHS)

Approach	Floor (µg/ft²)	Sill (µg/ft²)	Probability			
			Total IQ 1pt (%)	Total IQ >2pt (%)	Dust only IQ >1pt (%)	Dust only IQ >2pt (%)
Zero <sup>1</sup> .....	0	0	88.9	48.7	0.0	0.0
Post-1977 Background .....	0.2	0.8	94.7	63.1	6.2	0.6
GTZ With 3/20 DLCL .....	0.7	0.8	96.4	70.4	18.5	2.5
Numeric .....	1	10	97.0	74.5	30.2	5.2
GTZ With 5/40 DLCL .....	2.2	4.4	97.7	78.5	40.7	9.0
Numeric .....	2	20	97.9	80.0	44.6	11.0
Numeric .....	3	30	98.5	82.3	53.6	16.0
Numeric .....	5	40	98.8	85.1	62.7	22.4
Current Standard .....	10	100	99.4	90.3	75.8	37.9

<sup>1</sup> The exceedance values for zero dust-lead are provided for comparison with the DLHS candidates; it is not a candidate value.

**B. Dust-Lead Clearance Levels Approach**

TSCA Title IV granted EPA the authority to regulate LBP activities, and to take into account reliability, effectiveness, and safety (15 U.S.C. 2682(a)(1)) when setting the DLCL. While considering those three criteria, the 2001 LBP Hazards Rule modified the work practice standards to include DLCL, which “are used to evaluate the effectiveness of cleaning following an abatement” (Ref. 6). In both the 2001 LBP Hazards Rule and the 2021 DLCL Rule, the DLCL were finalized as the same value as the DLHS for floors and window sills. When originally established, EPA considered the DLCL in the broader context of Title X, and selected DLCL that were compatible with a “workable framework for lead-based paint hazard evaluation and reduction.” EPA chose DLCL that were consistent with the DLHS in part to ensure they were “as easy as possible to

understand and implement” (Ref. 47). At that time EPA established the DLCL and the DLHS at 40 µg/ft² and 250 µg/ft² for floors and window sills, with a separate DLCL of 400 µg/ft² for troughs. In 2021 the DLCL set by EPA continued to mirror the DLHS as it had done historically, as the Agency explained that it wanted to update the DLCL to achievable levels that would demonstrate elimination of dust-lead hazards under the 2019 DLHS of 10 µg/ft² for floors and 100 µg/ft² for window sills. The 2021 updates to the DLCL restored consistency between the DLCL and DLHS, which had been lowered in 2019 without a corresponding amendment to the DLCL. Previous public comments received on the 2018 DLHS proposal and 2020 DLCL proposal favored lowering the DLCL to be consistent with the DLHS (Refs. 53 and 54). As a result, in 2021 EPA finalized DLCL of 10 µg/ft² for floors and 100 µg/ft² for window sills (the same levels as the DLHS), and “EPA considered the

achievability of these levels, how the lower dust-lead loadings can be reliably detected by laboratories, the effectiveness of these levels, and consistency with the revised 2019 standards and across the Federal Government” (Ref. 3). The 2021 Court Opinion affirmed that “TSCA [Title] IV gives the EPA latitude to consider ‘reliability, effectiveness, and safety’” when promulgating regulations “[w]ith respect to implementation, including abatement.” *A Cmty. Voice*, 997 F.3d at 995 (Ref. 11). This would include the DLCL as they represent part of post-abatement work practices. The Court continued by emphasizing that this gives EPA more discretion when setting the DLCL because they are relevant to the implementation of remedial measures, rather than the identification of a hazard (*i.e.*, DLHS). The Court analogized this dichotomy to other environmental statutory schemes (see also Unit IV.A.1.b. for EPA’s discussion of the

SDWA). The Court also held that the DLCL and DLHS are directly related and must be reconsidered together. Yet the Court recognized the difference in statutory authority and considerations (see Unit IV.A. for more information on DLHS).

In accordance with the 2021 Court Opinion, EPA is proposing to revise the DLCL in the same proceeding as the reconsideration of the 2019 DLHS, and given the Court's direction for how to revise the DLHS and DLCL, EPA is proposing clearance levels that are decoupled from the DLHS (see Unit I.B and C. for more background on decoupling). EPA evaluated the 2021 DLCL in accordance with the statute and is proposing to revise the DLCL from 10 µg/ft<sup>2</sup>, 100 µg/ft<sup>2</sup> and 400 µg/ft<sup>2</sup> for floors, window sills, and troughs, respectively, to 3 µg/ft<sup>2</sup>, 20 µg/ft<sup>2</sup>, and 25 µg/ft<sup>2</sup>. EPA is proposing to revise the DLCL in order to reduce exposure to dust-lead beyond the 2021 levels. Additionally, New York City (NYC) has lowered their clearance levels since the 2021 DLCL final rule, which shows that levels below EPA's 2021 DLCL are achievable. Discussion on NYC's clearance levels can be found in Unit IV.B.2.d. Accordingly, EPA is also requesting comment on an alternative DLCL of 5 µg/ft<sup>2</sup>, 40 µg/ft<sup>2</sup>, and 100 µg/ft<sup>2</sup>, as well as whether another DLCL is appropriate given reliability, effectiveness and safety and why, see Unit VII.

#### 1. Selecting the Proposed DLCL

EPA is proposing to revise the DLCL given the statutory criteria of reliability, effectiveness, and safety, based on consideration of HUD's Lead Hazard Control Clearance Survey (LHCCS), the potential for risk reduction by lowering exposure to dust-lead, and an evaluation of laboratory capabilities and capacity.

##### a. Lead Hazard Control Clearance Survey

EPA collaborated with HUD to develop the 2015 LHCCS to examine whether HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH) Lead Hazard Control (LHC) grantees could achieve DLCL below the standards at that time (40 µg/ft<sup>2</sup>, 250 µg/ft<sup>2</sup> and 400 µg/ft<sup>2</sup> for floors, window sills and troughs, respectively). LHC work performed by the grantees must be conducted by LBP certified individuals. Since most of the LHC grantees use commercial firms in their area, HUD OLHCHH believes that the grantees are conducting a large percentage of these activities and are therefore representative of the regulated community.

At that time, 98 LHC grantees completed the survey, giving HUD information from housing units in which lead hazard control activities took place from 2010 through 2012, for a total dataset of 1,552 housing units including 7,211 floor samples and 4,893 window sill samples (Ref. 55). The data were analyzed to determine the percentage of samples cleared at or below specific values. Numerical modeling was performed to estimate loadings that fell below laboratory detection limits. For more information on how that analysis was conducted please see Appendix D of the EA (Ref. 14). Since the 2015 LHCCS report was published, to the Agency's knowledge, there has not been any data or source of information of this magnitude in terms of DLCL samples alongside the details of the clearance process, including the number of tests performed (with results) and the type of additional work or cleaning performed. EPA found this 2015 LHCCS report still relevant and recent enough to provide meaningful input to inform this reconsideration rulemaking.

In terms of the primary DLCL option EPA is proposing, 64% of the 2010 to 2012 samples showed dust-lead levels at or below 3 µg/ft<sup>2</sup> for floors, 64% were at or below 20 µg/ft<sup>2</sup> for window sills, and 64% were at or below 25 µg/ft<sup>2</sup> for window troughs. As a result, approximately 64% of samples from the LHCCS data had dust-lead levels at or below the primary DLCL option of 3 µg/ft<sup>2</sup> for floors, 20 µg/ft<sup>2</sup> for window sills and 25 µg/ft<sup>2</sup> for troughs, which EPA believes is achievable, especially since the survey respondents were only required to achieve clearance below the 2001 DLCL at that time (40/250/400 µg/ft<sup>2</sup> for floors, window sills and troughs, respectively). It is possible that the percentage of samples achieving clearance may be even higher today, due to the 2021 revision of the DLCL to 10/100 µg/ft<sup>2</sup>, meaning clearance has had to be achieved at these lower levels or below, since that time. Given lead-hazard control work has been subject to the current DLCL of 10/100 µg/ft<sup>2</sup> for some time, EPA is requesting comment from the regulated community regarding their ability to clear to 3/20/25 µg/ft<sup>2</sup> after various lead hazard control activities and given any additional cleaning necessary to make sure the dust-lead levels fall below the DLCL. See Unit IV.B.2.a. for more information on the LHCCS results for the alternative DLCL of 5/40/100 µg/ft<sup>2</sup> for floors, window sills and troughs, respectively.

##### b. Primary DLCL Modeling Results

EPA must understand the estimated health impacts of dust-lead exposure when selecting a DLCL that is reliable, effective, and safe, and in order to inform the EA. The TSD that accompanies this proposal includes evaluation of the 2021 DLCL (10/100 µg/ft<sup>2</sup> for floors and window sills), and the primary DLCL (3/20 µg/ft<sup>2</sup> for floors/window sills) and alternative DLCL (5/40 µg/ft<sup>2</sup> for floors/window sills) options. The unique dust-lead contribution to exposure from window troughs cannot be distinguished from window sills given the strong correlation between dust-lead loadings on the two surface types, the lack of data on access to window troughs versus window sills by children, and the paired impacts in window sills and window troughs from intervention studies addressing lead paint in window trim and casings. Further discussion on exposure to window troughs can be found in the TSD in Appendix C. As a result, exposure to window trough dust-lead and resultant benefits from a lowered DLCL for troughs is not calculated separately for this rulemaking.

The TSD also describes modeling of dust-lead exposures at the specific DLCL options for window sills and floors only and estimates of both BLLs that were evaluated for children at each age up to age six, including age two (generally, this is the age of greatest modeled exposure), and lead-related reduction in IQ at age six was estimated from the lifetime average BLL (average of BLLs across the period prior to age six). More information on estimated potential impacts from dust-lead exposures analyzed in the TSD, can be found in Unit III. *Technical Analyses* and Unit IV.A.2.a. *Modeled Approach*.

Compared to the alternative DLCL option, the primary option (3/20/25 µg/ft<sup>2</sup> for floors, window sills and troughs) is expected to be more health protective in that it results in the least amount of dust-lead left on a surface after the completion of an abatement. The modeling results provided in the TSD show that young children in pre-1978 housing exposed to dust-lead loadings of 3 µg/ft<sup>2</sup> for floors and 20 µg/ft<sup>2</sup> for sills would have a 11.3% probability of exceeding a total BLL of 3.5 µg/dL (CDC's BLRV). This is lower than the 18.0% probability when exposed to the current DLCL of 10 µg/ft<sup>2</sup> for floors and 100 µg/ft<sup>2</sup> for window sills and the 13.9% probability when exposed to the alternative DLCL. Total BLL includes exposure from other media such as soil, diet, water, and air; even at zero dust-

lead, children would still have a 5.7% probability of exceeding the CDC’s BLRV from these other sources. When considering dust-lead exposure only, the primary option for DLCL (3/20/25 µg/ft<sup>2</sup>), is estimated to result in 1.6 to 16.0% probability of young children’s

BLL exceeding 1 to 2.5 µg/dL, compared to 3.2 to 23.0% probability for the alternative DLCL (5/40/100 µg/ft<sup>2</sup>). The primary DLCL is also estimated to have a 14.6% probability of exceeding 2 IQ points decrement from dust exposure, while the alternative DLCL is estimated

to result in a 22.4% probability of exceeding 2 IQ points decrement from dust exposure. Ultimately, the primary DLCL option is expected to result in a higher reduction of dust-lead exposure than the alternative DLCL.

TABLE 5—PERCENT EXCEEDANCE VALUES FOR DLHS CANDIDATES, AGE: 2 YR OLD (30 MONTHS)

Approach	Floor (µg/ft <sup>2</sup> )	Sill (µg/ft <sup>2</sup> )	Probability			
			Total BLL >3.5 µg/dL (%)	Total BLL >5 µg/dL (%)	Dust only BLL >1 µg/dL (%)	Dust only BLL >2.5 µg/dL (%)
Zero <sup>1</sup>	0	0	5.7	2.2	0.0	0.0
3/20 DLCL	3	20	11.3	4.5	16.0	1.6
5/40 DLCL	5	40	13.9	5.5	23.0	3.2
Current Standard	10	100	18.0	7.5	36.7	6.5

<sup>1</sup> The exceedance values for zero dust-lead are provided for comparison with the DLHS candidates; it is not a candidate value.

TABLE 6—PERCENT EXCEEDANCE VALUES FOR DLHS CANDIDATES, AGE: 6 YR OLD (72 MONTHS)

Approach	Floor (µg/ft <sup>2</sup> )	Sill (µg/ft <sup>2</sup> )	Probability			
			Total IQ >1pt (%)	Total IQ >2pt (%)	Dust only IQ >1pt (%)	Dust only IQ >2pt (%)
Zero <sup>1</sup>	0	0	88.9%	48.7%	0.0%	0.0%
3/20 DLCL	3	20	98.2%	81.8%	51.4%	14.6%
5/40 DLCL	5	40	98.8%	85.1%	62.7%	22.4%
Current Standard	10	100	99.4%	90.3%	75.8%	37.9%

<sup>1</sup> The exceedance values for zero dust-lead are provided for comparison with the DLHS candidates; it is not a candidate value.

c. Laboratory Capabilities for Primary DLCL

To better understand current laboratory capabilities for specific equipment types, and the impact that the primary and alternative DLCL options, especially given that a non-numeric DLHS would shift the LQSR “action level” to the DLCL, EPA spoke with nine NLLAP-recognized laboratories about their dust wipe testing programs (Refs. 56, 57, 58, 59, 60, 61, 62, 63 and 64). EPA was interested in information from laboratories who had high dust wipe testing capacity and laboratories that had both a flame atomic absorption spectroscopy (FAAS) and the more sensitive laboratory instruments such as inductively coupled plasma atomic emission spectroscopy (ICP–AES) or an inductively coupled plasma mass spectroscopy (ICP–MS). The Agency wanted additional background on ICP instruments and their use for dust wipe testing in general. Among the laboratories EPA spoke to, six were accredited to use FAAS, five were accredited to use ICP–AES, and two

were accredited to use ICP–MS to analyze dust wipe samples for lead. Eight of the nine laboratories provide commercial testing services, four of which are the largest U.S. lead laboratories by dust wipe test volume.

The information received from stakeholder outreach indicates that laboratories using ICP–AES equipment for dust wipe testing have a reporting limit of ≤3 µg/wipe. The five laboratories with ICP–AES capabilities have current reporting limits ranging from 0.5 µg/wipe to 3 µg/wipe. EPA believes that laboratories with more up-to-date instruments and optimized methods should be able to satisfy the LQSR dust wipe recommendations and the regulatory limit of the primary DLCL option of 3/20/25 µg/ft<sup>2</sup> and the quantitation limit of equal to or less than 50% of that level (*i.e.*, 1.5/10/12.5 µg/ft<sup>2</sup>). If finalized as proposed, EPA believes that ICP–AES would likely become the instrument standard for dust wipe testing for lead at the NLLAP laboratories, as other technologies were not reported to consistently meet the quantitation limit described above. For

more information on the on how the alternative DLCL compares or the impact it could have on NLLAP-recognized laboratories, see Unit IV.B.2.c.

FAAS has been the most popular choice for lead dust wipe testing because it has a lower purchase price and operating cost, is fast and easy to use, and was sensitive enough for the 2019 and 2021 rules’ DLHS and DLCL of 10 µg/ft<sup>2</sup> on floors and 100 µg/ft<sup>2</sup> on window sills. As shown in the table below, Table 2–9 of the EA, over two-thirds of laboratories recognized under the NLLAP for lead dust wipe testing currently use FAAS, and over half of these NLLAP laboratories rely solely on FAAS (Ref. 14). EPA seeks information on whether and the extent to which labs that do not have any or have only limited ICP capabilities would adopt ICP technology for dust wipe testing if it were to effectively become the standard for dust wipe testing for lead. In addition, EPA requests comment on the timing, benefits, and challenges associated with ICP adoption.

TABLE 7—ANALYTICAL EQUIPMENT USED FOR LEAD DUST WIPE TESTING BY LABORATORIES RECOGNIZED UNDER NLLAP PROGRAM

Equipment	Total number of laboratories accredited	Commercial laboratories accredited
FAAS .....	56	54
ICP–AES .....	27	19
ICP–MS .....	5	1
FAAS and ICP–AES .....	10	10
FAAS and ICP–MS .....	2	2
ICP–AES and ICP–MS .....	1	1
Total .....	101	87

Sources: Methods described in accreditation certificates for NLLAP laboratories, and descriptions on laboratory websites.

Several concerns about switching to ICP instruments were raised by laboratories, such as, a reduction in the throughput rate, need for additional equipment and staff due to the complexity of the machines (compared to FAAS), higher prices, delayed turnaround, and concerns over maintaining the current sample volume and ultimately whether to continue keeping dust wipe testing for lead in their portfolio/revisiting their business model. Based on the outreach conducted, laboratories indicated that the throughput rate on ICP–AES machines is roughly seven to 12 times slower than FAAS throughput. One major laboratory EPA spoke to estimated that they would have to purchase three to six new instruments, hire several highly qualified technicians, and run the laboratory on shifts over 24 hours to meet current demand for dust wipe tests conducted solely by ICP. This shift in instrumentation is estimated to increase both cost per sample as well as turnaround time. Laboratories mentioned that for clearance a substantial portion of their dust wipe testing clients request same-day or next-day turnaround on samples so that residents can quickly reoccupy their homes. Several laboratories doubted the technical feasibility of providing same-day or next-day turnarounds at sufficient volume should they switch to ICP technology thereby, potentially delaying homeowners from quickly reoccupying their homes and renters from quickly beginning occupancy or from quickly reoccupying their rental housing. Dust wipe testing by ICP–AES is also estimated to be about 125% more expensive per sample than testing by FAAS, and laboratories expressed concern that less overall dust wipe testing will occur because state and local municipalities often have a fixed budget for their housing and health programs. See the EA for more specific information on the breakdown of the

cost estimates of dust wipe testing. EPA also seeks information on the potential geographic impacts of the proposal on laboratory testing for lead dust wipes.

Finally, EPA found that several high-volume laboratories forecast that dust wipe test volumes will continue to grow over the next decade (Refs. 60 and 61). First, a growing proportion of laboratories’ dust wipe testing business comes from landlords who need to comply with municipal housing regulations set by states or localities. Laboratories expect similar regulations to be enacted in the coming years, increasing demand for dust wipe testing for clearance (Ref. 61). Second, in recent years laboratories have received an increased volume of test samples generated by disaster recovery programs. When there is a natural disaster (such as a major flood) that requires clean-up and re-construction of pre-1978 housing, laboratories can receive an unexpected spike in dust wipe tests. Laboratories pointed out that the increasing rate of disaster-related demand spikes may overwhelm their capacity if only ICP can be used for dust wipe testing. If finalized as proposed, this rulemaking will also likely increase the amount of dust wipe testing required given the proposed regulatory levels. EPA seeks comment on the extent to which laboratories would be able to accommodate increased or emergency demand for dust wipe testing if this proposal is finalized.

The Agency is proposing 3/20/25 µg/ft<sup>2</sup> as the primary DLCL option due to the potential for risk reduction as discussed in Unit IV.B.1.b. Given information gathered via EPA’s outreach to laboratories, EPA is concerned that setting clearance levels too low may deter participation in lead-hazard control programs and activities that require dust wipe testing or cause a market failure that does not allow the current volume of testing to continue. As a result, EPA is requesting comment

on the reliability, effectiveness, and safety of the primary DLCL of 3/20/25 µg/ft<sup>2</sup> for floors, window sills, and troughs, including specifically the impact on laboratory capability as well as the accuracy of the information presented. See Unit VII. *Request for Comments* for more information.

2. Alternative DLCL

EPA is requesting comment on an alternative option to revise the DLCL for floors, window sills, and troughs from 10 µg/ft<sup>2</sup>, 100 µg/ft<sup>2</sup> and 400 µg/ft<sup>2</sup>, respectively to 5 µg/ft<sup>2</sup>, 40 µg/ft<sup>2</sup>, and 100 µg/ft<sup>2</sup>, respectively. EPA chose 5/40/100 µg/ft<sup>2</sup> as the alternate DLCL based on consideration of HUD’s LHCCS, potential for risk reduction, an evaluation of laboratory capabilities as well as high confidence that these standards can be successfully implemented, as shown by the use of these clearance levels currently in NYC. Another consideration supporting the alternative DLCL option is to avoid potentially spreading the resources for LBP hazard mitigation so broadly that they may be diverted from scenarios that present the greatest risk. EPA notes that the EA indicates that the alternative DLCL option is estimated to have positive net benefits. See EA, Table ES–11.

a. Lead Hazard Control Clearance Survey

The LHCCS indicates that 73% of samples from 2010 to 2012 showed dust-lead levels at or below 5 µg/ft<sup>2</sup> for floors, 89% were at or below 40 µg/ft<sup>2</sup> for window sills, and 94% were at or below 100 µg/ft<sup>2</sup> for window troughs. As such, overall more than 72% of samples had dust-lead levels at or below the alternative DLCL option of 5/40/100 µg/ft<sup>2</sup> for floors, window sills and window troughs. This is compared to 64% of samples clearing at or below the primary DLCL option of 3/20/25 µg/ft<sup>2</sup>. As a result, EPA has high confidence that the alternative DLCL option is

achievable, while considering reliability and effectiveness. EPA is requesting comment on whether the LHCCS data support the reliability and effectiveness of the alternative DLCL option, and whether the regulated community can clear to 5/40/100  $\mu\text{g}/\text{ft}^2$  after various lead hazard control activities and specialized cleaning.

#### b. Alternative DLCL Modeling Results

The alternative (5/40/100  $\mu\text{g}/\text{ft}^2$  for floors, window sills and troughs) represents a 50% or more reduction of dust-lead left on a surface following the completion of an abatement, when compared to the current DLCL (10/100/400  $\mu\text{g}/\text{ft}^2$ ). This alternative DLCL option would be beneficial to maintaining lower children's BLLs and protecting against associated health outcomes such as decreased IQ. The modeling results provided in the TSD show that young children in pre-1978 housing exposed to dust-lead loadings of 5  $\mu\text{g}/\text{ft}^2$  for floors and 40  $\mu\text{g}/\text{ft}^2$  for window sills would have an estimated 13.9% probability of exceeding a total BLL of 3.5  $\mu\text{g}/\text{dL}$  (CDC's BLRV); this is compared to the primary DLCL option (3/20/25  $\mu\text{g}/\text{ft}^2$ ) which would result in a 11.3% probability of exceedance (a difference of 2.6% between the primary and alternative DLCL options). Ultimately, both options are lower than the 18.0% probability of exceedance of the BLRV when exposed to the current DLCL of 10  $\mu\text{g}/\text{ft}^2$  for floors and 100  $\mu\text{g}/\text{ft}^2$  on window sills.

When considering dust-lead exposure only, young children in pre-1978 housing exposed to the alternative DLCL would have a 3.2 to 23.0% probability of exceeding a BLL of 1 to 2.5  $\mu\text{g}/\text{dL}$  based on the modeled results, compared to 1.6 to 16.0% probability for the primary DLCL (3/20/25  $\mu\text{g}/\text{ft}^2$ ). The alternative DLCL is also estimated to have a 22.4% probability of exceeding 2 points of IQ loss. As with total BLL, this is a considerable reduction from the 37.9% chance of exceeding 2 points of IQ loss for young children living in target housing who are exposed the current DLCL, but still higher than the primary DLCL estimate of 14.6%. EPA must understand the impact on health effects when selecting a DLCL that is reliable, effective, and safe, and to inform the EA. Overall, the modeling within the TSD indicated that the alternative DLCL (5/40/100  $\mu\text{g}/\text{ft}^2$  for floors, window sills and troughs) represents a reduction in risk from the current clearance levels of 10/100/400  $\mu\text{g}/\text{ft}^2$ , but that risk is still higher than the estimated results for the primary DLCL. For a table representation of

these modeling results, please see Unit IV.B.1.b. (Tables 5 and 6).

#### c. Laboratory Capabilities for Alternative DLCL

EPA spoke with nine NLLAP-recognized laboratories about their dust wipe testing programs. For additional details about the laboratory outreach see Unit IV.B.1.c. *Laboratory Capabilities* and the EA (Ref. 14). Based on EPA's laboratory outreach, EPA has increased confidence relative to the proposed DLCL (*i.e.*, 3/20/25  $\mu\text{g}/\text{ft}^2$ ), that laboratories can numerically quantify dust-lead levels of 5  $\mu\text{g}/\text{wipe}$  with FAAS technology and attain a quantitation limit of equal to or less than 50% of that level (*i.e.*, 2.5/20/50  $\mu\text{g}/\text{ft}^2$ ). Three major laboratories EPA spoke with already report at this level with FAAS, and the remaining three laboratories using FAAS that EPA talked to expressed no concern about attaining this level in the future if they ask their customers to wipe 2  $\text{ft}^2$  instead of 1  $\text{ft}^2$  (Refs. 57, 60 and 64). EPA is requesting comment on whether the alternative DLCL option (*i.e.*, 5/40/100  $\mu\text{g}/\text{ft}^2$  for floors, window sills and troughs) would allow NLLAP-recognized laboratories to continue using FAAS technology, if it would mitigate any unintended reductions in dust wipe capacity (due to throughput time, cost, labor, etc.) and avoid any negative impacts on other programs that require specific testing using ICP-AES or FAAS.

Should EPA finalize the DLCL at 5/40/100  $\mu\text{g}/\text{ft}^2$  and given no changes to the LQSR, EPA's laboratory outreach suggests that a handful of smaller laboratories with dated FAAS equipment may elect to discontinue their dust wipe programs for lead. Due to the expected continuing participation of other smaller as well as large-volume laboratories, EPA believes that these limited discontinuations are unlikely to impact the nationwide availability or market pricing of tests (see the EA for a breakdown of cost estimates). Additionally, EPA does not foresee any concerns reporting to 40  $\mu\text{g}/\text{ft}^2$  on window sill or 100  $\mu\text{g}/\text{ft}^2$  on troughs (even with the small surface areas) if laboratories successfully attain a regulatory limit of 5  $\mu\text{g}/\text{ft}^2$ .

EPA also received feedback that the alternative DLCL option (5/40/100  $\mu\text{g}/\text{ft}^2$ ) could better mitigate any negative impacts on other programs that require specific testing using ICP-AES or FAAS equipment. Laboratories currently use their ICP-AES machines for a variety of purposes. Most notably, this equipment is regularly used for the characterization of metals in hazardous waste and measuring lead in drinking water.

Under the primary DLCL option 3/20/25  $\mu\text{g}/\text{ft}^2$ , laboratories would face a significant increase in demand for use of their ICP machines, which could result in substantial downstream effects on the availability and price of testing for other lead and non-lead programs. Additionally, some laboratories mentioned they might eliminate use of their FAAS machines to streamline laboratory functionality. This may have downstream effects on testing for lead in soil, paint chips, and air; laboratories currently test these matrices by FAAS with some frequency. If laboratories decide maintaining FAAS is no longer viable for their primary line of business (dust wipes), all lead matrices could be added to ICP queue, which would worsen availability issues and increase prices.

The Agency is requesting comment on whether reliability, effectiveness and safety support the DLCL alternative option of 5/40/100  $\mu\text{g}/\text{ft}^2$ . EPA is interested in setting a DLCL that has a high potential for risk reduction; however, the Agency also wants to finalize an option that is achievable and encourages (not deters) participation in lead-hazard control programs and activities that require dust wipe testing. As a result, EPA is requesting comment on the alternative DLCL option of 5/40/100  $\mu\text{g}/\text{ft}^2$  for floors, window sills, and troughs (compared to the primary DLCL option), the impact that level could have on laboratories, and the accuracy of the information presented. See Unit VII. *Request for Comments* for more details.

#### d. New York City

Between 2019 and 2021 NYC Department of Health and Mental Hygiene lowered their lead dust clearance and lead dust hazard risk assessment testing standards twice. NYC lowered their standards for floors, window sills and window wells (*i.e.*, troughs), respectively, from 40  $\mu\text{g}/\text{ft}^2$ , 250  $\mu\text{g}/\text{ft}^2$ , and 400  $\mu\text{g}/\text{ft}^2$  to 10  $\mu\text{g}/\text{ft}^2$ , 50  $\mu\text{g}/\text{ft}^2$ , and 100  $\mu\text{g}/\text{ft}^2$  in 2019 (effective June 12, 2019) and again to 5  $\mu\text{g}/\text{ft}^2$ , 40  $\mu\text{g}/\text{ft}^2$ , 100  $\mu\text{g}/\text{ft}^2$  in 2021 (effective June 1, 2021) (Refs. 65 and 66). The Agency spoke to the New York City Department of Health and Mental Hygiene and received feedback that although there was a transitional period that lasted several months and had various challenges, overall, the regulated community was able to adjust and comply with the new lower standards (Ref. 67). Based on NYC's experience, EPA believes that the alternative DLCL option (*i.e.*, 5  $\mu\text{g}/\text{ft}^2$ , 40  $\mu\text{g}/\text{ft}^2$ , 100  $\mu\text{g}/\text{ft}^2$  for floors, window sills and window troughs) can be considered effective and reliable.

### C. Cross Reference With HUD Regulations

EPA is proposing to modify 40 CFR 745.227(h) to clarify that the proposed DLCL would differ from the DLHS, that the Agency does not intend to compel clearance down to the DLHS, and to alleviate potential regulatory confusion surrounding clearance. HUD's LSHR's clearance regulations at 24 CFR 35.1340(d), which apply to both abatement and non-abatement activities, currently refer to 24 CFR 35.1320(b)(2), which in turn cross-references EPA's regulations at 40 CFR 745.227(h), which currently discusses EPA's DLHS but not EPA's DLCL. See Unit III.A.3.f of the 2019 DLHS Rule for additional background on this topic (Ref. 2). As explained earlier in this preamble, prompted by analysis conducted following the 2021 Court Opinion, EPA is proposing a DLHS that is no longer the same value as the DLCL. As a result, EPA is proposing to clarify the language at 40 CFR 745.227(h), so it is clear, including when referenced by the LSHR, that EPA does not intend to compel clearance to the DLHS, whether in federally assisted housing or not.

### D. Definition of Abatement

EPA is proposing to amend the definition of abatement in EPA's LBP activities regulations and thus modify the trigger for when EPA recommends an abatement. This change is intended to align with the proposed decoupling of the DLHS and DLCL and to focus impacted entity resources (*e.g.*, HUD, city, state) on the situations that present the most risk. TSCA Section 401(1) defines an abatement as "any set of measures designed to permanently eliminate lead-based paint hazards . . ." and includes "the removal of lead-based paint and lead-contaminated dust, the permanent containment or encapsulation of lead-based paint . . . and all preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures." EPA included a definition of abatement, which closely resembles the statutory language, within the LBP activities regulations at 40 CFR 745.223. An abatement under the LBP activities regulations is described as "any measure or set of measures designed to permanently eliminate lead-based paint hazards" and specifically includes "projects resulting in permanent elimination of lead-based paint hazards . . ."

The 2021 Court Opinion stated that "TSCA [Title] IV gives the EPA latitude to consider 'reliability, effectiveness, and safety'" when promulgating

regulations "[w]ith respect to implementation, including abatement" (Ref. 11). Hence, in considering revising the DLCL, EPA must and has considered whether reliability, effectiveness and safety support changing the regulatory definition of abatement. Given that under this statutory scheme EPA only intends to compel post-abatement clearance to the proposed DLCL, the Agency is proposing to change the regulatory definition of abatement so that the recommendation for action applies when dust-lead loadings are at or above the DLCL (which continues to incorporate non-health-based factors such as reliability), rather than at or above the DLHS as has been the case historically (but which, going forward in accordance with the 2021 Court Opinion, can no longer incorporate non-health-based factors such as reliability). This is deemed necessary due to the decoupling of the DLHS from the DLCL, and EPA's desire to avoid situations where abatements are designed to eliminate dust-lead levels to the DLHS and are unable to do so in a reliable and effective manner. Otherwise, EPA would be recommending an abatement if dust-lead levels are between the DLHS and the DLCL, even though such an abatement would only need to pass clearance below the DLCL. Also, where an abatement is conducted, a cyclical pattern could result, where an abatement successfully passes clearance below the DLCL but an abatement is still recommended by EPA if dust-lead levels are at or above the DLHS. Thus, EPA is proposing to change the regulatory definition to require that abatements eliminate dust-lead hazards to below the DLCL to ensure that successful abatements can be considered complete. Relatedly, as explained in Unit IV.E, EPA is proposing amendments to the abatement report to help protect from exposure even after the abatement is complete.

An additional benefit to modifying the trigger for when EPA recommends an abatement is that it allows the regulated community to focus resources on situations that present more risk. As discussed in the 2001 and 2019 final rules, an important concern for EPA is having the resources for LBP hazard mitigation distributed so broadly that they may be diverted from situations that present the greatest risk. As a result, EPA is proposing to change the regulatory definition of abatement to permanently eliminate dust-lead hazards to below the DLCL and requesting public comment on this proposal. EPA believes that this proposed amendment to the regulatory

definition appropriately applies the statutory definition in the context of this rule, where the statute requires EPA to consider reliability, effectiveness, and safety for purposes of EPA's TSCA section 402 DLCL regulations. Furthermore, the statutory definition of abatement in TSCA section 401 states that the set of measures covered by the term are to be "in accordance with the standards established by the Administrator" under TSCA Title IV, which refers to the "standards for performing [LBP] activities" as what EPA's TSCA section 402 regulations shall contain. Note that nothing in this rulemaking changes the fact that owners of properties covered by the LBP Activities Rule are not compelled to evaluate their properties for the presence of dust-lead hazards, nor compelled by EPA to take action (such as an abatement) if dust-lead hazards are identified at or above the DLCL, although HUD and some state or local governments may require action.

### E. Abatement Report

As explained in Units IV.A. and B., EPA is proposing to lower the current DLHS to any reportable level analyzed by an NLLAP-recognized laboratory, and the DLCL to 3 µg/ft<sup>2</sup>, 20 µg/ft<sup>2</sup>, and 25 µg/ft<sup>2</sup> for floors, window sills and troughs, respectively. The DLHS identify when pre-1978 housing or a COF has a dust-lead hazard present. If finalized as proposed, it is likely that once a project passes clearance and the abatement can be considered complete, there could still be dust-lead hazards present due to the DLHS being any reportable level. The Agency realizes the challenge this creates for the regulated community and to keep dust-lead levels down and mitigate exposure, EPA is proposing to amend the requirements for what needs to be included in an abatement report.

After the completion of an abatement, a report is required to be developed by a certified supervisor or project designer. The list of what needs to be included in the abatement report is described at 40 CFR 745.227(e)(10), and consists of elements such as the start and completion dates of the abatement, information about the risk assessor or inspector conducting the sampling, any clearance testing and soil analyses, etc. EPA is proposing to modify 40 CFR 745.227(e)(10) to include a requirement to add specific language into each abatement report, when dust-lead levels are between the DLHS and the DLCL. That language refers the public to a useful reference titled "*Protect Your Family From Lead in Your Home*" and acknowledges that LBP hazards

(particularly dust-lead hazards) could remain after an abatement. The goal of including this language in an abatement report is to ensure that occupants are provided information and tools available to them to minimize dust-lead hazards and take actions to protect themselves from exposure even after the abatement is complete.

The certified firm (or individual who prepared the report) must keep the abatement reports for at least 3 years and must provide a copy to the individual or entity who “contracted for its services” (40 CFR 745.227(i)). EPA is requesting comment on the proposed language to be added to the abatement report.

#### F. Other Amendments

In order to conform the regulations to a statutory change, make several other amendments to improve efficiency of the program and make several regulatory text corrections, EPA is proposing to amend 40 CFR part 745, subparts E (Residential Property Renovation), F (Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property), and L (Lead-Based Paint Activities).

##### 1. Definition of Target Housing

EPA is proposing to update the definition of target housing in 40 CFR 745.103 and 40 CFR 745.223 to align with the statutory changes made in 2017, and to make conforming edits to language in 40 CFR 745.223 and 40 CFR 745.227. Target housing defines which housing is subject to EPA’s LBP rules. Within section 237(a) through (c) of Title II of Division K of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, 131 Stat. 788 and 789), Congress amended HUD and EPA’s statutory definitions of target housing to include 0-bedroom dwellings if a child less than 6 years of age resides or is expected to reside in such housing (42 U.S.C. 4822(e); 42 U.S.C. 4851(b)(27); 15 U.S.C. 2681(17)). The proposed change to the definition of target housing in 40 CFR 745.103 and 40 CFR 745.223 would conform to the statutory language by defining target housing as any housing constructed prior to 1978, except housing for older adults or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing). For consistency, EPA is also proposing to revise the definition of living area in 40 CFR 745.223 to change the age from 6 and under to less than 6 years of age. Similarly, language describing the age of children in 40 CFR 745.227(c)(2)(i),

(c)(2)(iv), (c)(2)(v), (d)(3), (d)(5), and (d)(6)(ii) would be updated from 6 years of age and under to under age 6 to conform to the statutory language as amended.

##### 2. Definition of Child-Occupied Facility (COF) and Living Areas

EPA is proposing to revise the definition of COF in 40 CFR 745.223 and related regulatory language in 40 CFR 745.227 to establish consistency throughout the LBP regulations. The LBP Activities regulations define COFs as buildings or portions of buildings, constructed prior to 1978, in which the same child regularly visits on at least two different days within any given week, with their visits lasting at least 3 hours with combined visits of at least 6 hours, and combined annual visits lasting at least 60 hours. COFs may include, but are not limited to, day-care centers, preschools and kindergarten classrooms. Living areas define any area of a residential dwelling used by one or more children which include, but are not limited to, living rooms, kitchen areas, dens, play rooms, and children’s bedrooms. Currently, the definition of COF at 40 CFR 745.223 identifies children impacted by the LBP Activities regulations as age 6 and under, while the definition of COF in the RRP regulations at 40 CFR 745.83 identifies children impacted by the RRP regulations as under 6 years of age. In order to establish consistency in age throughout the LBP regulations, including with the definition of target housing and the RRP regulations’ definition of COF, EPA is proposing to change the language in the definition of COF in 40 CFR 745.223 to less than 6 years of age. Language describing the age of children in 40 CFR 745.227(d)(7) would also be updated from 6 years of age and under to under age 6 to conform.

##### 3. Electronic Submissions

EPA is proposing to require submissions for application payments, applications, and notices to be done electronically. Under this proposal, this rule would specifically define “electronic” in 40 CFR 745.83 and 40 CFR 745.223 to mean “the submission of an application, payment, or notice using the Agency’s Central Data Exchange (CDX), or a successor platform.” In 2016, the U.S. Treasury Department changed their process so that paper checks would no longer be allowed for payment of fees associated with RRP or abatement programs. Since that time, applications that require payment, such as individual and firm certifications as well as training

provider accreditation applications, have been submitted electronically via CDX. Therefore, EPA is proposing to amend 40 CFR 745.89 (a)(1), 40 CFR 745.92(c)(2), and 40 CFR 745.238(e)(2) to conform to the 2016 U.S. Treasury Department process and require payments to be made only electronically via CDX or a successor platform.

Currently there’s no specific submission method defining how to submit applications in EPA’s LBP regulations. This ambiguity allows for the potential of written applications to be submitted which requires time consuming activities such as data entry and accrues administrative costs. Therefore, EPA is proposing to amend 40 CFR 745.89 (a)(1), (b)(1), (b)(1)(i), and (c)(1); 40 CFR 745.225(b)(1), (e)(5), (f)(2), and (j)(2); 40 CFR 745.226(a), (e), (f), and (h)(1)(iii); 40 CFR 745.227(e)(4)(vii) and 40 CFR 745.238(d), and (e) to reflect the proposed requirement of submitting applications electronically via CDX or a successor platform. This will add further clarification and uniformity to this process.

Additionally, EPA is proposing to require that abatement and training notifications be submitted electronically via CDX or a successor platform. Requiring electronic submissions and eliminating fax submissions would remove the need for fax machine maintenance and would also reduce phone service costs. Therefore, EPA is proposing to amend 40 CFR 745.225(c)(13)(vi) and (14)(iii) to require submission of abatement and training notifications to occur electronically via CDX or a successor platform.

##### 4. Disclosure Rule Warning Statement

EPA is proposing to update the Disclosure Rule’s Lead Warning Statement in 40 CFR 745.113(b)(1) to address a drafting error. Both the preamble of the Disclosure Rule (required by Section 1018 of Title X), and the relevant public sample form include the following language: “Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling,” which is consistent with EPA and HUD’s adaptation to leasing contracts of the statutory language in Section 1018 (Ref. 7). However, the Lead Warning Statement in 40 CFR 745.113(b)(1) does not include the word “known.” To conform this regulatory text with the statutory and preamble language, EPA is proposing to amend the Lead Warning Statement to include the word “known” when discussing lessors disclosing the presence of LBP and/or LBP hazards in the dwelling.

## 5. Disclosure Rule Reference

EPA is proposing to amend the Disclosure Rule at 40 CFR 745.113(a)(4) and 40 CFR 745.113(b)(4) to include the correct lead hazard information pamphlet reference, 15 U.S.C. 2686. This reference further discusses the requirements for the lead hazard information pamphlet and is the basis for its statutory authority. The current reference of 15 U.S.C. 2696 does not exist and was a drafting error.

## 6. Definition of Housing for the Elderly

EPA is proposing to add the definition of “housing for the elderly” to 40 CFR 745.223 in order to clarify the term “elderly” used in the definition of “target housing,” also in 40 CFR 745.223. EPA already defines “housing for the elderly” in 40 CFR 745.103 as “retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy” under Subpart F, “Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property.” The proposal to include the same definition in Subpart L, “Lead-Based Paint Activities” would add clarity and consistency throughout the LBP program.

## 7. Obsolete Regulatory Text

EPA is proposing to revise and delete obsolete regulatory text where language is out of date or no longer applicable in 40 CFR 745.81(a)(4)(i) and (b); 40 CFR 745.90(a)(3), and (4); 40 CFR 745.225(i)(2); and 40 CFR 745.226(f)(5). For example, 40 CFR 745.81(b) currently reads: “Before December 22, 2008, renovators or firms performing renovations in State and Indian Tribal areas without an authorized program may provide owners and occupants with either of the following EPA pamphlets: *Protect Your Family From Lead in Your Home* or *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*. After that date, *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools* must be used exclusively.” This information is outdated; therefore, EPA is proposing to update and consolidate this section to read: “After December 22, 2008, renovators or firms performing renovations in States and Indian Tribal areas without an authorized program must provide owners and occupants the following EPA pamphlet: *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools*.”

## 8. Incorporation by Reference

EPA is also considering adding incorporations by reference for two voluntary consensus standards, each of which is already included in the definition of “wipe sample” at 40 CFR 745.63: American Society for Testing and Materials (ASTM) E1728 and ASTM E1792. EPA intends to incorporate by reference the most recent version of each standard (*i.e.*, ASTM E1728–20 and ASTM E1792–20). Copies of these materials may be obtained from ASTM International, 100 Barr Harbor Dr., P.O. Box C700, West Conshohocken, PA 19428–2959, or by calling (877) 909–ASTM, or at <https://www.astm.org>. ASTM standards referenced in this rule are also available for public review in read-only format in the ASTM Reading Room at <https://www.astm.org/epa.htm> only for the duration of the public comment period.

If you have a disability and the format of these materials intended for incorporation by reference interferes with your ability to access the information, please contact EPA’s Rehabilitation Act Section 508 (29 U.S.C. 794d) Program at <https://www.epa.gov/accessibility/forms/contact-us-about-section-508-accessibility> or via email at [section508@epa.gov](mailto:section508@epa.gov). To enable us to respond in a manner most helpful to you, please indicate the nature of the accessibility issue, the web address of the requested material, your preferred format in which you want to receive the material (electronic format (ASCII, etc.), standard print, large print, etc.), and your contact information.

## V. Implications of Proposed Rule for Existing HUD and EPA Programs

### A. HUD Programs

#### 1. Lead-Safe Housing Rule

HUD has specific authority to control LBP and LBP hazards in certain federally owned and federally-assisted target housing (Ref. 28). HUD’s regulations at 24 CFR 35.1320(b)(2) cross-reference EPA’s regulations at 40 CFR 745.227(h), which currently discusses EPA’s DLHS but not EPA’s DLCL. Due to the current cross-reference, the HUD regulations have been read as requiring entities receiving government funding currently to conduct post-abatement clearance until the levels are below EPA’s DLHS, which at the time this cross-reference was made, were the same values as EPA’s DLCL. Due to the 2021 Court Opinion, EPA is now proposing approaches for these standards that would result in decoupling the DLHS and DLCL as

explained in Unit IV. EPA is proposing modifications to 40 CFR 745.227(h) to clarify that the Agency does not intend to compel clearance down to the DLHS and to alleviate potential regulatory confusion surrounding clearance (as discussed in Unit IV.C of this notice).

Other impacts of EPA’s proposal could include a possible decrease in the number of landlords participating in certain HUD programs, as well as families potentially shifting from assisted housing to unassisted housing, which has been shown to be associated with a higher prevalence of LBP hazards (Refs. 68 and 69) and higher BLLs (Ref. 70). As discussed in Unit II.A., lead exposure, even in small amounts, can cause substantial and long-lasting health problems, particularly through its effects on children’s development. Access to secure housing is also an important social determinant of health (Ref. 71). Research finds negative health effects resulting from three key mechanisms of housing insecurity: lack of housing affordability leading to stress and material deprivation (Refs. 72, 73, 74 and 75), lack of housing stability (Refs. 76, 77, 78, 79 and 80), and lack of safe and adequate housing (Refs. 81, 82, 83, 84 and 85). HUD’s housing assistance programs play a critical role in helping nearly 5 million households (Ref. 86) avoid housing insecurity and its harmful effects on physical and mental health (Refs. 70, 87, 88, 89, and 90). Despite such Federal assistance, the nation faces a critical shortage of affordable rental housing affecting about 8 million very low-income households (Ref. 91). EPA considered the proposed changes to the DLHS and DLCL and the potential impacts on HUD’s housing programs within the EA (see Section 10.2 for this discussion) (Ref. 14). Existing research on landlord participation in the Housing Choice Voucher program (Refs. 92, 93, 94 and 95) suggests that more stringent standards or uncertainty as to how to meet those standards could be a disincentive for private target housing providers to participate in HUD’s rental assistance programs including the Housing Choice Voucher program (tenant-based rental assistance program) and the project-based assistance programs, which could in turn reduce access to affordable and stable housing associated with a relatively lower prevalence of LBP hazards than unassisted housing. As a result, EPA is requesting information and comment on whether adoption of the proposed DLHS and DLCL or alternative regulatory options under consideration would lead to an increase in housing insecurity or

lead exposures. If so, EPA is requesting comment on whether there would be any adverse health effects due to this potential increase in housing insecurity alongside the health benefits of reduced lead exposure, as well as whether there are changes that EPA could make to the rule that maintain landlord participation in rental assistance programs while achieving the objectives of the statute.

EPA expects relatively limited impacts on housing supply due to this rulemaking for some housing types subject to HUD's LSHR. Subpart F of the LSHR covers HUD-owned single family housing properties for sale that are sold under a HUD mortgage program. HUD (*i.e.* the Federal Government) would be responsible for all costs associated with compliance to a stricter DLHS/DLCL before selling the property. While modest delays may occur in closing on sale transactions for these properties, a reduction in housing supply covered under this subpart is unlikely. Subpart G of the LSHR covers multi-family housing where either HUD is the owner of a mortgage or the owner of a property receives mortgage insurance under a program run by HUD. Housing covered under this subpart of the LSHR has risk assessment, interim control, and LBP maintenance requirements, but private landlords for these properties directly seek out Federal funds, and even if some of the federally-provided money is spent complying with a stricter DLHS/DLCL to comply with the LSHR, participating grantees should typically have a positive net return. To ensure all potential impacts of the rule are considered, EPA is requesting comment on impacts to housing covered under these other LSHR subparts as well as additional factors that should be considered as part of the EA.

## 2. Grantee Programs

On February 16, 2017, HUD issued policy guidance to establish new and more protective requirements for dust-lead action levels for its Lead-Based Paint Hazard Control (LBPHC) and Lead Hazard Reduction Demonstration (LHRD) grantees (the requirements also apply to related HUD grants authorized by Title X, section 1011 (42 U.S.C. 4852), under similar names, including Lead Hazard Reduction grants and their High Impact Neighborhoods and Highest Lead-Based Paint Abatement Needs grant categories) (Ref. 96). The guidance adopted dust-lead action levels of 10 µg/ft<sup>2</sup> for floors and 100 µg/ft<sup>2</sup> for window sills, respectively, for initiating lead hazard control activities under these grant programs, and lead clearance action levels of 10 µg/ft<sup>2</sup> for

floors, and 100 µg/ft<sup>2</sup> for window sills and troughs, respectively, for clearing such lead hazard control activities. If the proposed changes to the DLCL discussed in Unit IV are finalized, LBPHC and LHRD grantees would be required by EPA's regulations to clear lead abatement projects to the updated DLCL of 3 µg/ft<sup>2</sup>, 20 µg/ft<sup>2</sup>, and 25 µg/ft<sup>2</sup> for floors, window sills, and troughs respectively. If EPA finalizes the proposed changes to the DLHS and DLCL, HUD has informed the Agency that it would likely issue new policy guidance on initiating lead hazard control activities and on clearing lead abatement projects under these grant programs, and that it would consider issuing new policy guidance on clearing interim control projects under these grant programs.

## 3. EPA–HUD Disclosure Rule

Under the Disclosure Rule (Ref. 7), prospective sellers and lessors of target housing, which is most pre-1978 housing, must provide purchasers and renters with a federally approved lead hazard information pamphlet and disclose known LBP and/or LBP hazards, and any available records, reports, and additional information pertaining to LBP and/or LBP hazards. The information disclosure activities are required before a purchaser or renter is obligated under a contract to purchase or lease target housing. The records or reports pertaining to LBP and/or LBP hazards include, among other things, results from risk assessments, regardless of whether the levels of dust-lead are above or below the dust-lead hazard standards, and from post-abatement dust wipe testing, above or below the clearance levels. Because disclosure is required in target housing regardless of whether dust levels are above or below the DLHS or DLCL, finalizing the GTZ approach for the dust-lead hazard standards and lowering the dust-lead clearance levels would not result in more disclosures; rather it would result in more disclosures indicating that a lead-based paint hazard is present (since the proposed GTZ is lower than the current DLHS from 2019). EPA is also proposing changes to the definition of "target housing" (40 CFR 745.223) which expands the universe of housing subject to the Disclosure Rule requirements. This is reflective of a change to the statutory definition (Pub. L. 115–37, Consolidated Appropriations Act, 2017, Division K, Title II, section 237(c)). This proposed conforming change to the regulatory definition of target housing to include 0-bedroom dwellings where a child resides may

slightly increase the number of disclosures issued.

## 4. HUD Guidelines

The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing ([https://www.hud.gov/program\\_offices/healthy\\_homes/lbp/hudguidelines](https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines)) were developed in 1995 under section 1017 of Title X. The Guidelines provide detailed, comprehensive, and technical information on how to identify LBP hazards in residential housing and COFs, and how to control such hazards safely and efficiently. The Guidelines were revised in 2012 to incorporate new information, technological advances, and new Federal regulations, including EPA's LBP hazard standards. If EPA finalizes changes to the DLHS and DLCL as proposed, HUD has informed the Agency that it would likely revise Chapter 5 of the Guidelines on risk assessment and reevaluation, Chapter 12 on abatement, and Chapter 15 on clearance, and make conforming changes elsewhere as needed (Ref. 97).

### B. EPA LBP Programs

#### 1. LBP Activities Rule

LBP activities include risk assessments, inspections, and abatements. If this rule is finalized as proposed, it will have impacts to LBP activities, including: the definition of abatement, what is considered a DLHS, the DLCL used to determine whether an abatement can be considered complete, and the definition of target housing.

As stated earlier in this preamble, EPA's risk assessment work practice standards provide the basis for risk assessors to determine whether LBP hazards are present in target housing and COFs. As part of a risk assessment, dust samples are taken from floors and window sills to determine if dust-lead levels exceed the DLHS. The results of the sampling, among other things, are documented in a risk assessment report which is required under the LBP Activities Rule (Ref. 24). In addition to the sampling results, the report must describe the location and severity of any dust-lead hazards found and describe interim controls or abatement measures needed to address the hazards.

Under this proposed rule, sampling results reporting any level of lead analyzed by an NLLAP-recognized laboratory will indicate that a dust-lead hazard is present on the surfaces tested. EPA expects that the proposed DLHS will result in more hazards being identified in a portion of target housing and COFs that undergo risk assessments. This proposed rule does

not change any other risk assessment requirements; however, it does recommend changes to the definition of abatement, which is discussed in the following paragraph.

Abatements are currently defined as any measures or set of measures designed to permanently eliminate lead-based paint hazards and include activities such as the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, and all preparation, cleanup, disposal, and post-abatement dust wipe testing activities associated with such measures. The proposed change to the definition of abatement would shift the recommendation for an abatement to when the dust-lead loadings are at or above the DLCL. Because the proposed DLCL are lower than the 2019 DLHS, more recommendations for abatement are expected. However, not every circumstance where dust-lead hazards are identified will result in an EPA recommendation for abatement, *i.e.*, when dust-lead loadings are at or above the DLHS, but below the DLCL. Similarly, EPA recommends interim controls only in circumstances when dust-lead loadings are at or above the DLCL, rather than the DLHS, for the reasons explained above.

After LBP abatements are conducted, EPA's regulations require a certified inspector or risk assessor to conduct post-abatement dust wipe testing of the abated area. If the dust wipe sample results show dust-lead loadings equal to or exceeding the applicable DLCL, "the components represented by the failed sample shall be recleaned and retested." See 40 CFR part 745.227(e)(8)(vii). In other words, the abatement is not cleared until the dust wipe samples in the work area are below the DLCL. If this rule is finalized as proposed, inspectors and risk assessors would compare dust wipe sampling results for floors, window sills and troughs to the revised DLCL of 3 µg/ft<sup>2</sup>, 20 µg/ft<sup>2</sup>, and 25 µg/ft<sup>2</sup>, respectively. Dust wipe sampling results at or above the DLCL would indicate that the components represented by the sample must be recleaned and retested.

Lastly, as described in Unit IV.F.1, this proposed rule conforms the regulatory definition of target housing with the statute to include any 0-bedroom dwellings constructed prior to 1978 if a child less than 6 years of age, resides or is expected to reside in such housing, which could increase the number of homes covered by this regulation. In addition, EPA is proposing regulatory changes to adjust the age requirements from 6 years of age

and under, to under age 6 for the definition of target housing, COFs and living area, which could reduce the number of homes and COFs covered by this regulation; see Units IV.F.1. and 2. for more information.

## 2. Previous LBP-Related Activities

Since the DLHS do not compel specific EPA actions, revisions to the DLHS would not in and of themselves compel any actions under the LBP Activities Rule, retroactively or otherwise, but actions would be compelled under other laws or regulations, including HUD's LSHR and possibly those of some state, local, Tribal or territorial governments. Inspection reports and risk assessments describe conditions at a specific time. A report that indicates no presence of LBP and/or an LBP hazard should not imply the absence of those conditions in perpetuity. Additionally, the DLHS may be incorporated into requirements mandated by state, Federal, Tribal, and other programs that may require actions based on the revised DLHS. Those other authorities may want to consider guidance or other communications with their regulated communities, so those entities understand how to comply with the various programs that reference the DLHS.

The DLCL however, are used to evaluate the effectiveness of a cleaning following an abatement. After the dust wipe samples show dust-lead loadings below the DLCL, an abatement report is prepared, copies of any reports required under the LBP Activities Rule are provided to the building owner (and to potential lessees and purchasers under the LBP Disclosure Rule by those building owners or their agents), and all required records are also retained by the abatement firm or by the individuals who developed each report. The proposed DLCL of 3 µg/ft<sup>2</sup> for floors, 20 µg/ft<sup>2</sup> for window sills, and 25 µg/ft<sup>2</sup> for troughs would not impose retroactive requirements on regulated entities that have previously performed post-abatement clearance. These updated DLCL would only apply to post-abatement clearance sampling and analysis conducted after the compliance date for that portion of the final rule (*i.e.*, one year after publication of the final rule).

In addition, this rulemaking does not impose retroactive requirements to regulated entities that have previously complied with the Disclosure Rule. In accordance with 40 CFR 745.107, a seller or lessor generally must properly disclose any available records or reports pertaining to LBP and/or LBP hazards before the purchaser or lessee is

obligated under any contract to purchase or lease target housing. The seller or lessor is not required to disclose reports or records that may be created in the future, after the close of that transaction. Additionally, any LBP-free certification that was issued by a certified inspector, and was issued before the effective date of this rulemaking, is still valid going forward and may continue to be used for exemption to the Disclosure Rule.

## 3. Renovation, Repair, and Painting Rule

The proposed DLHS and DLCL would not trigger new requirements under the existing RRP Rule (40 CFR part 745, subpart E). The existing RRP work practices are required where LBP is present (or assumed to be present) and are not predicated by dust-lead loadings exceeding the DLHS. The existing RRP regulations do not require dust-lead sampling prior to or at the conclusion of a renovation and are not affected by a change to the DLHS or DLCL. Therefore, RRP regulations will not be directly affected by the proposed revisions to the DLHS or the DLCL.

The RRP Rule does require specific post-renovation cleaning verification under 40 CFR 745.85(b), but the rule does not require dust wipe sampling and analysis using the DLCL. However, although optional under the RRP Rule, dust wipe sampling for clearance using the DLCL in accordance with the LBP Activities Rule (40 CFR 745.227(e)(8)) may be required by contract or by another Federal, state, territorial, Tribal, or local law or regulation. At this time, other than HUD's Lead Safe Housing Rule, for renovations of assisted target housing, EPA is not aware of other laws and regulations that require clearance testing using EPA's DLCL. EPA seeks information on this point and welcomes public comments.

## 4. Laboratory Quality System Requirements

As discussed previously in Unit II.C., NLLAP is an EPA program under which an accrediting organization assesses whether a paint chip, dust, or soil testing laboratory meets minimum standards for laboratory analysis to attain EPA recognition as an accredited lead testing laboratory (<https://www.epa.gov/lead/national-lead-laboratory-accreditation-program-nllap>). Laboratories and other testing firms recognized under NLLAP follow the LQSR. This rulemaking does not modify the minimum standards outlined in the latest LQSR version 3.0. However, changes to the action level (*i.e.*, the proposed DLCL) would impact the quantitation limit that NLLAP-

recognized laboratories would attain to participate in the NLLAP, as that must be equal to or less than 50% of the lowest action level for dust wipe samples per specific surface area (*i.e.*, floors, window sills, window troughs) (Ref. 29). If finalized as proposed, the lowest action level for dust wipe samples would be the DLCL of 3  $\mu\text{g}/\text{ft}^2$  for floors, 20  $\mu\text{g}/\text{ft}^2$  for window sills and 25  $\mu\text{g}/\text{ft}^2$  for troughs. As a result, the quantitation limit for NLLAP-recognized labs would be equal to or less than 1.5  $\mu\text{g}/\text{ft}^2$  for floors, 10  $\mu\text{g}/\text{ft}^2$  for window sills and 12.5  $\mu\text{g}/\text{ft}^2$  for troughs.

### C. Authorized Programs

Pursuant to TSCA section 404 and EPA's regulations at 40 CFR part 745, subpart Q, interested states, territories, and federally recognized Tribes may apply for and receive authorization to administer their own LBP Activities programs (as briefly described in Unit II.C.), as long as their programs are at least as protective of human health and the environment as EPA's program, and provide adequate enforcement.

As part of the authorization process, states, territories, and federally recognized Tribes must demonstrate to EPA that they meet the requirements of the LBP Activities Rule. A state, territory, or federally recognized Tribe must demonstrate that it meets any new requirements imposed by this rulemaking upon finalization in its application for authorization or, if already authorized, in a report submitted under 40 CFR 745.324(h) no later than two years after the effective date of the new requirements. If an application for authorization has been submitted but not yet approved, the state, territory, or federally recognized Tribe must demonstrate that it meets the proposed requirements either by amending its application, or in a report it submits under 40 CFR 745.324(h) no later than two years after the effective date of the new requirements (40 CFR 745.325(e)).

### VI. Proposed Effective and Compliance Dates

EPA is proposing that the final rule would become effective on the date that is 60 days after publication in the **Federal Register**. The Agency is proposing an extended compliance date of one year for the DLHS, the DLCL, and the change to the abatement report requirements (40 CFR 745.65 definition "dust-lead hazard"; 40 CFR 227(h)(3)(i); 40 CFR 745.227(e)(8)(viii) and (10)(vii)). EPA seeks comment on the appropriate compliance date, including whether the compliance date should be six months, eighteen months, two years or another

longer timeframe, as well as the justification for the change.

EPA has considered the impacts of the proposed DLHS and DLCL on NLLAP-recognized laboratories and is proposing a subsequent compliance date of one year after publication of the final rule in **Federal Register** for certain provisions under this rulemaking. The proposed compliance date is intended to provide a reasonable amount of time for NLLAP-recognized laboratories to take actions to meet the lower LQSR quantitation limit (50% of the lowest action level for dust wipe samples) so they can continue providing dust wipe testing services to the regulated community and in emergent situations by the compliance date for the revised standards.

To obtain a better understanding of laboratories' capability and capacity for dust wipe testing, EPA conducted teleconferences with nine NLLAP-recognized laboratories (Refs. 56, 57, 58, 59, 60, 61, 62, 63 and 64). As explained in Unit IV.B., based on the information EPA received from this outreach, EPA believes that laboratories with more up to date ICP-AES instruments and optimized methods should be able to satisfy the LQSR dust wipe testing procedures and the regulatory limit of the primary DLCL option of 3  $\mu\text{g}/\text{ft}^2$  for floors, 20  $\mu\text{g}/\text{ft}^2$  for window sills and 25  $\mu\text{g}/\text{ft}^2$  for troughs (quantitation limit of 1.5  $\mu\text{g}/\text{ft}^2$  for floors, 10  $\mu\text{g}/\text{ft}^2$  for window sills and 12.5  $\mu\text{g}/\text{ft}^2$  for troughs). However, FAAS is the most ubiquitous equipment used, and EPA is estimating that accredited laboratories may buy new equipment to meet the lower LQSR limits. Based on the outreach performed, laboratories may need as little as six months but as much as 18 months to finance and obtain new equipment (such as ICP-AES), hire and train staff, and potentially receive new NLLAP accreditation (Refs. 56, 57 and 62). Two laboratories said it could take as much as two years to adjust to hypothetical regulatory changes such as the ones being proposed (Refs. 58 and 59).

EPA therefore believes that the proposed compliance date provides the needed flexibility for laboratories while ensuring that the revised DLHS and DLCL become effective in a timely manner. However, in consideration of the feedback received from NLLAP-recognized laboratories during the Agency's outreach efforts, EPA is requesting comment on the proposed compliance date, whether six-months is appropriate for the primary DLCL option (*i.e.*, 3/20/25  $\mu\text{g}/\text{ft}^2$ ) or if 12 months, 18 months, or some other amount of time is necessary, and why the extra time is needed.

Additionally, if the alternative DLCL is finalized (*i.e.*, 5/40/100  $\mu\text{g}/\text{ft}^2$ ), based on the laboratory outreach, EPA has increased confidence that laboratories can numerically quantify dust-lead levels of 5  $\mu\text{g}/\text{wipe}$  and attain a quantitation limit of equal to or less than 50% of that level (*i.e.*, 2.5/20/50  $\mu\text{g}/\text{ft}^2$ ) with FAAS technology, especially if the area tested is doubled from one square foot to two. EPA is also requesting comment on whether NLLAP-recognized laboratories would still need a six-month compliance date if the Agency finalized the alternative DLCL, or if 12-months, 18-months, or some other amount of time would be necessary to provide the flexibility that laboratories need in that scenario and why.

EPA is also proposing a six-month compliance date for the DLHS along with the DLCL and is interested in revising both standards at the same time to reduce any confusion and avoid any concerns within the regulated community that may be caused by staggering the DLHS and the DLCL compliance dates. EPA believes that since the DLHS are non-numeric which is different than they have been historically, and as the program is shifting to the DLCL becoming the "action level" for the LQSR, it is important to allow ample time for the regulated community to adapt to the revised DLHS and DLCL. Additionally, if the DLHS compliance date occurred before the DLCL compliance date, EPA is concerned it may trigger unnecessary confusion for laboratories. EPA is requesting comment on the appropriateness of the DLHS and the DLCL having the same compliance date.

### VII. Request for Comments

#### A. Proposed Dust-Lead Hazard Standards

EPA is seeking input on its proposal to lower the DLHS to any reportable level of dust-lead analyzed by an NLLAP-recognized laboratory, and the two alternative approaches to revising the DLHS—the numeric standard approach and the post-1977 background approach. EPA is requesting feedback not only on all the approaches considered but also on all the DLHS options themselves outlined in the preamble and within the TSD. EPA is requesting comment on the appropriateness of EPA's interpretation of "any reportable level." EPA is also requesting comment on whether laboratories believe there are potential inconsistencies with the lowest reportable level within any one laboratory or across the industry, the

extent of these inconsistencies, and if laboratories foresee this causing any concern for their clients. EPA is also requesting comment on the effects of not setting the DLHS at a fixed numeric value, and whether any potential inconsistencies with individual laboratory reporting levels (when interpreting dust-lead results in relation to the hazard standards), would cause challenges for the regulated community or other stakeholders, e.g., building owners or residents.

EPA is also seeking any information or data for a level of dust-lead exposure that would not result in adverse health effects, and any information on how much exposure in terms of BLL or change in IQ decrement would be the most scientifically appropriate to compare to the modeled results or as a rationale to set the DLHS, including the appropriate threshold of probability of exceedance for a child from the sub-population of interest.

#### *B. Proposed Dust-Lead Clearance Levels and Alternatives*

EPA is requesting comment on its proposal to lower the DLCL to 3 µg/ft<sup>2</sup> for floors, 20 µg/ft<sup>2</sup> for window sills, and 25 µg/ft<sup>2</sup> for troughs. EPA is requesting comment on NLLAP-recognized laboratories' ability to test to these clearance levels, especially given that, if finalized as proposed, the quantitation limit would be 50% of the DLCL (i.e., 1.5/10/12.5 µg/ft<sup>2</sup>) for laboratories that remain in NLLAP. EPA is also requesting comment on whether LBP professionals can clean/achieve clearance at these levels. EPA is also interested in feedback on whether the primary or alternative DLCL option is preferred and if they appropriately take into account reliability, effectiveness, and safety. Also, in some cases, window sills and troughs may have a small surface area, and therefore, EPA is requesting comment on the ability to collect a sufficient amount of dust-lead to meet all laboratories' quantitation limits with their existing analytical equipment or any other equipment that might be necessary for the DLCL primary and secondary options presented. EPA is also requesting comment on whether there is any data or information on whether window sills and window troughs should have the same clearance values, and why or why not. EPA is interested in both feedback and justification for whether a higher trough value such as 100 µg/ft<sup>2</sup> or if another DLCL combination (for floors, window sills and window troughs) besides the primary and alternative options considered is appropriate given the statutory criteria of reliability,

effectiveness, and safety. Lastly, EPA requests comment on whether or not the proposed DLCL would discourage initiation of elective dust-lead remediation altogether.

Additionally, EPA is seeking input on a phased approach of establishing the alternative, higher DLCL first (5/40/100 µg/ft<sup>2</sup>) and then in a specific amount of time, e.g., three years, lowering it to the primary DLCL value (3/20/25 µg/ft<sup>2</sup>). This phased approach would give laboratories with FAAS equipment time to purchase the more sensitive equipment needed to achieve the lower levels, hire new employees, become accredited with the new equipment, etc. EPA requests feedback on whether this is an approach that should be considered and, if so, what would be an appropriate amount of time between the first and second lowering of the DLCL.

#### *C. Other Amendments*

EPA is seeking comment on whether the changes to the definition of abatement make it clear that abatements should only be recommended when the dust-lead loadings are at or above the DLCL, rather than at or above the DLHS as it has been historically. EPA is also interested in receiving feedback on its proposed changes to 40 CFR 745.227(h) (to alleviate potential regulatory confusion surrounding clearance); as well as the additional language being added to the abatement report requirements, including whether EPA should make similar modifications to the risk assessment report requirements to add specific language explaining that abatements should only be recommended when the dust-lead loadings are at or above DLCL. EPA is also requesting comment on the effectiveness of the proposed language in the abatement report requirements to educate the public on remaining dust-lead hazards, promote behavior change, and point them to educational materials such as *Protect Your Family*. In those circumstances where the additional language would be added to abatement reports, EPA is also interested in feedback on whether the *Protect Your Family* materials themselves should be included alongside the abatement report and why *Protect Your Family* should be included. Separately, due to feedback received during the UMRA/federalism consultation: EPA is also interested in feedback on whether additional communication materials would be beneficial for public housing authorities to have access to in order to provide to residents living in homes with dust-lead hazards. If so, EPA is requesting information on what type of materials, for what DLHS and DLCL options, and

for which type of stakeholder/end user (if there are any besides public housing authorities) would be helpful.

EPA is seeking comment on all other amendments including the conforming change to the definition of target housing to provide consistency with the statutory change to the definition, as well as the conforming edits to children's age (i.e., under six) to provide consistency within the LBP regulations. EPA is requesting comment on how long after final rule publication the compliance date should be. EPA is proposing to establish a compliance date for the DLHS and DLCL that would occur on the date that is one year after the publication date of the final rule in the **Federal Register**. The Agency invites public comment on the adequacy of the proposed compliance date. EPA is also seeking feedback from states, territories, or Tribes that are authorized by EPA to operate their own LBP activities programs, on the impact of this proposed rule and if it will have substantial direct effects on the states, territories, or Tribes, on the relationship between the U.S. government and the states, territories, or Tribes, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes, such as whether states, territories, or Tribes may relinquish their programs back to EPA.

#### *D. Methods, Models and Data*

EPA is also requesting comment on the methods, models and data used in the EA and the TSD that accompany this proposal. In particular, EPA requests comment on the EA's use of the lifetime IQ concentration-response function to calculate IQ loss for ages for young children, particularly at low exposure levels (see section 6.4 in the EA). Additionally, EPA solicits comment and peer reviewed information on evidence relevant to quantifying and monetizing the incremental contribution of blood lead concentrations to other health and/or behavioral endpoints, including adult cardiovascular mortality.

EPA is proposing to update its regulatory definition of target housing to conform to the 2017 revised statutory language (see Unit IV.F.1.). EPA estimates that there are 10,850 pre-1978 dwellings that would be affected because they have zero bedrooms and a child under the age of 6 resides in them. EPA's EA for this action (Ref. 14) estimates that the total annual cost (including complying with existing lead-based paint program requirements for disclosure for real estate transactions, disclosure for renovation

activities, abatement, and the renovation, repair and painting rule) in newly defined target housing would be \$0.2 million. EPA's analysis also estimates that the annual benefits of these requirements would be \$3.7 million using a 3% discount rate and \$0.8 million using a 7% discount rate. EPA requests comment on its estimate of the number of affected housing units, and on the methods and assumptions it used to estimate the costs and benefits resulting from aligning its regulatory definition with the revised statutory definition.

EPA is proposing to require submissions for applications, application payments, and abatement and training notifications notices for the lead paint program be made electronically, instead of through mail, fax, or hand delivery (see Unit IV.F.3.). Based on its EA for this action (Ref. 14), EPA expects that this automation would save firms switching to electronic reporting an average of 5 hours per firm in labor, and that across all affected firms the change would result in total annual savings of approximately \$20,000 using a 3% discount rate and \$10,000 using a 7% discount rate. EPA solicits comment on the benefits and costs of requiring such electronic reporting.

Certain provisions of the HUD LSHR require lead hazard reduction activities when dust-lead levels exceed the DLHS. Given the nature of the proposed GTZ approach, in order to account for these activities in its EA (Ref. 14), EPA estimated what the reportable levels would be under the GTZ options, based on the analytical equipment that laboratories would likely use under these options. According to the LQSR, NLLAP-recognized laboratories must be able to demonstrate a quantitation limit less than or equal to half of the action level in order to maintain or obtain NLLAP recognition. Since the action level under the GTZ options would be the DLCL, the floor and window sill reporting levels estimated for analytical purposes for the GTZ options vary depending on the DLCL levels that the GTZ is paired with. Because some types of laboratory equipment have quantitation levels well below half of the DLCL options, EPA estimated the reporting limits for the mix of analytical instruments likely to be used under the GTZ options in order for the quantitation limits to be at least half of the DLCL. EPA solicits data on the distribution of quantitation limits for different types of analytical instruments in order to allow the Agency to refine its estimates of the reportable levels under the GTZ/DLCL options that the

Agency is considering. EPA also requests data on the false positive and false negative rates for testing lead in dust using different types of analytical equipment (e.g., FAAS, ICP-AES, and ICP-MS).

EPA requests data on costs for dust-lead testing that the Agency can use to refine its EA for the final rule. EPA also solicits information and comments related to any other data, assumptions, or methodology that EPA used to estimate the costs of the proposed rule, or on any costs that EPA did not quantify. EPA also requests comment on potential changes to the proposed rule that would reduce impacts on small entities while being consistent with statutory requirements and still achieving the rule's objectives.

Also, due to feedback from the UMRA/federalism consultation EPA is interested in any comments that can provide information on COFs, particularly any information that could help inform an EA, such as data on the number and cost of abatements partnered with recent dust-lead loading results, how many children under six were present in the COF at the time, etc. Based on the information available to it at the time of the proposal, EPA was unable to quantify benefits to children visiting COFs that would be affected by this rule. Since the data EPA used were only associated with the abatements in states, territories and tribes where the Agency administers the lead-based paint activities program, EPA specifically requests data on COF abatements in the jurisdictions that are authorized to administer their own lead abatement programs. EPA also requests information on the typical practices of environmental investigations at child-occupied facilities, and whether or how these practices may differ by type of COF (e.g., public school, private school, daycare center). EPA is interested in whether state/local requirements ever require routine dust wipe testing at COFs in the absence of a child with a blood lead level above a state or Federal action level, or how often COFs proactively have their dust-lead levels voluntarily tested. EPA would also welcome information on whether, in real-world practice, COFs always undergo dust wipe testing when a child who frequents the facility has a BLL above state or Federal action levels, or whether COFs are only tested if an investigation of the affected child's home reports no LBP, and if there are other circumstances that might lead to dust wipe testing at a COF.

Based on the information available to it at the time of the proposal, EPA was unable to quantify benefits to children

visiting COFs that would be affected by this rule. EPA requests information that would allow it to estimate such benefits for the final rule. EPA requests comment on data sources for parameterizing the R-SHEDS-IEUBK model used in the TSD and EA to estimate changes in blood lead levels for COFs (given that children's activity and exposure patterns may differ between housing and COFs, and the model is not calibrated or validated for predicting blood lead level changes in COFs), as well as how to avoid double-counting benefits between activities in target housing and COFs. EPA requests comment on sources of data including: children's activity patterns while attending COFs, physical parameters of COFs including area covered by different flooring material types, number and type of windows, and information on frequency of maintenance and cleaning. EPA also requests information on the range of baseline blood lead levels or lead exposures across the population of children that visit a COF where an abatement occurs.

EPA also requests information and data on the potential economic and health impacts to current residents and landlords of housing that is subsidized by tenant-based rental or project assistance programs run by HUD or USDA. EPA also requests comment on whether there are other types of assisted housing programs where there is a significant risk of landlords withdrawing from the program due to this rulemaking; specific factors that determine whether landlords would stop participating in Federal assistance programs; and estimates of the cost elasticity of landlord participation in such programs. EPA also welcomes comment and/or data that provides evidence for direct or indirect health impacts associated with relatively higher potential lead exposures in regard to housing insecurity attributable to housing quality standards (both generally and specific to lead-related standards).

EPA is requesting comment on research, studies, modeling, data, and any other information on the effects of the availability of target housing units for low-income families, including assisted target housing units, due to housing quality standards. Furthermore, EPA requests comment on potential impacts to the non-federally-assisted rental housing market, particularly naturally-occurring low-income housing, due to housing quality standards, including quantitative evidence of housing instability or differential housing outcomes or lead

exposures for families with young children that have resulted from local, state, or Federal lead paint regulations.

#### E. Other Requests for Comment

Finally, EPA is requesting comment on the impacts on NLLAP-recognized dust-lead laboratories, through considerations such as: added turnaround time for testing analysis (affecting re-occupancy, including temporary housing costs adding to overall project costs); added laboratory costs and the possibility of increasing project costs; and possible loss to NLLAP-recognized laboratories that cannot or do not want to make the investment and/or reduce their throughput at the proposed lower DLHS and DLCL. EPA is also interested in information about possible solutions for any unintended consequences of the lower DLHS and DLCL (which are consistent with the 2021 Court Opinion that instructed EPA to consider only health factors when setting the DLHS and affirmed that EPA could consider other factors *i.e.*, reliability, effectiveness, and safety, when setting the DLCL).

In addition to the areas which EPA has specifically requested comment, EPA requests comment on all other aspects of this proposed rule.

#### VIII. References

The following is a list of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

- Public Law 102-550, Title X—Housing and Community Development Act, enacted October 28, 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or “Title X”) (42 U.S.C. 4822 and 4851 *et seq.*). <https://www.epa.gov/lead/residential-lead-based-paint-hazard-reduction-act-1992-title-x>.
- EPA. Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint; Final Rule. RIN 2070-AJ82. **Federal Register** (84 FR 32632, July 9, 2019) (FRL-9995-49). <https://www.govinfo.gov/content/pkg/FR-2019-07-09/pdf/2019-14024.pdf>.
- EPA. Review of Dust-Lead Post Abatement Clearance Levels; Final Rule. RIN 2070-AK50. **Federal Register** (86 FR 983, January 7, 2021) (FRL-10018-61). <https://www.govinfo.gov/content/pkg/FR-2021-01-07/pdf/2020-28565.pdf>.
- EPA. Integrated Science Assessment (ISA) for Lead (Final Report, June 2013). U.S. EPA, Washington, DC, EPA/600/R-10/075F, 2013. <https://www.epa.gov/isa/integrated-science-assessment-isa-lead>.
- HHS, National Toxicology Program. *NTP Monograph on Health Effects of Low-Level Lead*. National Institute of Environmental Health Sciences, Research Triangle Park, NC. NIH Pub. No. 12-5996. ISSN 2330-1279. June 13, 2012. [https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead\\_newissn\\_508.pdf](https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead_newissn_508.pdf).
- EPA. Lead; Identification of Dangerous Levels of Lead; Final Rule. RIN 2070-AC63. **Federal Register** (66 FR 1206, January 5, 2001) (FRL-6763-5). <https://www.govinfo.gov/content/pkg/FR-2001-01-05/pdf/01-84.pdf>.
- HUD, EPA. Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing; Final Rule. RIN 2070-AC75. **Federal Register** (61 FR 9064, March 6, 1996) (FRL-5347-9). <https://www.govinfo.gov/content/pkg/FR-1996-03-06/pdf/96-5243.pdf>.
- Agency for Toxic Substances and Disease Registry, HHS. *Toxicological Profile for Lead*. August 2020. <https://www.atsdr.cdc.gov/toxprofiles/tp13.pdf>.
- President’s Task Force on Environmental Health Risks and Safety Risks to Children. *Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts*. December 2018. <https://www.epa.gov/lead/federal-action-plan-reduce-childhood-lead-exposure>.
- EPA. EPA Strategy to Reduce Exposures and Disparities in U.S. Communities. October 27, 2022. [https://www.epa.gov/system/files/documents/2022-11/Lead%20Strategy\\_1.pdf](https://www.epa.gov/system/files/documents/2022-11/Lead%20Strategy_1.pdf).
- U.S. Court of Appeals for the Ninth Circuit. *A Community Voice v. EPA*, No. 19-71930, Opinion. May 14, 2021. <https://cdn.ca9.uscourts.gov/datastore/opinions/2021/05/14/19-71930.pdf>.
- Executive Order 13990. Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. **Federal Register** (86 FR 7037, January 25, 2021). <https://www.govinfo.gov/content/pkg/FR-2021-01-25/pdf/2021-01765.pdf>.
- The White House. Fact Sheet: List of Agency Actions for Review. January 20, 2021. <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/>.
- EPA. Economic Analysis of the Proposed Reconsideration of the Dust-Lead Hazard Standards and Post-Abatement Clearance Levels. June 2023.
- EPA. America’s Children and the Environment (ACE). “Biomonitoring—Lead.” June 29, 2022. <https://www.epa.gov/americaschildrenenvironment/biomonitoring-lead>.
- EPA. Technical Support Document for the Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels. June 2023.
- EPA. Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels. Unfunded Mandates Reform Act Statement. June 2023.
- Zartarian, V., Xue, J., Tornero-Velez, R., & Brown, J. Children’s Lead Exposure: A Multimedia Modeling Analysis to Guide Public Health Decision-Making. *Environmental Health Perspectives*, 125(9), 097009-097009. September 12, 2017. <https://doi.org/10.1289/EHP1605>.
- EPA. Technical Support Document for Residential Dust-lead Clearance Levels Rulemaking Estimation of Blood Lead Levels and Effects from Exposures to Dust-lead. December 2020. <https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0063-0395>.
- EPA. Air Quality Criteria for Lead; Final Report. EPA/600/R-05/144aF-bF. October 2006. <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=158823>.
- HHS, National Toxicology Program. *Lead and Lead Compounds. 15th Report on Carcinogens*. National Institute of Environmental Health Sciences, Research Triangle Park, NC. 15th edition. December 12, 2021. <https://ntp.niehs.nih.gov/ntp/roc/content/profiles/lead.pdf>.
- President’s Task Force on Environmental Health Risks and Safety Risks to Children. *Key Federal Programs to Reduce Childhood Lead Exposures and Eliminate Associated Health Impacts*. November 2016. [https://ptfcehs.niehs.nih.gov/features/assets/files/key\\_federal\\_programs\\_to\\_reduce\\_childhood\\_lead\\_exposures\\_and\\_eliminate\\_associated\\_health\\_impactspresidents\\_508.pdf](https://ptfcehs.niehs.nih.gov/features/assets/files/key_federal_programs_to_reduce_childhood_lead_exposures_and_eliminate_associated_health_impactspresidents_508.pdf).
- TSCA Title IV, Lead Exposure Reduction. 15 U.S.C. 2681 *et seq.* <https://www.govinfo.gov/content/pkg/USCODE-2020-title15/pdf/USCODE-2020-title15-chap53-subchapIV.pdf>.
- EPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. RIN 2070-AC64. **Federal Register** (61 FR 45778, August 29, 1996) (FRL-5389-9). <https://www.govinfo.gov/content/pkg/FR-1996-08-29/pdf/96-21954.pdf>.
- EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. RIN 2070-AC83. **Federal Register** (73 FR 21692, April 22, 2008) (FRL-8355-7). <https://www.govinfo.gov/content/pkg/FR-2008-04-22/pdf/E8-8141.pdf>.
- EPA. Lead; Amendment to the Opt-Out and Recordkeeping Provisions in the Renovation, Repair, and Painting Program. RIN 2070-AJ55. **Federal Register** (75 FR 24802, May 6, 2010) (FRL-8823-7). <https://www.govinfo.gov/content/pkg/FR-2010-05-06/pdf/2010-10100.pdf>.
- EPA. Lead; Clearance and Clearance Testing Requirements for the Renovation, Repair, and Painting Program. RIN 2070-AJ57. **Federal Register** (76 FR 47917, October 4, 2011) (FRL-8823-5). <https://www.govinfo.gov/content/pkg/FR-2011-08-05/pdf/2011-19417.pdf>.
- HUD. Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance. RIN 2501-AB57. **Federal Register** (64 FR 50140,

- September 15, 1999). <https://www.govinfo.gov/content/pkg/FR-1999-09-15/pdf/99-23016.pdf>.
29. EPA. Laboratory Quality System Requirements (LQSR) Revision 3.0. November 5, 2007. <https://www.epa.gov/sites/default/files/documents/lqsr3.pdf>.
30. Petition for Review, *A Cmty. Voice v. U.S. Env't Prot. Agency*, 997 F.3d 983 (9th Cir. 2021) (No. 19–71930).
31. EPA. Testimony of Michal Ilana Freedhoff before the Senate Committee on Environment and Public Works. June 22, 2022. [https://www.epw.senate.gov/public/\\_cache/files/3/1/31e721e6-dc47-4eb3-a241-5dcb0d5c9221/1424B42DD6F7DF8A64EE202F42E44247.06-22-2022-freedhoff-testimony.pdf](https://www.epw.senate.gov/public/_cache/files/3/1/31e721e6-dc47-4eb3-a241-5dcb0d5c9221/1424B42DD6F7DF8A64EE202F42E44247.06-22-2022-freedhoff-testimony.pdf).
32. EPA. Testimony of Michael S. Regan before the Senate Committee on Environment and Public Works. March 22, 2023. [https://www.epw.senate.gov/public/\\_cache/files/5/0/504a2c31-4291-496c-b37e-5322d5d5c7a8/3B200C21C840470316D7F6842BFDD9EE.03-22-2023-regan-testimony.pdf](https://www.epw.senate.gov/public/_cache/files/5/0/504a2c31-4291-496c-b37e-5322d5d5c7a8/3B200C21C840470316D7F6842BFDD9EE.03-22-2023-regan-testimony.pdf).
33. Unified Agenda of Regulatory and Deregulatory Actions. EPA Long-Term Actions. Spring 2023. [https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION\\_GET\\_AGENCY\\_RULE\\_LIST&currentPubId=202304&showStage=longterm&agencyCd=2000](https://www.reginfo.gov/public/do/eAgendaMain?operation=OPERATION_GET_AGENCY_RULE_LIST&currentPubId=202304&showStage=longterm&agencyCd=2000).
34. EPA, Office of Pollution Prevention and Toxics. *Technical Support Document for Residential Dust-lead Hazard Standards Rulemaking Approach taken to Estimate Blood Lead Levels and Effects from Exposures to Dust-lead*. June 2019.
35. SAB. SAB review of EPA's Approach for Developing Lead Dust Hazard Standards for Residences (November 2010 Draft) and Approach for Developing Lead Dust Hazard Standards for Public and Commercial Buildings (November 2010 Draft). EPA–SAB–11–008. July 7, 2011. [https://sab.epa.gov/ords/sab/f?p=114:0:16965043720403:APPLICATION\\_PROCESS=REPORT\\_DOC:::REPORT\\_ID:964](https://sab.epa.gov/ords/sab/f?p=114:0:16965043720403:APPLICATION_PROCESS=REPORT_DOC:::REPORT_ID:964).
36. Versar, Inc. *External Peer Review of EPA's Approach for Estimating Exposures and Incremental Health Effects from Lead due to Renovation, Repair, and Painting Activities in Public and Commercial Buildings*. February 27, 2015. <https://www.regulations.gov/document/EPA-HQ-OPPT-2010-0173-0259>.
37. Eastern Research Group, Inc. *Summary Report of the Peer Review Meeting for EPA's Draft Report, Proposed Modeling Approaches for a Health-Based Benchmark for Lead in Drinking Water*. October 25, 2017. <https://www.regulations.gov/document/EPA-HQ-OW-2017-0300-0091>.
38. Bevington, Charles, et al. "Relationship between Residential Dust-Lead Loading and Dust-Lead Concentration Across Multiple North American Datasets." *Building and Environment* 188 (2021): 107359. <https://doi.org/10.1016/j.buildenv.2020.107359>.
39. Frank, J., Poulakosc, A., Tornero-Velez, R., & Xueb, J. *Systematic Review and Meta-analyses of Lead (Pb) Concentrations in Environmental Media (Soil, Dust, Water, Food, and Air) Reported in the United States from 1996 to 2016*. Science of The Total Environment, Volume 694, 133489. ISSN 0048–9697. December 1, 2019. <https://doi.org/10.1016/j.scitotenv.2019.07.295>.
40. Lanphear, Bruce P., et al. *Low-Level Environmental Lead Exposure and Children's Intellectual Function: International Pooled Analysis*. Environmental Health Perspective. July 2005, 113(7):894–9. <https://pubmed.ncbi.nlm.nih.gov/16002379/>.
41. Lanphear, Bruce P., et al. Erratum: "Low-Level Environmental Lead Exposure and Children's Intellectual Function: An International Pooled Analysis". Environmental Health Perspective. September 17, 2019, 127(9):99001. <https://pubmed.ncbi.nlm.nih.gov/31526192/>.
42. Crump, Kenny S., et al. *A Statistical Reevaluation of the Data Used in the Lanphear et al. (2005) Pooled-Analysis that Related Low Levels of Blood Lead to Intellectual Deficits in Children*. Crit Rev Toxicol. October 2013, 43(9):785–99. <https://pubmed.ncbi.nlm.nih.gov/24040996/>.
43. Kirrane, Ellen, F., and Patel, Molini, M. Memorandum to Integrated Science Assessment for Lead Docket (EPA–HQ–ORD–2011–0051). May 12, 2014. <https://www.regulations.gov/document/EPA-HQ-ORD-2011-0051-0050>.
44. Ruckart PZ, Jones RL, Courtney JG, et al. Update of the Blood Lead Reference Value—United States, 2021. *MMWR Morb Mortal Wkly Rep* 2021; 70:1509–1512. DOI: <https://www.cdc.gov/mmwr/volumes/70/wr/mm7043a4.htm>.
45. HHS, PHS, and CDC. Preventing Lead Poisoning in Young Children. October 1, 1991. <https://wonder.cdc.gov/wonder/Prevguid/p0000029/p0000029.asp#head007001001000000>.
46. The Blood Lead Reference Value (BLRV) Workgroup. Recommendation for a Revised Blood Lead Reference Value (for the Lead Exposure and Prevention Advisory Committee). August 10, 2021. <https://www.cdc.gov/nceh/lead/docs/lepac/blrv-recommendation-report-508.pdf>.
47. EPA. Lead; Identification of Dangerous Levels of Lead; Proposed Rule. **Federal Register** (63 FR 30302, June 3, 1998) (FRL–5791–9). <https://www.govinfo.gov/content/pkg/FR-1998-06-03/pdf/98-14736.pdf>.
48. CDC. CDC Response to Advisory Committee on Childhood Lead Poisoning Prevention Recommendations in "Low Level Lead Exposure Harms Children: A Renewed Call of Primary Prevention." June 7, 2012. [https://www.cdc.gov/nceh/lead/docs/cdc\\_response\\_lead\\_exposure\\_recs.pdf](https://www.cdc.gov/nceh/lead/docs/cdc_response_lead_exposure_recs.pdf).
49. Children's Health Protection Advisory Committee. *RE: Childhood Lead Poisoning Prevention*. Letter to Lisa P. Jackson, EPA Administrator. March 29, 2012. [https://www.epa.gov/sites/default/files/2015-10/documents/chpac\\_lead\\_letter\\_2012\\_03\\_29.pdf](https://www.epa.gov/sites/default/files/2015-10/documents/chpac_lead_letter_2012_03_29.pdf).
50. EPA. Review of the National Ambient Air Quality Standards for Lead. **Federal Register** (81 FR 71906, October 18, 2016) (FRL–9952–87). <https://www.govinfo.gov/content/pkg/FR-2016-10-18/pdf/2016-23153.pdf>.
51. EPA. National Ambient Air Quality Standards for Lead. **Federal Register** (73 FR 77517, December 19, 2008) (FRL–8732–9). <https://www.govinfo.gov/content/pkg/FR-2008-12-19/pdf/E8-30199.pdf>.
52. HUD. Lead Hazards in U.S. Housing: American Healthy Homes Survey II. <https://www.huduser.gov/portal/pdredge/pdr-edge-trending-030822.html>. (Accessed June 29, 2023.)
53. EPA. Office of Pollution Prevention and Toxics. *Review of the Dust-lead Hazard Standards and the Definition of Lead-Based Paint. Response to Public Comments*. June 2019. <https://www.regulations.gov/document/EPA-HQ-OPPT-2018-0166-0571>.
54. EPA. Office of Pollution Prevention and Toxics. *Review of the Dust-Lead Post-Abatement Clearance Levels. Response to Public Comments*. December 2020. <https://www.regulations.gov/document/EPA-HQ-OPPT-2020-0063-0397>.
55. HUD, Office of Lead Hazard Control and Healthy Homes. *Lead Hazard Control Clearance Survey*. Final Report. October 2015. [https://www.hud.gov/sites/documents/clearancesurvey\\_24oct15.pdf](https://www.hud.gov/sites/documents/clearancesurvey_24oct15.pdf).
56. EPA. Summary of discussion between EPA and Stat Analysis Corporation. June 13, 2022.
57. EPA. Summary of discussion between EPA and HIH Laboratory, Inc. June 14, 2022.
58. EPA. Summary of discussion between EPA and Batta Environmental. June 14, 2022.
59. EPA. Summary of discussion between EPA and EMSL Analytical, Inc. June 15, 2022.
60. EPA. Summary of discussion between EPA and Environmental Hazard Services, LLC. June 21, 2022.
61. EPA. Summary of discussion between EPA and Accurate Analytical Testing, LLC. June 22, 2022.
62. EPA. Summary of discussion between EPA and Schneider Laboratories, Inc. June 30, 2022.
63. EPA. Summary of discussion between EPA and Marion County Health Department. July 11, 2022.
64. EPA. Summary of discussion between EPA and GPI. July 12, 2022.
65. NYC. New Lead in Dust Standards for New York City. June 2019. <https://www1.nyc.gov/assets/doh/downloads/pdf/lead/lead-in-dust-standards.pdf>.
66. NYC. New Lead in Dust Standards for New York City. June 2021. <https://www1.nyc.gov/assets/doh/downloads/pdf/lead/lead-in-dust.pdf>.
67. EPA. Summary of discussion between EPA and New York City Department of Health and Mental Hygiene; Healthy Homes Program. March 21, 2022.
68. David E Jacobs, et al. The Prevalence of Lead-based Paint Hazards in U.S. Housing. October 1, 2002. <https://doi.org/10.1289/ehp.021100599>.
69. HUD. Office of Lead Hazard Control and Healthy Homes. *American Healthy Homes Survey II Lead Findings*. Final Report.

- October 29, 2021. [https://www.hud.gov/sites/dfiles/HH/documents/AHHS\\_II\\_Lead\\_Findings\\_Report\\_Final\\_29oct21.pdf](https://www.hud.gov/sites/dfiles/HH/documents/AHHS_II_Lead_Findings_Report_Final_29oct21.pdf).
70. Ahrens, Katherine A., Barbara A. Haley, Lauren M. Rossen, Patricia C. Lloyd, and Yutaka Aoki. 2016. "Housing Assistance and Blood Lead Levels: Children in the United States, 2005–2012." *American Journal of Public Health*. 106,11: 2049–2056. <https://doi.org/10.2105/ajph.2016.303432>.
71. Bess, K.D., A.L. Miller, and R. Mehdipanih. 2022. The Effects of Housing Insecurity on Children's Health: A Scoping Review. Health Promotion International, daac006. Advance online publication. <https://doi.org/10.1093/heapro/daac006>.
72. Lee, C.Y., Zhao, X., Reesor-Oyer, L., Cepni, A.B., & Hernandez, D.C. (2021). Bidirectional Relationship Between Food Insecurity and Housing Instability. *Journal of the Academy of Nutrition and Dietetics*, 121(1), 84–91. <https://doi.org/10.1016/j.jand.2020.08.081>.
73. Baker, Emma, Laurence Lester, Kate Mason, and Rebecca Bentley. 2020. Mental Health and Prolonged Exposure to Unaffordable Housing: A Longitudinal Analysis. *Social Psychiatry and Psychiatric Epidemiology*. 55, 6: 715–721. <https://pubmed.ncbi.nlm.nih.gov/32140739/>.
74. Chung, Roger Yat-Nork et al. 2020. Housing Affordability Effects on Physical and Mental Health: Household Survey in a Population with the World's Greatest Housing Affordability Stress. *Journal of Epidemiology and Community Health*. 74, 2: 164–172. <https://pubmed.ncbi.nlm.nih.gov/31690588/>.
75. Jenkins Morales, M., & Robert, S.A. 2022. Housing Cost Burden and Health Decline Among Low- and Moderate-Income Older Renters. *The Journals of Gerontology. Series B, Psychological Sciences and Social Sciences*, 77(4), 815–826. <https://doi.org/10.1093/geronb/gbab184>.
76. Jelleman, T., and N. Spencer. 2008. Residential Mobility in Childhood and Health Outcomes: A Systematic Review. *Journal of Epidemiology and Community Health*. 62: 584–592. <https://doi.org/10.1136/jech.2007.060103>.
77. Burgard, Sarah A., Kristin S. Seefeldt and Sarah Zelner. 2012. Housing Instability and Health: Findings from the Michigan Recession and Recovery Study. *Social Science & Medicine*. 75, 12: 2215. <https://doi.org/10.1016/j.socscimed.2012.08.020>.
78. Desmond, Matthew, and Rachel Tolbert Kimbro. 2020. Eviction's Fallout: Housing, Hardship, and Health. *Social Forces*. 94, 1: 295–324. <https://doi.org/10.1093/sf/sov044>.
79. DiTosto, Julia D., et al. 2021. Housing Instability and Adverse Perinatal Outcomes: A Systematic Review. *American Journal of Obstetrics & Gynecology MFM*. 3, 6: 100477. <https://doi.org/10.1016/j.ajogmf.2021.100477>.
80. Collinson, Robert, John Eric Humphries, Nicholas S. Mader, Davin K. Reed, Daniel I. Tannenbaum, and Winnie van Dijk. 2022. Eviction and Poverty in American Cities. NBER Working Paper No. 30382. <https://www.nber.org/papers/w30382>.
81. Cutts, Diana Becker, et al. 2011. US Housing Insecurity and the Health of Very Young Children. *American Journal of Public Health*. 101, 8: 1508–1514. <https://doi.org/10.2105/AJPH.2011.300139>.
82. Solari, Claudia D. and Robert D Mare. 2012. "Housing Crowding Effects on Children's Wellbeing." *Social Science Research*. 41, 2: 464–476. <https://doi.org/10.1016/j.ssresearch.2011.09.012>.
83. Ahmad, Khansa, Sebhath Erqou, Nishant Shah, Umair Nazir, Alan R. Morrison, Gaurav Choudhary, Wen-Chih. 2020. "Association of Poor Housing Conditions with COVID–19 Incidence and Mortality Across US Counties." *PLoS ONE*. 15, 11: e0241327. <https://doi.org/10.1371/journal.pone.0241327>.
84. Marmot Review Team. 2011. *The Health Impacts of Cold Homes and Fuel Poverty*. London: Friends of the Earth and the Marmot Review Team. <https://www.instituteofhealthequity.org/resources-reports/the-health-impacts-of-cold-homes-and-fuel-poverty>.
85. ASHRAE Multidisciplinary Task Group. 2020. *Damp Buildings, Human Health, and HVAC Design*. Atlanta, GA: ASHRAE. [https://www.techstreet.com/ashrae/standards/damp-buildings-human-health-and-hvac-design?product\\_id=2110372](https://www.techstreet.com/ashrae/standards/damp-buildings-human-health-and-hvac-design?product_id=2110372).
86. HUD. Data compiled from HUD's Picture of Subsidized Households dataset, available at <https://www.huduser.gov/portal/datasets/asstshg.html>.
87. Fenelon, Andrew, Natalie Slopen, Michel Boudreaux, and Sandra J. Newman. 2018. "The Impact of Housing Assistance on the Mental Health of Children in the United States." *Journal of Health and Social Behavior*. 1–17. <https://doi.org/10.1177/0022146518792286>.
88. Fenelon, Andrew, et al. 2017. Housing Assistance Programs and Adult Health in the United States. *American Journal of Public Health*. 107, 4: 571–578. <https://pubmed.ncbi.nlm.nih.gov/28207335/>.
89. Boudreaux, Michel, Andrew Fenelon, Natalie Slopen, and Sandra J. Newman. 2020. "Association of Childhood Asthma with Federal Rental Assistance." *JAMA Pediatrics*. 174, 6: 592–598. <https://doi.org/10.1001/jamapediatrics.2019.6242>.
90. Slopen, Natalie, Andrew Fenelon, Sandra Newman, and Michel Boudreaux. 2018. "Housing Assistance and Child Health: A Systematic Review." *Pediatrics*. 141, 6: e20172742. <https://doi.org/10.1542/peds.2017-2742>.
91. Alvarez, Thyria and Barry L. Steffen. 2021. *Worst Case Housing Needs: 2021 Report to Congress*. Washington, DC: U.S. Department of Housing and Urban Development, Office of Policy Development and Research. <https://www.huduser.gov/portal/publications/Worst-Case-Housing-Needs-2021.html>.
92. Greenlee, Andrew J. 2014. More Than Meets the Market? Landlord Agency in the Illinois Housing Choice Voucher Program. *Housing Policy Debate*, 24:3, 500–524, DOI: 10.1080/10511482.2014.913649. <https://doi.org/10.1080/10511482.2014.913649>.
93. Varady, David P., Joseph Jaroscak, and Reinout Kleinhaus. 2017. How to Attract More Landlords to the Housing Choice Voucher Program: A Case study of Landlord Outreach Efforts. *Urban Research & Practice*, 10:2, 143–155, DOI: 10.1080/17535069.2016.1175741. <https://doi.org/10.1080/17535069.2016.1175741>.
94. Garboden, Philip M.E., Eva Rosen, Stefanie DeLuca, and Kathryn Edin. 2018. Taking Stock: What Drives Landlord Participation in the Housing Choice Voucher Program. *Housing Policy Debate*. 28:6, 979–1003. <https://doi.org/10.1080/10511482.2018.1502202>.
95. Greif, Meredith. 2018. Regulating Landlords: Unintended Consequences for Poor Tenants. *City & Community*, 17:3, 658–674. <https://doi.org/10.1111/cico.12321>.
96. HUD. *Revised Dust-Lead Action Levels for Risk Assessment and Clearance; Clearance of Porch Floors*. Policy Guidance 2017–01 Rev 1. February 16, 2017. [https://www.hud.gov/sites/documents/LEADDUSTLEVELS\\_REV1.pdf](https://www.hud.gov/sites/documents/LEADDUSTLEVELS_REV1.pdf).
97. HUD. *Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing*. Second Edition, July 2012. [https://www.hud.gov/program\\_offices/healthy\\_homes/lbp/hudguidelines](https://www.hud.gov/program_offices/healthy_homes/lbp/hudguidelines).
98. EPA. Supporting Statement for an Information Collection Request (ICR) under the Paperwork Reduction Act (PRA); Reconsideration of the Dust-Lead Hazard Standards and Dust-Lead Post-Abatement Clearance Levels; Proposed Rule (RIN 2070–AK91), (EPA ICR No. 2760.01). June 30, 2023.
99. Council of Large Public Housing Authorities. Letter to EPA RE: Dust-Lead Hazard Standards (DLHS) and Dust-Lead Clearance Levels (DLCL) Reconsideration Rulemaking. January 10, 2023.
100. EPA. EJ 2020 Action Agenda: The U.S. EPA's Environmental Justice Strategic Plan for 2016–2020. October 2016. [https://www.epa.gov/sites/default/files/2016-05/documents/052216\\_ej\\_2020\\_strategic\\_plan\\_final\\_0.pdf](https://www.epa.gov/sites/default/files/2016-05/documents/052216_ej_2020_strategic_plan_final_0.pdf).

## IX. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

### A. Executive Orders 12866: Regulatory Planning and Review and 14094: Modernizing Regulatory Review

This action is a "significant regulatory action" as defined under section 3(f)(1) of Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11, 2023). Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. The Agency prepared an analysis of the potential costs and benefits associated with this action, this analysis (Ref. 14), is available in the docket.

### B. Paperwork Reduction Act (PRA)

The information collection activities in this proposed rule have been submitted for review and approval to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document that the EPA prepared has been assigned EPA ICR No. 2760.01 (Ref. 98). You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here.

The ICR addresses the incremental changes to the existing reporting, notification, and recordkeeping programs that are currently approved under OMB Control Nos. 2070–0151 and 2070–0195. As approved under OMB Control No. 2070–0151 and pursuant to 24 CFR part 35, subpart A, and 40 CFR 745, subpart F, sellers and lessors of target housing must already provide purchasers or lessees any available records or reports “pertaining to” LBP and/or LBP hazards available to the seller or lessor. Accordingly, a seller or lessor must disclose any reports showing dust-lead levels, regardless of the value. A lower hazard standard may prompt a different response on the already required lead disclosure form, *i.e.*, that a lead-based paint hazard is present rather than not, which would occur when a dust-lead level is below the current standard but at or above a lower final standard. However, for existing target housing, this action would not result in additional disclosures because the lead disclosure form is required regardless of whether dust-lead is present at or below the hazard standard. Nevertheless, due to the change in target housing definition, EPA estimates an additional 967 disclosure events will occur annually, which will affect 3,040 respondents at an average burden and cost of 0.08 hours and \$4.37 per respondent, resulting in a total annual burden of 337 hours at a total annual cost of \$13,272.

Next, as approved under OMB Control No. 2070–0195, the ICR addresses the information collection activities associated with the reporting and recordkeeping requirements for individuals, firms and state and local government entities conducting LBP activities or renovations of target housing and COFs; training providers; and states/territories/Tribes/Alaska Native villages. These information collection activities include the following:

- LBP activity firm pre-abatement reports and occupant protection plans, abatement activity notifications, post-abatement reports and recordkeeping;

- Applications for certification of individuals performing LBP activities, and related recordkeeping;
- LBP activities training provider accreditation applications, training notifications, and recordkeeping;
- LBP activity firm certification applications and recordkeeping;
- Distribution of pre-renovation lead hazard information pamphlet and post-renovation checklists documenting lead-safe work practices;
- RRP and LBP professionals classroom training time related to recordkeeping compliance;
- RRP training provider accreditation applications, training notifications, and recordkeeping;
- Private RRP firm and Government-employed RRP professional certification applications and recordkeeping; and
- Submission of related fees.

Incremental abatement notifications would be required when an abatement occurs due to the revised DLHS/DLCL and does not occur in the baseline; EPA estimates that 1,618 to 2,404 such notifications will incur average annual paperwork-associated costs of \$149. Additional LBP workers may need to be hired and subsequently trained and certified to accommodate the additional dust-lead remediation activities triggered by the revised DLHS/DLCL. EPA estimates that 2,237 to 3,971 respondents will incur average annual paperwork-associated costs of \$432. Because the EA finds that the revised DLHS/DLCL would increase the number of new lead hazard reduction events by no more than 5 per firm per year, EPA assumes that existing LBP activity firms would cover this new work and new entrants are unlikely to emerge. As such, EPA does not estimate any paperwork costs associated with LBP activity firm certification. Similarly, the EA finds that there would be fewer than 1 incremental event per affected RRP firm and therefore EPA assumes no new RRP firms or employees will enter the market in response to the DLHS/DLCL revision. As such, EPA does not estimate any paperwork costs associated with RRP firm certification or RRP training.

The revisions to the definition of target housing will result in paperwork costs in two dimensions. First, abatement firms operating in newly defined target housing are expected to incur reporting and recordkeeping costs for those additional events. EPA estimates that 25 respondents will incur an average annual cost of \$89.21 for these activities. Second, renovation service firms performing renovation activities in newly defined target housing are required to perform

disclosure activities. This will result in recurring disclosure event, recordkeeping, and materials costs. EPA estimates that 1,977 respondents will incur an average annual cost of \$14.73.

In addition, EPA currently receives approximately 90 percent of required notifications as well as applications for accreditation, certification, and re-certification from training providers, firms, and lead abatement individuals through EPA’s Central Data Exchange (CDX). The paperwork activities, related burden and costs with CDX user registration for those who elect to exercise the electronic submission option established under the Agency’s Cross-media Electronic Reporting Rule (CROMERR) (40 CFR 3) are described in an ICR approved under OMB Control No. 2025–0003. The amended information collection activities contained in this proposed rule are designed to assist the Agency in meeting its responsibility under TSCA to receive, process, and review reports, data, and other information. Accordingly, this proposed rule would require regulated parties to submit notifications and applications through CDX.

The ICR prepared for this proposed rule addresses the incremental burden changes related to the expected increase in the number of responses to the activities considered in the other existing ICRs, as well as the changing response obligation for the use of CDX from voluntary to mandatory.

*Respondents/affected entities:* Persons engaged in selling or leasing certain residential dwellings built before 1978; persons who are engaged in lead-based paint activities and/or perform renovations of target housing or child-occupied facilities for compensation, dust sampling, or dust testing; persons who perform lead-based paint inspections, lead hazard screens, risk assessments or abatements in target housing or child-occupied facilities; persons who provide training or operate a training program for individuals who perform any of these activities; state, territorial or Tribal agencies that administer lead-based paint activities and/or renovation programs. See also Unit I.A.

*Respondent’s obligation to respond:* Mandatory (40 CFR part 745).

*Estimated number of respondents:* 8,897 to 11,417 (per year).

*Frequency of response:* On occasion.

*Total estimated burden:* 23,329 to 38,985 hours (per year). Burden is defined at 5 CFR 1320.3(b).

*Total estimated cost:* \$1.3 million to \$2.1 million (per year), includes no

annualized capital or operation and maintenance costs.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for certain EPA's regulations in 40 CFR are listed in 40 CFR part 9, and on associated collection instruments.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under Review—Open for Public Comments" or by using the search function. EPA will respond to ICR-related comments in the context of the final rule.

### C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities subject to the requirements of the revised DLHS and DLCL are small businesses that are landlords who may incur costs for lead hazard reduction measures in compliance with the HUD's LSHR; elementary and secondary schools or child day care services (who make incur costs associated with COFs); residential remodelers (who may incur costs associated with additional cleaning and sealing in houses undergoing rehabilitation or ongoing lead-based paint maintenance subject to the HUD LSHR); and abatement firms (who may also incur costs associated with additional cleaning and sealing under the LSHR). The Agency has determined that approximately 39,000 small businesses would be directly affected by the revised DLHS and DLCL, of which 87% to 91% have cost impacts less than 1% of revenues, 9% to 12% have impacts between 1% and 3% of revenues, and 1% have impacts greater than 3% of revenues. The total estimated costs to small businesses are between \$303.1 million and \$414.4 million per year.

Additionally, the rule's other amendments may potentially affect four types of small entities: property owners that will incur recordkeeping and material costs for real estate disclosures in newly defined target housing;

renovation firms that will incur renovation disclosure costs and lead-safe work practice costs in newly defined target housing; LBP activities firms that will incur reporting and recordkeeping costs for abatement activities in newly defined target housing; and EPA-certified training providers that may incur costs for submitting reports electronically. The Agency has determined that approximately 2,998 small businesses would be directly affected by the amendment to the target housing definition, of which 100% have cost impacts less than 1% of revenues. The Agency has determined that approximately 86 small businesses would be directly affected by the amendment to the electronic reporting requirement, of which 100% have cost impacts less than 1% of revenues. All details of the analysis of potential costs and benefits associated with this action are presented in EPA's EA, which is available in the docket (Ref. 14).

The EA estimates potential costs from the revised DLHS and DLCL for activities in two types of target housing and COFs—those subject to the HUD LSHR and those where a child with a blood lead level exceeding a Federal or state threshold lives. Importantly, the DLHS do not require the owners of properties covered by this proposed rule to evaluate their properties for the presence of dust-lead hazards, or to act if dust-lead hazards are identified. Although the DLHS and DLCL do not compel specific actions under the LBP Activities Rule to address identified LBP hazards, the DLHS and DLCL are directly incorporated by reference into certain requirements mandated by HUD in the housing subject to the LSHR. Aside from the HUD regulations, and, perhaps some state or local regulations, the DLHS and DLCL do not impose new Federal requirements on small entities.

### D. Unfunded Mandates Reform Act (UMRA)

This action contains a Federal mandate under UMRA, 2 U.S.C. 1531–1538, that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Accordingly, EPA has prepared the written statement required under section 202 of UMRA (Ref. 17). The statement is included in the docket for this action and is briefly summarized here.

#### 1. Authorizing Legislation

This rulemaking is issued under the authority of TSCA sections 401, 402, 403, 404, and 406, 15 U.S.C. 2601 *et*

*seq.*, as amended by Title X of the Housing and Community Development Act of 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or "Title X") (Pub. L. 102–550) (Ref. 1) and section 237(c) of Title II of Division K of the Consolidated Appropriations Act, 2017 (Pub. L. 115–31, 131 Stat. 789), as well as sections 1004 and 1018 of Title X (42 U.S.C. 4851b, 4852d), as amended by section 237(b) of Title II of Division K of the Consolidated Appropriations Act, 2017.

#### 2. Cost-Benefit Analysis

The EA (Ref. 14) presents the costs of the rule as well as various regulatory options, and is summarized in Unit I.E. The rule is estimated to result in total compliance costs of \$536 million to \$784 million per year. Thus, the annual cost of the rule to the private sector (and State, local, and Tribal governments) in the aggregate exceeds the inflation-adjusted \$100 million UMRA threshold.

This rule will reduce exposures to lead, resulting in benefits from avoided adverse health effects. For the subset of health effects where the results were quantified, the estimated annualized benefits are \$1.069 billion to \$4.684 billion per year using a 3% discount rate and \$231 million to \$1.013 billion per year using a 7% discount rate. There are additional unquantified benefits due to other avoided health effects.

Net benefits are the difference between benefits and costs. The rule is estimated to result in quantified net benefits of \$532 million to \$3.899 billion per year using a 3% discount rate and –\$302 million to \$231 million per year using a 7% discount rate. EPA considers unquantified health benefits to be potentially important non-monetized impacts that contribute to the overall net benefits of this rule.

#### 3. State, Local, and Tribal Government Input

EPA sought input from State and local government representatives early in the rulemaking process during the joint intergovernmental consultation initiated in November 2022 and will continue to engage these partners throughout the rulemaking process. EPA's experience in administering the existing LBP activities program under TSCA section 402 suggests that these governments will play a critical role in the successful implementation of the national program to reduce exposures to LBP hazards.

This action is not subject to the requirements of UMRA section 203 because it contains no regulatory requirements that exceed the inflation-adjusted cost significance threshold or

uniquely affect small governments. Additionally, although EPA does not believe that this action would impose an unfunded mandate on Tribal governments or otherwise have substantial direct effects on one or more federally recognized Indian Tribes as specified in Executive Order 13175, the Agency is soliciting input from Tribal officials during the public comment period.

#### *E. Executive Order 13132: Federalism*

EPA has concluded that this action has federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it imposes substantial direct compliance costs on public housing authorities that state or local governments may be obligated to offset, and while some HUD funding for LBP projects exists, the Federal Government may not provide the funds necessary to pay the entirety of the costs. These costs to public housing authorities—estimated at \$143 million for the primary option—cover additional lead hazard reduction activities, cleaning, and dust-lead testing to ensure that public housing units are in compliance with the LSHR. Public school districts that administer COFs are also estimated to have annual compliance costs of approximately \$904 thousand. Additionally, states that have authorized LBP Activities programs must demonstrate that they have DLHS and DLCL at least as protective as the levels at 40 CFR 745.65 and 40 CFR 745.227. However, authorized states are under no obligation to continue to administer the LBP Activities program, and if they do not wish to adopt the new DLHS and DLCL they can relinquish their authorization. In the absence of a state authorization, EPA will administer these requirements.

EPA provides the following federalism summary impact statement. EPA consulted with state and local officials early in the process of developing the proposed action to permit them to have meaningful and timely input into its development. EPA invited the following national organizations representing state and local elected officials to a consultation meeting on November 10, 2022: National Governors' Association, National Conference of State Legislatures, U.S. Conference of Mayors, National League of Cities, Council of State Governments, International City/County Management Association, National Association of Counties, National Association of Towns and Townships, County Executives of America, and Environmental Council of the States. Additionally, the agency

invited professional organizations that represent or have state and local government members, such as Public Housing Authorities Directors Association, Council of Large Public Housing Authorities, Association of State and Territorial Health Officials, American Public Works Association, and other groups to participate in the meeting.

During the consultation EPA presented an overview on LBP terminology, authorized programs and background on the DLHS and the DLCL, including the relevant statutory authority and regulatory and litigation history. EPA also discussed potentially impacted entities, especially those relevant to the organizations present, as well as the three regulatory approaches for DLHS (*i.e.*, GTZ, numeric standard, and the post-1977 background) and what the Agency is considering while revising the DLCL. EPA concluded the consultation with a description of the preliminary costs and benefits, an update on target housing revisions, and a series of targeted questions for organizations' consideration.

Throughout the presentation several clarifying questions/comments were posed and responded to about the program requirements, triggers, and impacted entities. One commenter inquired whether cost estimates were included for COFs. EPA responded that the costs to COFs had not been considered; these costs are now included in the analysis. The Agency has also added a request for comment seeking additional data on COFs, see Unit VII.

Additionally, two commenters expressed concerns about having adequate funding for public housing authorities to meet their basic needs, such as electricity, and the inability to be proactive about issues such as lead, due to those same financial concerns. EPA appreciates those concerns being highlighted and will note that according to the 2021 Court Opinion the Agency cannot take into account non-health factors, such as costs, when revising the DLHS. However, the Agency can consider non-health factors when revising the DLCL. In this proposal EPA has a lower primary and higher alternative DLCL, which the Agency is requesting comment on. EPA has also spoken to nine NLLAP laboratories and has incorporated their feedback into the discussion surrounding DLCL within Unit IV.B. EPA is also requesting comment on a phased approach for the DLCL (*i.e.*, lowering the DLCL to the alternative and then the primary options), and on whether this proposal will have impacts on tenants or

landlords of public housing, including the potential to impact availability of federally assisted housing.

After the consultation was complete, EPA provided the organizations and officials an opportunity to provide follow-up comments in writing. The Agency received one comment from a non-profit organization whose members consist of over seventy large public housing authorities (Ref. 99). The commenter highlighted that a large portion of public housing properties are dated, resulting in many families and children who are living in dated housing units. They explained that public housing authorities have unmet financial needs and strongly encouraged the Agency to consider costs when revising the DLCL. The commenter expressed concerns about the lower DLCL resulting in a need to switch laboratory technology to ICP, which could require a larger surface area, increase turnaround time and an increase in costs. Feedback on all three DLHS approaches was also provided, notably that the post-1977 background approach would incur the highest costs and was "undesirable as currently presented" and the commenter emphasized the importance of communication materials and clear communication surrounding the GTZ approach.

The Agency appreciates the feedback provided to the EPA during the consultation process. Regarding concerns over the laboratories moving to ICP, EPA conducted laboratory outreach and included their feedback in this proposed rule. EPA is proposing the primary DLCL of 3/20/25  $\mu\text{g}/\text{ft}^2$  and is also proposing an alternative DLCL of 5/40/100  $\mu\text{g}/\text{ft}^2$  and requesting comment on both options. As mentioned above, EPA is also requesting comment on a phased approach to lowering the DLCL, as well as the proposal to extend the compliance date by one year and whether it should be shorter or longer to allow laboratories adequate time to adjust. Additionally, the Agency agrees that communication surrounding the GTZ approach may be an important element of this rulemaking and has added in an additional request for comment in Unit VII.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have Tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and

the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Federally recognized Tribes that have authorized LBP Activities programs must demonstrate that they have DLHS and DLCL at least as protective as the levels at 40 CFR 745.65 and 40 CFR 745.227. However, these authorized Tribes are under no obligation to continue to administer the LBP Activities program, and if they do not wish to adopt the new DLHS and DLCL they can relinquish their authorization. In the absence of a Tribal authorization, EPA will administer these requirements. This action does not create an obligation for Tribes to administer LBP Activities programs or alter EPA's authority to administer these programs. For these reasons, Executive Order 13175 does not apply to this action. However, EPA still intends to hold a Tribal consultation on this rulemaking in order to solicit input from Tribal officials from the four Indian Tribes with authorized programs during the public comment period. This consultation will also be open to any Tribal officials who would like to participate. EPA will ensure that the consultation materials are accessible to Tribal officials so that they may view it later as they consider submitting feedback during the public comment period. If a Tribal official is interested in attending the consultation on behalf of an Indian Tribe, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) directs Federal agencies that Federal health and safety standards must include an evaluation of the health and safety effects of the planned regulation on children. This action is subject to Executive Order 13045 because it is a significant regulatory action under section 3(f)(1) of Executive Order 12866, and EPA believes that the environmental health or safety risk addressed by this action has a disproportionate effect on children as they are more susceptible to the adverse health effects of lead due to their behavior and physiology. Accordingly, we have evaluated the environmental health or safety effects of dust-lead exposure on children.

The results of this evaluation are contained in Unit I.E. and in the EA and TSD, where the health impacts of lead exposure on children are discussed more fully (Refs. 14 and 16). The documents referenced above are

available in the public docket for this action.

The proposed DLHS aligns with the current state of the science, which does not support identifying a threshold of dust-lead exposure below which there would be no adverse human health effects; while the proposed DLCL is more health protective than the alternative in that it results in the least amount of dust-lead left on a surface after the completion of an abatement. EPA is proposing to revise the DLCL given the statutory criteria of reliability, effectiveness, and safety. Furthermore, EPA's Policy on Children's Health also applies to this action. Discussion about how the Agency applied this policy is presented in Unit I.E.6.

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

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

*I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51*

This action involves technical standards under NTTAA section 12(d), 15 U.S.C. 272 *note*. ASTM E1728 and ASTM E1792 are already cited in an existing regulatory definition of "wipe sample" at 40 CFR 745.63. EPA is proposing to formally incorporate the most current version of these standards (*i.e.*, ASTM E1728–20 and ASTM E1792–20). Additional information about these standards, including how to access them, is provided in Unit IV.F.8.

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

Executive Order 12898 (59 FR 7629, February 16, 1994) directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color and/or indigenous peoples) and low-income populations.

EPA believes that the human health or environmental conditions that exist prior to this action result in or have the potential to result in disproportionate and adverse human health or

environmental effects on people of color, low-income populations and/or Indigenous peoples. See discussion in Section 8.6 of the EA concerning existing disproportionate impacts of lead pollution faced by children in low-income households and households of people of color and/or Indigenous peoples, and the measured extent to which this action particularly benefits the health of children in low-income households.

EPA believes that this action is likely to reduce existing disproportionate and adverse effects on communities with environmental justice concerns. For example, 49% of children who will benefit from the rule are members of households below the poverty line, compared to 17% of children nationally who live below the poverty line. An estimated 44% of total monetized benefits from this rule accrue to children living in a household below the poverty line. 22–27% of children who will benefit from the rule are non-Hispanic Black, compared to 12% of children nationally who are non-Hispanic Black. An estimated 23% of total monetized benefits from this rule accrue to non-Hispanic Black children.

There is some uncertainty, however, regarding the environmental justice implications of this rule on HUD-assisted housing. If the rule inadvertently limits the availability of federally-assisted affordable housing, a subset of low-income individuals or families currently residing in assisted housing may face higher housing costs on the private market, disruptions caused by an involuntary loss of housing, and the potential for dust lead levels that exceed those in their baseline LSHR-regulated housing.

EPA additionally identified and addressed environmental justice concerns through public comment and collaboration with state, Tribal, and other co-regulatory bodies related to the EJ2020 action agenda and the development of the Lead Strategy. Through the agency-wide Lead Strategy, EPA has engaged with key stakeholders, communities, and organizations with vested interests in addressing lead exposures. Disparities in lead pollution are a national area of focus in the EJ2020 action agenda (Ref. 100), and this rulemaking's protective standards will deliver demonstrative progress on addressing childhood lead exposure and health disparities to members of overburdened communities.

The information supporting the Executive Order 12898 review is contained in the EA (Ref. 14) and Lead Strategy (Ref. 10), both of which are available in the docket.

**List of Subjects in 40 CFR Part 745**

Environmental protection, Abatement, Child-occupied facility, Clearance levels, Hazardous substances, Lead, Lead poisoning, Lead-based paint, Target housing.

**Michael S. Regan,**  
Administrator.

Therefore, for the reasons set forth in the preamble, it is proposed that 40 CFR chapter I be amended as follows:

**PART 745—LEAD-BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES**

■ 1. The authority citation for part 745 continues to read as follows:

**Authority:** 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

■ 2. Amend § 745.63 by adding in alphabetical order a definition for “Reportable level” to read as follows:

**§ 745.63 Definitions.**

\* \* \* \* \*

*Reportable level* means the lowest analyte concentration (or amount) that does not contain a “less than” qualifier and that is reported with confidence for a specific method by a laboratory recognized by EPA under TSCA section 405(b).

\* \* \* \* \*

■ 3. Amend § 745.65 by revising paragraph (b) to read as follows:

**§ 745.65 Lead-based paint hazards.**

\* \* \* \* \*

(b) *Dust-lead hazard.* Before [DATE 12 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], a dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of lead equal to or exceeding 10 µg/ft<sup>2</sup> for floors or 100 µg/ft<sup>2</sup> for interior window sills based on wipe samples. On or after [DATE 12 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE **FEDERAL REGISTER**], a dust-lead hazard is surface dust in a residential dwelling or child-occupied facility that contains a mass-per-area concentration of any reportable level of lead for floors or for interior window sills based on wipe samples analyzed by an NLLAP-recognized laboratory.

\* \* \* \* \*

■ 4. Amend § 745.81 by:

■ a. Removing paragraph (a)(4)(i) and redesignating paragraph (a)(4)(ii) as paragraph (a)(4); and

■ b. Revising paragraph (b).

The revisions read as follows:

**§ 745.81 Effective dates.**

(a) \* \* \*

(4) *Work practices.* \* \* \*

\* \* \* \* \*

(b) *Renovation-specific pamphlet.* On or after December 22, 2008, renovators or firms performing renovations in States and Indian Tribal areas without an authorized program must provide owners and occupants the following EPA pamphlet: *Renovate Right: Important Lead Hazard Information for Families, Child Care Providers and Schools.*

\* \* \* \* \*

■ 5. Amend § 745.83, by adding in alphabetical order a definition for “Electronic” to read as follows:

**§ 745.83 Definitions.**

\* \* \* \* \*

*Electronic* means the submission of an application, payment, or notification using the Agency’s Central Data Exchange (CDX), or successor platform.

\* \* \* \* \*

■ 6. Amend § 745.89 by revising paragraphs (a)(1), (b)(1), and (c)(1) to read as follows:

**§ 745.89 Firm certification.**

(a) \* \* \*

(1) Firms that perform renovations for compensation must electronically apply to EPA for certification to perform renovations or dust sampling. To apply, a firm must submit to EPA a completed “Application for Firms,” signed by an authorized agent of the firm, and pay electronically at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

\* \* \* \* \*

(b) \* \* \*

(1) *Timely and complete application.* To be re-certified, a firm must submit a complete electronic application for re-certification. A complete application for re-certification includes a completed “Application for Firms” which contains all of the information requested by the form and is signed by an authorized agent of the firm, noting on the form that it is submitted as a re-certification. A complete application must also include at least the correct amount of fees. If a firm pays more than the correct amount of fees, EPA will reimburse the firm for the excess amount.

(i) An application for re-certification is timely if it is electronically submitted 90 days or more before the date the firm’s current certification expires. If the firm’s application is complete and timely, the firm’s current certification will remain in effect until its expiration

date or until EPA has made a final decision to approve or disapprove the re-certification application, whichever is later.

\* \* \* \* \*

(c) \* \* \*

(1) To amend certification, a firm must electronically submit a completed “Application for Firms,” signed by an authorized agent of the firm, noting on the form that it is submitted as an amendment and indicating the information that has changed. The firm must also pay at least the correct amount of fees.

\* \* \* \* \*

■ 7. Amend § 745.90 by revising paragraphs (a)(3) and (4) to read as follows:

**§ 745.90 Renovator certification and dust sampling technician certification.**

(a) \* \* \*

(3) Individuals who have successfully completed an accredited lead-based paint inspector or risk assessor course before October 4, 2011, may take an accredited refresher dust sampling technician course in lieu of the initial training to become a certified dust sampling technician. Individuals who are currently certified as lead-based paint inspectors or risk assessors may act as certified dust sampling technicians without further training.

(4) To maintain renovator certification or dust sampling technician certification, an individual must complete a renovator or dust sampling technician refresher course accredited by EPA under § 745.225 or by a State or Tribal program that is authorized under subpart Q of this part within 5 years of the date the individual completed the initial course described in paragraph (a)(1) of this section. If the individual does not complete a refresher course within this time, the individual must re-take the initial course to become certified again. Individuals who take a renovator refresher course that does not include hands-on training will be certified for 3 years from the date they complete the training. Individuals who take a refresher training course that includes hands-on training will be certified for 5 years. Individuals who take the renovator refresher without hands-on training must, for their next refresher course, take a refresher course that includes hands-on training to maintain renovator certification.

\* \* \* \* \*

■ 8. Amend § 745.92 by revising paragraph (c)(2) to read as follows:

**§ 745.92 Fees for the accreditation of renovation and dust sampling technician training and the certification of renovation firms.**

\* \* \* \* \*

(c) \* \* \*

(2) Submit the application and a payment of \$15 electronically in accordance with the instructions provided with the application package.

■ 9. Amend § 745.103 by revising the definition for “Target housing” to read as follows:

**§ 745.103 Definitions.**

\* \* \* \* \*

*Target housing* means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing).

\* \* \* \* \*

■ 10. Amend § 745.113 by revising paragraphs (a)(4), (b)(1) and (4) to read as follows:

**§ 745.113 Certification and acknowledgement of disclosure.**

(a) \* \* \*

(4) A statement by the purchaser affirming receipt of the information set out in paragraphs (a)(2) and (3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2686.

\* \* \* \* \*

(b) \* \* \*

(1) A Lead Warning Statement with the following language:

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and/or lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

\* \* \* \* \*

(4) A statement by the lessee affirming receipt of the information set out in paragraphs (b)(2) and (3) of this section and the lead hazard information pamphlet required under 15 U.S.C. 2686.

\* \* \* \* \*

■ 11. Amend § 745.223 by:

- a. Revising the introductory text and paragraphs (1), (3)(i) through (iii), and (4) of the definition for “Abatement”;
- b. Revising the definition for “Child-occupied facility”;
- c. Adding in alphabetical order the definitions for “Electronic” and “Housing for the elderly”; and

■ d. Revising the definitions for “Living area” and “Target housing”.

The revisions and additions read as follows:

**§ 745.223 Definitions.**

\* \* \* \* \*

*Abatement* means any measure or set of measures designed to permanently eliminate lead-based paint hazards, in the case of dust-lead hazards to below the clearance levels. Abatement includes, but is not limited to:

(1) The removal of paint and dust (in the case of dust-lead hazards to below the clearance levels), the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust or soil; and

\* \* \* \* \*

(3) \* \* \*

(i) \* \* \*

(A) Shall result in the permanent elimination of lead-based paint hazards, in the case of dust-lead hazards to below the clearance levels; or

(B) Are designed to permanently eliminate lead-based paint hazards, in the case of dust-lead hazards to below the clearance levels, and are described in paragraphs (1) and (2) of this definition.

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, in the case of dust-lead hazards to below the clearance levels, conducted by firms or individuals certified in accordance with § 745.226, unless such projects are covered by paragraph (4) of this definition;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, in the case of dust-lead hazards to below the clearance levels, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by paragraph (4) of this definition; or

\* \* \* \* \*

(4) Abatement does not include renovation, remodeling, landscaping or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, in the case of dust-lead hazards to below the clearance levels, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based

paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards, in the case of dust-lead hazards to below the clearance levels.

\* \* \* \* \*

*Child-occupied facility* means a building, or portion of a building, constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least two different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least 3 hours and the combined weekly visit lasts at least 6 hours, and the combined annual visits last at least 60 hours. Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

\* \* \* \* \*

*Electronic* means the submission of an application, payment, or notification using the Agency’s Central Data Exchange (CDX), or successor platform.

\* \* \* \* \*

*Housing for the elderly* means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more at the time of initial occupancy.

\* \* \* \* \*

*Living area* means any area of a residential dwelling used by one or more children under age 6 including, but not limited to, living rooms, kitchen areas, dens, play rooms, and children’s bedrooms.

\* \* \* \* \*

*Target housing* means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities or any 0-bedroom dwelling (unless any child who is less than 6 years of age resides or is expected to reside in such housing).

\* \* \* \* \*

■ 12. Amend § 745.225 by:

- a. Revising the introductory text of paragraph (b)(1), paragraphs (c)(13)(vi) and (14)(iii), the introductory text of paragraph (e)(5) and paragraph (f)(2);
- b. Removing and reserving paragraph (i)(2)(ii); and
- c. Revising paragraph (j)(2).

The revisions read as follows:

**§ 745.225 Accreditation of training programs: target housing and child-occupied facilities.**

\* \* \* \* \*

(b) \* \* \*

(1) A training program seeking accreditation shall submit an electronic

application to EPA containing the following information:

\* \* \* \* \*

(c) \* \* \*

(13) \* \* \*

(vi) Notification must be accomplished electronically.

Instructions can be obtained online at <https://www.epa.gov/lead> or from the NLIC at 1-800-424-LEAD (5323). Hearing- or speech-impaired persons may reach the above telephone number through TTY by calling the toll-free Federal Communications Commission's Telecommunications Relay Service at 711.

\* \* \* \* \*

(14) \* \* \*

(iii) Notification must be accomplished electronically.

Instructions can be obtained online at <https://www.epa.gov/lead> or from the NLIC at 1-800-424-LEAD (5323).

\* \* \* \* \*

(e) \* \* \*

(5) A training program seeking accreditation to offer refresher training courses only shall submit an electronic application to EPA containing the following information:

\* \* \* \* \*

(f) \* \* \*

(2) A training program seeking re-accreditation shall submit an electronic application to EPA no later than 180 days before its accreditation expires. If a training program does not submit its application for re-accreditation by that date, EPA cannot guarantee that the program will be re-accredited before the end of the accreditation period.

\* \* \* \* \*

(i) \* \* \*

(2) \* \* \*

(ii) [Reserved]

\* \* \* \* \*

(j) \* \* \*

(2) To amend an accreditation, a training program must electronically submit a completed "Accreditation Application for Training Providers," signed by an authorized agent of the training provider, noting on the form that it is submitted as an amendment and indicating the information that has changed.

\* \* \* \* \*

■ 13. Amend § 745.226 by:

■ a. Revising paragraph (a)(1), introductory text of paragraph (e)(1), paragraphs (e)(2), (f)(2) and (3);

■ b. Removing and reserving paragraph (f)(5); and

■ c. Revising paragraph (h)(1)(iii).

The revisions read as follows:

**§ 745.226 Certification of individuals and firms engaged in lead-based paint activities: target housing and child-occupied facilities.**

(a) \* \* \*

(1) \* \* \*

(i) Submit to EPA an electronic application demonstrating that they meet the requirements established in paragraphs (b) or (c) of this section for the particular discipline for which certification is sought; or

(ii) Submit to EPA an electronic application attaching a valid lead-based paint activities certification (or equivalent) from a State or Tribal program that has been authorized by EPA pursuant to subpart Q of this part.

(2) [Reserved]

(3) Following the submission of an electronic application demonstrating that all the requirements of this section have been met, EPA shall certify an applicant as an inspector, risk assessor, supervisor, project designer, or abatement worker, as appropriate.

\* \* \* \* \*

(e) \* \* \*

(1) To maintain certification in a particular discipline, a certified individual shall apply electronically to and be re-certified by EPA in that discipline by EPA either:

\* \* \* \* \*

(2) An individual shall be re-certified if the individual successfully completes the appropriate accredited refresher training course and electronically submits a valid copy of the appropriate refresher course completion certificate.

\* \* \* \* \*

(f) \* \* \*

(2) A firm seeking certification shall electronically submit to EPA an application attesting that the firm shall only employ appropriately certified employees to conduct lead-based paint activities, and that the firm and its employees shall follow the work practice standards in § 745.227 for conducting lead-based paint activities.

(3) From the date of receiving the firm's electronic application requesting certification, EPA shall have 90 days to approve or disapprove the firm's request for certification. Within that time, EPA shall respond with either a certificate of approval or a letter describing the reasons for a disapproval.

\* \* \* \* \*

(5) [Reserved]

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

(iii) Misrepresented facts in its electronic application for certification to EPA.

\* \* \* \* \*

■ 14. Amend § 745.227 by:

■ a. Revising paragraphs (c)(2)(i), (iv) and (v), (d)(3), (5), (6)(ii) and (7), (e)(4)(ii), (vii) and (8)(viii);

■ b. Adding paragraph (e)(10)(vii); and

■ c. Revising paragraph (h)(3).

The revisions and additions read as follows:

**§ 745.227 Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities.**

\* \* \* \* \*

(c) \* \* \*

(2) \* \* \*

(i) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children under age 6 shall be collected.

\* \* \* \* \*

(iv) In residential dwellings, two composite dust samples shall be collected, one from the floors and the other from the windows, in rooms, hallways or stairwells where one or more children, under age 6, are most likely to come in contact with dust.

(v) In multi-family dwellings and child-occupied facilities, in addition to the floor and window samples required in paragraph (c)(1)(iii) of this section, the risk assessor shall also collect composite dust samples from common areas where one or more children, under age 6, are most likely to come into contact with dust.

\* \* \* \* \*

(d) \* \* \*

(3) Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to one or more children under age 6 shall be collected.

\* \* \* \* \*

(5) In residential dwellings, dust samples (either composite or single-surface samples) from the interior window sill(s) and floor shall be collected and analyzed for lead concentration in all living areas where one or more children, under age 6, are most likely to come into contact with dust.

(6) \* \* \*

(ii) Other common areas in the building where the risk assessor determines that one or more children, under age 6, are likely to come into contact with dust.

(7) For child-occupied facilities, interior window sill and floor dust samples (either composite or single-surface samples) shall be collected and

analyzed for lead concentration in each room, hallway or stairwell utilized by one or more children, under age 6, and in other common areas in the child-occupied facility where one or more children, under age 6, are likely to come into contact with dust.

\* \* \* \* \*

(e) \* \* \*

(4) \* \* \*

(ii) Notification for lead-based paint abatement activities required in response to an elevated blood lead level (EBL) determination, or Federal, State, Tribal, or local emergency abatement order should be received by EPA as early as possible before, but must be received no later than, the start date of the lead-based paint abatement activities. Should the start date and/or location provided to EPA change, an updated notification must be received by EPA on or before the start date provided to EPA. Documentation showing evidence of an EBL determination or a copy of the Federal/State/Tribal/local emergency abatement order must be included in the notification to take advantage of this abbreviated notification period.

\* \* \* \* \*

(vii) Notification must be accomplished electronically. Instructions can be obtained online at <https://www.epa.gov/lead>, or from the NLIC at 1-800-424-LEAD (5323).

\* \* \* \* \*

(8) \* \* \*

(viii) Before [DATE 12 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], the clearance levels for lead in dust are 10 µg/ft² for floors, 100 µg/ft² for interior window sills, and 400 µg/ft² for window troughs; on or after [DATE 12 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], the clearance levels for lead in dust are 3 µg/ft² for floors, 20 µg/ft² for interior window sills, and 25 µg/ft² for window troughs.

\* \* \* \* \*

(10) \* \* \*

(vii) On or after [DATE 12 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], when dust-lead clearance sampling results are below the dust-lead clearance levels and at or above the dust-lead hazard standards, a dust-lead hazard statement with the following language must be included:

Although the completed abatement project achieved dust-lead levels below clearance, some dust-lead hazards remain because any reportable level of dust-lead is considered a

dust-lead hazard. In order for abatement work to be considered complete, dust-lead levels must be below clearance levels, which are established based on reliability, effectiveness and safety. To continue to reduce lead exposure from dust, the EPA pamphlet entitled *Protect Your Family From Lead in Your Home* includes recommendations such as: using a vacuum with a high-efficiency particulate air (HEPA) filter on furniture and other items returned to the work area and regularly cleaning hard surfaces with a damp cloth or sponge and a general all-purpose cleaner. For more information on how to continue to reduce lead exposure see *Protect Your Family From Lead in Your Home*.

\* \* \* \* \*

(h) \* \* \*

(3) Dust-lead hazards and dust-lead clearance levels are identified for residential dwellings and child-occupied facilities as follows:

(i) Before [DATE 12 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], a dust lead-hazard is present in a residential dwelling on floors and interior window sills when the weighted arithmetic mean lead loading for all single surface or composite samples of floors and interior window sills are equal to or greater than 10 µg/ft² for floors and 100 µg/ft² for interior window sills, respectively; for projects where clearance sampling is required or otherwise performed, levels of lead in dust must be below 10 µg/ft² for floors, 100 µg/ft² for interior window sills, and 400 µg/ft² for window troughs for purposes of clearance; on or after [DATE 12 MONTHS AFTER THE DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], a dust lead-hazard is present in a residential dwelling on floors and interior window sills when the lead loading for any single surface or composite sample of floors and interior window sills is equal to or greater than any reportable level of dust-lead for floors and for interior window sills; for projects where clearance sampling is required or otherwise performed, levels of lead in dust must be below 3 µg/ft² for floors, 20 µg/ft² for interior window sills, and 25 µg/ft² for window troughs for purposes of clearance;

(ii) A dust lead-hazard is present on floors or interior window sills in an unsampled residential dwelling in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled residential unit on the property (and, for projects where clearance sampling is required or otherwise performed, levels of lead in dust must be below the applicable value

from paragraph (h)(3)(i) of this section for purposes of clearance); and

(iii) A dust lead-hazard is present on floors or interior window sills in an unsampled common area in a multi-family dwelling, if a dust-lead hazard is present on floors or interior window sills, respectively, in at least one sampled common area in the same common area group on the property (and, for projects where clearance sampling is required or otherwise performed, levels of lead in dust must be below the applicable value from paragraph (h)(3)(i) of this section for purposes of clearance).

\* \* \* \* \*

- 15. Amend § 745.238 by:
  - a. Revising paragraphs (d)(1) and (2),
  - b. Removing paragraph (d)(3),
  - c. Revising paragraphs (e)(1) and (2).

The revisions read as follows:

**§ 745.238 Fees for accreditation and certification of lead-based paint activities.**

\* \* \* \* \*

(d) \* \* \*

(1) *Certification and re-certification.*

(i) *Individuals.* Submit a completed application electronically (titled “Application for Individuals to Conduct Lead-based Paint Activities”), the materials described at § 745.226, and the application fee(s) described in paragraph (c) of this section.

(ii) *Firms.* Submit a completed application electronically (titled “Application for Firms”), the materials described at § 745.226, and the application fee(s) described in paragraph (c) of this section.

(2) *Accreditation and re-accreditation.* Submit a completed application electronically (titled “Accreditation Application for Training Programs”), the materials described at § 745.225, and the application fee described in paragraph (c) of this section.

(e) \* \* \*

(1) Parties seeking identification card or certificate replacement shall electronically complete the applicable portions of the appropriate application in accordance with the instructions provided.

The appropriate applications are:

\* \* \* \* \*

(2) Submit application and payment electronically in the amount specified in paragraph (c)(3) of this section in accordance with the instructions.

\* \* \* \* \*

■ 16. Amend § 745.325 by revising paragraph (d)(3)(ii) to read as follows:

**§ 745.325 Lead-based paint activities: State and Tribal program requirements.**

\* \* \* \* \*

(d) \* \* \*

(3) \* \* \*

(ii) Abatement permanently eliminate lead-based paint hazards, in the case of dust-lead hazards to below the clearance levels, and are conducted in a way that does not increase the

hazards of lead-based paint to the occupants of the dwelling or child-occupied facility.

\* \* \* \* \*

[FR Doc. 2023-15073 Filed 7-31-23; 8:45 am]

**BILLING CODE 6560-50-P**



# FEDERAL REGISTER

---

Vol. 88

Tuesday,

No. 146

August 1, 2023

---

Part IV

## Federal Communications Commission

---

47 CFR Parts 1 and 63

Review of International Authorizations To Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees; Proposed Rule

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 1 and 63

[IB Docket No. 23–119, MD Docket No. 23–134; FCC 23–28; FR ID 143248]

#### Review of International Authorizations To Assess Evolving National Security, Law Enforcement, Foreign Policy, and Trade Policy Risks; Amendment of the Schedule of Application Fees

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Communications Commission (Commission) takes another important step to protect the nation’s telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission’s rules that allow carriers to provide international telecommunications service. The Commission proposes rules that would require carriers to renew, every 10 years, their international authorizations. In the alternative, the Commission seeks comment on adopting rules that would require all international authorization holders to periodically update information enabling the Commission to review the public interest and national security implications of those authorizations based on that updated information. Through these proposals, the Commission seeks to ensure that the Commission is exercising appropriate oversight of international authorization holders to safeguard U.S. telecommunications networks.

**DATES:** Comments are due on or before August 31, 2023; and reply comments are due on or before October 2, 2023. Written comments on the Paperwork Reduction Act proposed information collection requirements must be submitted by the public, Office of Management and Budget (OMB), and other interested parties on or before October 2, 2023.

**ADDRESSES:** You may submit comments, identified by IB Docket No. 23–119 and MD Docket No. 23–134, by any of the following methods:

- *Federal Communications Commission’s Website:* <http://apps.fcc.gov/ecfs/>. Follow the instructions for submitting comments.
- *Mail:* Parties who choose to file by paper must file an original and one copy of each filing.
  - Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All

filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Find this particular information collection by selecting “Currently under 60-day Review—Open for Public Comments” or by using the search function. Your comment must be submitted into [www.reginfo.gov](http://www.reginfo.gov) per the above instructions for it to be considered. In addition to submitting in [www.reginfo.gov](http://www.reginfo.gov) also send a copy of your comment on the proposed information collection to Cathy Williams, FCC or Nicole Ongele, via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov) or [Nicole.Ongele@fcc.gov](mailto:Nicole.Ongele@fcc.gov). Include in the comments the OMB control number 3060–0686.

**FOR FURTHER INFORMATION CONTACT:** Gabrielle Kim, Office of International Affairs, Telecommunications and Analysis Division, at (202) 418–0730 or via email at [Gabrielle.Kim@fcc.gov](mailto:Gabrielle.Kim@fcc.gov). For additional information concerning the Paperwork Reduction Act information collection requirements contained in this document, send an email to [PRA@fcc.gov](mailto:PRA@fcc.gov) or contact Cathy Williams, Office of Managing Director, at (202) 418–2918 or [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission’s Notice of Proposed Rulemaking, FCC 23–28, adopted on April 20, 2023, and released on April 25, 2023. The full text of this document is available on the Commission’s website at <https://docs.fcc.gov/public/attachments/FCC-23-28A1.pdf>. This Notice of Proposed Rulemaking is adopted pursuant to sections 4(i), 4(j), 201, 214, 218, 219, 403, and 413 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201, 214, 218, 219, 403, and 413.

To request materials in accessible formats for people with disabilities, send an email to [FCC504@fcc.gov](mailto:FCC504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

Pursuant to §§ 1.415 and 1.419 of the Commission’s rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission’s Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing.

- Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

- Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). <https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy>.

The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>1</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the

<sup>1</sup> 47 CFR 1.1200 *et seq.*

presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

#### Initial Paperwork Reduction Act of 1995 Analysis

This document contains proposed information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due October 2, 2023.

*Comments should address:* (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; (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; and (e) ways to further reduce the information

collection burden on small business concerns with fewer than 25 employees. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

#### Synopsis

##### I. Notice of Proposed Rulemaking

1. This document seeks comment on proposed rules and possible alternative approaches, including alternatives for small entities, that will further the Commission's goal of ensuring that the Commission continually accounts for evolving public interest considerations associated with international section 214 authorizations following an initial grant of the authority. *First*, the Commission proposes to cancel the authorizations of those international section 214 authorization holders that fail to respond to the one-time collection requirement adopted in the Order. *Second*, the Commission proposes to adopt a 10-year renewal framework for the Commission's reassessment of all authorizations or, in the alternative, seek comment on a formalized periodic review of such authorizations. *Third*, the Commission proposes to adopt a process that prioritizes renewal applications with foreign ownership to regularly reassess any evolving national security, law enforcement, foreign policy, and/or trade policy concerns, as opposed to reviewing international section 214 authorizations only on an *ad hoc* basis. The Commission intends to continue to collaborate with the relevant Executive Branch agencies and to refer matters to the Executive Branch agencies, including the Committee, where warranted. The Commission seeks comment on categorizing applications to minimize burdens on the relevant Executive Branch agencies, including the Committee. *Fourth*, the Commission proposes or seeks comment on new application rules to capture critical information from all applicants with and without reportable foreign ownership not currently collected and to require additional certifications. *Fifth*, to further ensure that carriers' use of their international section 214 authority is in the public interest, the Commission proposes and seeks comment on modifications to related Parts 1 and 63 rules. *Finally*, the Commission invites comment on the

costs and benefits of the proposed rules and any alternatives.

##### A. Failure To Timely Respond to One-Time Information Collection

2. In the Order, the Commission directs each authorization holder to identify its 10% or greater direct or indirect foreign interest holders (reportable foreign ownership), as of thirty (30) days prior to the filing deadline. If an international section 214 authorization holder fails to timely respond to the information collection required in the Order, the Commission proposes to cancel its authorization. The Commission would deem the failure to respond to the Order as presumptive evidence that the authorization holder is no longer in operation. The Commission proposes to publish a list of non-responsive authorization holders in the **Federal Register** and provide an additional 30 days from that publication for those authorization holders to respond to the information collection requirement or surrender the authorization. If an authorization holder has not responded within 30 days of the publication of the notice in the **Federal Register**, the Commission proposes that those authorizations would be automatically cancelled. The Commission notes that authorization holders that fail to comply with the information collection required in the Order are subject to forfeitures in addition to cancellation. The Commission tentatively finds this proposal is reasonable and necessary to ensure the accuracy of the Commission's records regarding international section 214 authorization holders and in consideration of the Commission's need to implement a renewal or, in the alternative, periodic review process with administrative efficiency.

3. The Commission proposes that any authorization holder whose authorization is cancelled for failure to timely respond to the information collection may file a petition for reinstatement *nunc pro tunc* of the authorization. The Commission proposes that a petition for reinstatement will be considered: (1) if it is filed within six months after publication of the **Federal Register** notice; (2) if the petition demonstrates that the authorization holder is currently in operation and has customers; and (3) if the petition demonstrates good cause for the failure to timely respond. The Commission proposes that an authorization holder whose authorization is cancelled under these procedures would be able to file an application for a new international

214 authorization in accordance with the Commission's rules, which would be subject to full review. The Commission seeks comment on the cancellation process generally and if there are any proposals to assist small entities. Should there be any other procedural requirements if an authorization holder does not file a petition for reinstatement within six months after publication of the **Federal Register** notice? The Commission seeks comment whether these procedures would provide non-responsive authorization holders with sufficient due process and notice and opportunity to respond.

#### *B. International Section 214 Renewal or Periodic Review Requirements*

##### 1. Legal Authority

4. *Legal Authority.* As described below, the Commission proposes to adopt a 10-year renewal requirement for all international section 214 authorization holders, whereby those authorization holders must periodically demonstrate that their authorization continues to serve the public interest, and such authorization would expire following appropriate proceedings if the holder fails to meet that burden. In the alternative, the Commission seeks comment on adopting a periodic review process whereby international section 214 authorization holders must periodically submit similar information demonstrating that their authorization continues to serve the public interest, and the Commission or the Office of International Affairs could institute a revocation proceeding if the holder fails to meet that burden. As a threshold matter, the Commission tentatively finds that it has the authority to require the renewal of international section 214 authorizations. The Commission also tentatively concludes that it has the authority to adopt a periodic review process as an exercise of its power to revoke authorizations.

5. The Commission tentatively concludes that it has direct and ancillary authority under sections 4(i), 201(b), and 214 of the Act—individually and collectively—to adopt terms and conditions of service for international section 214 authorizations, including time limits on an authorization, and to cancel an authorization through non-renewal of the international section 214 authority where the Commission determines that the public interest so requires. Section 214 of the Act does not expressly require the renewal of section 214 authorizations unlike section 307(c), which permits the Commission to prescribe license terms by rule,

except that broadcast license terms may not exceed eight years. Although section 214 does not expressly provide for renewal of authorizations, section 214(c) affords the Commission discretion to grant the authority requested or “refuse” to do so, and the Commission may condition any grant on “such terms and conditions as in its judgment the public convenience and necessity may require.” In addition, under section 4(i), the Commission has broad authority to adopt rules, not inconsistent with the Act, “as may be necessary in the execution of its functions.” Under section 201(b) the Commission has broad general grant of rulemaking authority to “prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of this [Act].”<sup>2</sup>

6. Section 214(a) of the Act prohibits any carrier from constructing, acquiring, or operating any line, and from engaging in transmission through any such line, without first obtaining a certificate from the Commission “that the *present or future* public convenience and necessity require or will require the construction, or operation, or construction and operation, of such . . . line . . . .” Thus, the Act requires the Commission to ensure that not only the “construction” of the line, but also its “operation,” further the public convenience and necessity. In addition, the Act requires the Commission to ensure that not only the present, but also the future operations of a telecommunications carrier authorized to provide service under section 214, further the public convenience and necessity. Promotion of national security is an integral part of the Commission's public interest responsibility, including its administration of section 214 of the Act and one of the core purposes for which Congress created the Commission.<sup>3</sup> In

<sup>2</sup> 47 U.S.C. 201(b). Indeed, in upholding Commission's exercise of ancillary jurisdiction pursuant to section 201(b), the Supreme Court stated in *AT&T v. Iowa Utilities Board* that “[w]e think that the grant in § 201(b) means what it says: The FCC has rulemaking authority to carry out the ‘provisions of this Act.’” 525 U.S. 366, 378 (1999).

<sup>3</sup> Section 1 of the Act provides that Congress created the Commission, among other reasons, “for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communications . . . .” 47 U.S.C. 151; see, e.g., *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15968, paragraph 3, *aff'd*, *China Telecom (Americas) Corp. v. FCC*; *China Unicom Americas Order on Revocation at \*2*, paragraph 3; *Pacific Networks/ComNet Order on Revocation and Termination at \*2*, paragraph 3; *Protecting Against National Security Threats Order*, 34 FCC Rcd 11423, *aff'd*, *Huawei Technologies USA, Inc. v. FCC*, 2 F.4th 421, 439; *2022 Protecting Against National Security Threats Order*.

recent revocation actions, the Commission has found, given established statutory directives and longstanding Commission determinations, that it has authority to revoke section 214 authority. By the same reasoning, the Commission tentatively finds that it has the authority to require the renewal and/or periodic review of a carrier's international section 214 authority to ensure that the public convenience and necessity continues to be served by the carrier's operations.

7. In addition, section 214(c) of the Act permits the Commission to “attach to the issuance of the [section 214] certificate such terms and conditions as in its judgment the public convenience and necessity may require.” In granting all telecommunications carriers blanket domestic section 214 authority, the Commission found that the “present and future public convenience and necessity require the construction and operation of all domestic new lines pursuant to blanket authority,” subject to the Commission's ability to revoke a carrier's section 214 authority when warranted to protect the public interest.<sup>4</sup> Likewise, when the Commission opened the U.S. telecommunications market to foreign participation in the late 1990s, it delineated a non-exhaustive list of circumstances where it reserved the right to designate for revocation an international section 214 authorization based on public interest considerations and stated that it considers “national security” and “foreign policy” concerns when granting authorizations under section 214 of the Act.<sup>5</sup> Thus, carriers

<sup>4</sup> *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15968 through 69, paragraph 4, *aff'd*, *China Telecom (Americas) Corp. v. FCC*; *China Unicom Americas Order on Revocation at \*2*, 9, paragraphs 4, 24; *Pacific Networks/ComNet Order on Revocation and Termination at \*2*, paragraph 4; *Domestic 214 Blanket Authority Order*, 14 FCC Rcd at 11374, paragraph 16. The Commission has explained that it grants blanket section 214 authority, rather than forbearing from application or enforcement of section 214 entirely, in order to remove barriers to entry without relinquishing its ability to protect consumers and the public interest by withdrawing such grants on an individual basis. *Id.* at 11372 through 73, 11374, paragraphs 12 through 14, 16.

<sup>5</sup> *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 15968 through 99, paragraph 4, *aff'd*, *China Telecom (Americas) Corp. v. FCC*; *China Unicom Americas Order on Revocation at \*2*, 9, paragraphs 4, 24; *Pacific Networks/ComNet Order on Revocation and Termination at \*2*, paragraph 4; *Foreign Participation Order*, 12 FCC Rcd at 23896, 23919 through 20, paragraphs 9, 61 through 63. With regard to revocation of an international section 214 authorization, the Commission in the *Foreign Participation Order* and the *Reconsideration Order* delineated a non-exhaustive list of circumstances where it reserved the right to designate for

are granted a section 214 authorization subject to the Commission's reserved power to revoke those authorizations if later circumstances warrant. Likewise, the Commission tentatively finds that under section 214(c) the Commission has reserved the power to adopt terms and conditions for authorizations granted under section 214 of the Act, such as requiring the renewal or other review of carriers' international section 214 authority, as the public convenience and necessity may require in order to provide the Commission the opportunity to assess whether an authorized telecommunications carrier and its operations raise national security, foreign policy, and/or trade policy concerns.

8. The Commission tentatively finds that section 4(i) of the Act provides further support for the Commission's authority to require renewal, or periodic review, of international section 214 authorizations. Section 4(i) authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with this Act, as may be necessary in the execution of its functions." The Commission has long found that section 4(i) "supports revocation authority, as reasonably ancillary to the Commission's authority to authorize common carrier service in the first instance." As the Commission explained, revocation authority "is necessary to ensure not only compliance with the Commission's rules and its requirements for truthfulness, but also that circumstances with serious national security and law enforcement consequences that would have been relevant in determining whether to authorize service remain relevant in light of significant developments since the time of such authorization." For these same reasons, the Commission tentatively finds that the authority to refuse renewal of or require periodic

revocation an international section 214 authorization based on public interest considerations. See, e.g., *Foreign Participation Order*, 12 FCC Rcd at 24023, paragraph 295; *Reconsideration Order*, 15 FCC Rcd at 18173, 18175 through 76, paragraphs 28, 35; see also 47 CFR 63.11(g)(2); *2014 Foreign Carrier Entry Order*, 29 FCC Rcd at 4259, 4266, paragraphs 6, 22. In the *Foreign Participation Order*, the Commission also stated it considers "national security" and "foreign policy" concerns when granting authorizations under section 214 of the Act. *Foreign Participation Order*, 12 FCC Rcd at 23919 through 20, paragraphs 61 through 63 (in regulating foreign participation in the U.S. telecom market in the late 1990s, the Commission recommitted to considering "national security" and "foreign policy" concerns when granting licenses under section 310(b)(4) and authorizations under section 214(a) of the Act, stating it would also continue to "accord deference" to expert Executive Branch views on these issues that would inform its "public interest analysis").

review of carriers' international section 214 authority is at least "reasonably ancillary" to the performance of the Commission's responsibilities under section 214 of the Act to ensure that a carrier's operations remain consonant with the "public convenience and necessity."

9. The Commission seeks comment on its legal analysis and whether these statutory provisions give the Commission broad flexibility to promulgate regulations—such as a renewal or, in the alternative, a periodic review process for international section 214 authorizations—that may not be expressly identified in precise terms where necessary to carry out the Commission's regulatory responsibilities under section 214 consistent with the purposes of the Act, such as promoting national security.<sup>6</sup> At a minimum, would such rules be "reasonably ancillary to the effective performance of the Commission's various responsibilities . . . ." The Commission also seeks comment on whether other statutory provisions provide a legal basis for adopting the renewal or in the alternative, a periodic review process outlined below. Would the Commission have authority to institute one of the proposals—periodic renewal or periodic review—but not the other?

10. *Due Process and Retroactivity*. As noted below, the Commission seeks comment on whether all international section 214 authorizations regardless of issuance date and ownership should be subject to renewal or, in the alternative, periodic review process. Because the renewal framework the Commission proposes to adopt will affect both existing authorization holders and authorizations held pursuant to applications granted, after the effective date of the renewal rules, the Commission seeks comment on due process and retroactivity concerns—including "primary" versus "secondary" retroactivity—that may arise from this proposal.<sup>8</sup> Specifically, the Commission seeks comment on the

<sup>6</sup> See, e.g., *United States v. Southwestern Cable Co.*, 392 U.S. 157, 178 (1968) (upholding the Commission's authority to regulate cable television).

<sup>7</sup> *Southwestern Cable*, 392 U.S. at 178; see also *AT&T v. Iowa Utilities Board*, 525 U.S. at 380 (noting that "'ancillary' jurisdiction . . . could exist even where the Act does not 'apply'") (emphasis in original).

<sup>8</sup> See, e.g., *Mobile Relay Assocs. v. FCC*, 457 F.3d 1, 11 (D.C. Cir. 2006) (non-renewal resulting from a new regulatory framework may "upset[] expectations based on prior law," but that is not primarily retroactive).

interplay between renewal standards and retroactivity concerns.

11. The courts have established a distinction for rules between "primary" retroactivity and "secondary" retroactivity. A rule is primarily retroactive if it (1) "increase[s] a party's liability for past conduct"; (2) "impair[s] rights a party possessed when he acted"; or (3) "impose[s] new duties with respect to transactions already completed." The standard for primary retroactivity assesses whether a rule has changed the past legal consequences of past actions. In contrast, a rule would be "secondarily" retroactive if it "affects a regulated entity's investment made in reliance on the regulatory status quo before the rule's promulgation." Secondary retroactivity will be upheld "if it is reasonable."

12. The Commission tentatively concludes that the renewal framework the Commission proposes here is not "primarily" retroactive as applied to applications granted after the effective date of any new rules, as the mere adoption of such a requirement would not make past conduct unlawful, alter rights the carrier had at the time an application was granted, or impose new duties with respect to completed transactions. For the same reasons, the Commission does not believe a renewal requirement as applied to existing authorization holders would be primarily retroactive—for example, because the Commission may revoke a section 214 authorization, grant of an application does not confer a permanent authorization. The Commission recognizes, however, that such a requirement could upset the expectations of existing authorization holders. To the extent the Commission's proposed renewal process constitutes "secondary" retroactivity, the Commission tentatively concludes it is reasonable and does not violate the Administrative Procedure Act as, among other things, the proposed renewal framework would simply provide for a more systematic review process that focuses on evolving national security, law enforcement, foreign policy, and/or trade policy concerns. The Commission seeks comment on its tentative conclusions. When and under what circumstances would denial of a renewal application trigger primary or secondary retroactivity concerns? For example, would non-renewal of an international section 214 authorization based on evolving national security, law enforcement, foreign policy, and/or trade policy risks, regardless of that authorization holder's ongoing compliance with the Commission's rules, have primary or secondary

retroactive effect? Additionally, would the application of renewal or, in the alternative, periodic review procedures to existing authorization holders require different standards or procedures based on retroactivity, reliance interests, or fair notice concerns?

## 2. Need for International Section 214 Renewal Requirements

13. The Commission's principal goal in this proceeding is to adopt a renewal process or, in the alternative, a formalized periodic review of international section 214 authorizations to assess evolving national security, law enforcement, foreign policy, and/or trade policy risks. As the Senate Subcommittee noted in the PSI Report, "[n]ational security and law enforcement concerns, as well as trade, and foreign policy concerns . . . are ever evolving, meaning that an authorization granted in one year may not continue to serve the public interest years later." The PSI Report stated, "[a]uthorizations effectively exist in perpetuity despite evolving national security implications," yet "[t]he FCC does not require a foreign carrier's authorization to be periodically reassessed to confirm the services continue to serve the public interest."

14. The Commission tentatively concludes that adopting a systemized renewal or, in the alternative, formalized periodic review process for international section 214 authorizations would better enable the Commission to ensure that an authorization, once granted, continues to serve the public interest. While neither the proposed renewal process nor a formalized periodic review process would supplant the Commission's existing authority to conduct *ad hoc* review of whether a carrier's retention of international section 214 authority presents national security, law enforcement, foreign policy, and/or trade policy risks that warrant revocation or termination of its international section 214 authority, this *ad hoc* review based on current information collection requirements does not allow the Commission to systematically and continually account for evolving risks.

15. The Commission tentatively concludes that the proposals in the Notice would help to ensure that the Commission and the Executive Branch agencies can continually account for evolving national security, law enforcement, foreign policy, and/or trade policy risks associated with the authorizations. As discussed above, the Executive Branch agencies may recommend that the Commission modify or revoke an existing

authorization if they at any time identify unacceptable risks to national security, law enforcement, foreign policy, and/or trade policy.<sup>9</sup> For instance, in recent years, the Executive Branch agencies filed a recommendation requesting that the Commission revoke and terminate a carrier's international section 214 authorizations, stating that "[t]his recommendation reflects the substantial and unacceptable national security and law enforcement risks associated with [China Telecom (Americas) Corporation's] continued access to U.S. telecommunications infrastructure pursuant to its international [s]ection 214 authorizations."

16. With regard to the Executive Branch agencies' oversight of all authorization holders with mitigation agreements, the PSI Report nonetheless observed, "older [mitigation] agreements contained few provisions, were broad in scope, and provided little for Team Telecom to verify," and "[w]here Team Telecom did reserve for itself the right to monitor a foreign carrier's operations in the United States, it exercised that authority in an *ad hoc* manner." The PSI Report further noted that although Executive order 13913 "allows [the Committee] to review existing authorizations, it does not *mandate* periodic review or renewal." In view of these concerns, the Commission believes that a renewal or, in the alternative, periodic review process would better enable the Commission and the Executive Branch agencies to reassess and account for evolving national security, law enforcement, foreign policy, and/or trade policy risks presented by international section 214 authorization holders in light of updated information about both the holder and the foregoing risks.

17. While the Commission could simply adopt a basic reporting mechanism for authorization holders to regularly inform the Commission of select information such as their current ownership, the Commission tentatively concludes that a formalized system of renewal or, in the alternative, periodic review would better ensure that the

<sup>9</sup> See Executive Branch Recommendation to the Federal Communications Commission to Revoke and Terminate [China Telecom (Americas) Corporation's] International Section 214 Common Carrier Authorizations, File Nos. ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, at 1-2 (filed Apr. 9, 2020) (Executive Branch Recommendation to Revoke and Terminate). The Executive Branch agencies that jointly made this recommendation are DOJ, DHS, DOD, the Departments of State and Commerce, and USTR. *Id.* at 1, n.1. See also *Executive Order 13913*, 85 FR at 19646 (Sec. 9(b)); see also *id.* at 19645 (Sec. 6(a)).

Commission conduct periodic and comprehensive review of all authorizations, including reassessment of any national security, law enforcement, foreign policy, and/or trade policy concerns. The Commission's review would be based on the totality of the circumstances presented by each situation, including additional information as necessary, to determine whether the public interest continues to be served by an authorization holder's international section 214 authority. The Commission's proposed renewal framework would include rule-based conditions as well as any other appropriate conditions, the breach of which could warrant revocation or termination. In addition, a carrier's failure to file a renewal application would cause the authorization to expire automatically. Thus, a renewal framework is more efficient than case-by-case review of periodic reports followed by revocation proceedings where necessary. Additionally, a periodic and systemized reassessment framework is consistent with Commission's practice in other contexts, such as broadcast or wireless license renewals. The Commission tentatively concludes that establishing a similar process will assist the Commission's ongoing efforts to protect the nation's telecommunications infrastructure from potential national security, law enforcement, foreign policy, and/or trade policy threats and ensure that only those individuals or entities with the requisite character qualifications have access to this critical infrastructure.

## 3. Renewal Requirement Applicable to All International Section 214 Authorization Holders

18. The Commission proposes to adopt a renewal framework or, in the alternative, a formalized periodic review process for all international section 214 authorization holders, with or without foreign ownership, to ensure the Commission fully reassesses public interest considerations associated with all authorization holders. Under this proposal, all authorization holders would be subject to a renewal requirement, including authorization holders that have been granted international section 214 authority prior to the effective date of the renewal rules and authorization holders that are granted international section 214 authority after the effective date of the rules. The Commission proposes, as discussed below, to structure the periodic reassessment by prioritizing review of authorization holders with reportable foreign ownership, consistent

with the Commission's long held view that foreign ownership in the U.S. telecommunications sector implicates national security, law enforcement, foreign policy, and/or trade policy considerations. The Commission also recognizes, in view of evolving and heightened threats to U.S. telecommunications infrastructure, that national security, law enforcement, foreign policy, and/or trade policy risks may also be raised irrespective of whether an authorization holder has foreign ownership.

19. In this document, the Commission proposes to capture critical information and require certifications of all applicants for international section 214 authority and modification, assignment, and transfer of control of international section 214 authority. The Commission further proposes to refer to the Executive Branch agencies, including the Committee, matters that may raise national security, law enforcement, foreign policy, and/or trade policy concerns to assist the Commission's public interest determination. The Commission has a continuing interest in ensuring that all authorization holders, not only those with reportable foreign ownership, maintain the requisite character qualifications and continue to comply with the Commission's rules. Furthermore, as discussed above, it is important for the Commission to have complete and accurate information concerning all international section 214 authorization holders, including identification of those authorization holders that no longer exist or provide service under their international section 214 authority. The Commission seeks comment on its proposed approach.

20. The Commission does not address in this proceeding blanket domestic section 214 authority. Applying a renewal or, in the alternative, a periodic review process to domestic section 214 authority at this time would delay the implementation of solutions to the Commission's evolving concerns about international section 214 authorizations given, among other things, that the Commission has granted blanket section 214 authority for domestic service based on policy determinations that are beyond the scope of the Commission's current concerns. The Commission believes the public interest would be better served by implementing a new framework for review of international section 214 authorizations as expeditiously as possible.

21. The Commission seeks comment generally on its proposal to implement a renewal or, in the alternative, periodic review process for international section 214 authorizations and whether the

Commission should exempt certain authorization holders from either framework. What would be the justifications for excluding any authorization holders? Do these justifications outweigh the concerns raised by the Commission, other U.S. government agencies, and Congress regarding threats to the security of U.S. telecommunications infrastructure in an evolving national security and law enforcement environment? Are there any special considerations applicable to small businesses offering services pursuant to international section 214 authority? The Commission also seeks comment on how best to structure a periodic review process to the extent the Commission decides to apply this alternative to some or all authorization holders.

#### 4. 10-Year Renewal Timeframe

22. The Commission proposes to adopt a renewal timeframe of 10 years and seeks comment on this proposal. The Commission tentatively finds that a renewal timeframe of 10 years—in conjunction with the proposal in this Notice to require authorization holders to provide updated ownership information, cross border facilities information, and other information every three years—would ensure that the Commission and the relevant Executive Branch agencies can continually reassess and account for evolving national security, law enforcement, foreign policy, and/or trade policy concerns associated with international section 214 authorizations. The Commission tentatively concludes that a 10-year timeframe is reasonable under the renewal framework that the Commission proposes in this document for structuring a formalized and systemic reassessment of carriers' international section 214 authority. Moreover, a 10-year timeframe minimizes burdens on authorization holders and balances the Commission's policy considerations with administrative efficiency for the Commission and the relevant Executive Branch agencies, including the Committee.

23. The Commission seeks comment on the Commission's proposed 10-year renewal timeframe. Would a different timeframe better enable the Commission to periodically reassess international section 214 authorization holders in consideration of evolving risks and for compliance with the Act and its implementing rules? The Commission notes that wireless and broadcast licensees have various renewal terms. With regard to Miscellaneous Wireless Communications Services (WCS), the

term of a license varies according to different spectrum bands, which results in different license periods such as 10, 12, or 15 years. In the context of broadcast licensing, each license granted for the operation of a broadcasting station is limited to a term not to exceed eight years. Would a renewal timeframe similar to broadcast or wireless license renewals, such as 8, 12, or 15 years be more appropriate, and if so, why? Or would a shorter renewal timeframe, such as 5 years, better enable the Commission to reassess and account for evolving risks? The Commission also seeks comment on whether the 10-year period should reset if an international section 214 authorization holder undergoes a complete review, such as during the review of a substantive assignment or transfer of control application.<sup>10</sup> Commenters should address the burdens that will be placed on authorization holders based on the length of the license term. The Commission also proposes below ongoing reporting requirements in the context of a 10-year renewal timeframe.

24. The Commission also seeks comment on whether it should adopt a rule reserving its discretion to issue a shorter renewal timeframe on a case-by-case basis where the Commission deems it appropriate to require the authorization holder to seek renewal sooner than otherwise would be required, or to adopt conditions on renewal where the Commission determines that renewal otherwise would not be in the public interest.<sup>11</sup>

25. The Commission tentatively affirms that, regardless of the renewal

<sup>10</sup> For example, if an entity that is granted an international section 214 authorization in 2025, so that its 10-year renewal period would be 2035, files a substantive transfer of control application which is granted in 2030, should the 10-year renewal period be reset to 2040?

<sup>11</sup> The Commission notes that its rules expressly preserve the Commission's discretion to grant individual broadcast station licenses for less than the standard license term if the public interest, convenience, and necessity would be served by such action. See 47 CFR 73.1020(a) ("Both radio and TV broadcasting stations will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience and necessity will be served thereby, it may issue either an initial license or a renewal thereof for a lesser term."); *id.* 74.15(d) ("Lower power TV and TV translator station and FM translator station licenses will ordinarily be renewed for 8 years. However, if the FCC finds that the public interest, convenience or necessity will be served, it may issue either an initial license or a renewal thereof for a lesser term. The FCC may also issue a license renewal for a shorter term if requested by the applicant."); *1997 Broadcast License Terms Order*, 12 FCC Rcd at 1729, 1739, n.24, Appx. A. See also 47 U.S.C. 309(k)(2) (where applicant fails to meet the standards for renewal, the Commission may grant the application "on terms and conditions as are appropriate, including renewal for a term less than the maximum otherwise permitted.").

timeframe, the Commission would continue to be able to exercise its existing authority, as it deems necessary, to conduct *ad hoc* reviews of international section 214 authorizations at any time during the renewal period. In other words, adoption of renewal rules does not mean that the Commission would only review authorizations at such periodic intervals. For instance, if the Commission were to adopt a renewal timeframe of 10 years, the Commission might still elect to exercise its existing authority to review and, if necessary, revoke authorizations at any time in between the scheduled 10-year renewal proceedings.

26. *Periodic Review Alternative.* In the alternative, the Commission seeks comment on whether it should adopt a three-year formalized system of periodic review. Under this approach, the Commission would systematically and continually review all authorization holders at regular intervals to reassess whether their retention of international section 214 authority continues to serve the public interest or raises concerns that may warrant revocation of the international section 214 authority. To the extent circumstances in any particular situation raised such concerns, the Commission could initiate a revocation proceeding. Thus, in contrast to the renewal framework, an authorization would not be cancelled if the Commission determined that retention of the authorization was not in the public interest. Instead, the authorization would continue by default subject to the Commission instituting a revocation proceeding.

27. The Commission seeks comment generally on this approach and on the appropriate timeframe. The Commission seeks comment on whether it should adopt this approach for all authorization holders, regardless of whether their international section 214 authority is granted prior to or after the effective date of new rules adopted in this proceeding. What other options should the Commission consider with regard to a periodic review process given evolving national security, law enforcement, foreign policy, and/or trade policy risks? As noted with respect to the renewal approach, the Commission also tentatively affirms that it retains discretion to review international section 214 authorizations at any time the Commission deems such action to be necessary in the public interest, regardless of when a carrier's authorization may be scheduled for periodic review.

28. *Bifurcated Process.* The Commission also seeks comment on

whether it should adopt a bifurcated process for authorization holders depending on whether their international section 214 authority is granted prior to or after the effective date of new rules adopted in this proceeding. Specifically, should the Commission adopt a 10-year renewal framework, as proposed above, for authorization holders whose international section 214 application is granted after the effective date of new rules adopted in this proceeding? At the same time, should the Commission adopt a three-year formalized periodic review process for authorization holders whose international section 214 authority was or is granted prior to the effective date of rules adopted in this proceeding?

#### 5. Application of New Framework

29. *Authorizations Granted After Effective Date of Rules.* With respect to authorization holders whose international section 214 authority is granted after the effective date of new rules adopted in this proceeding, the Commission tentatively finds that it may implement a renewal requirement, if adopted, pursuant to its statutory authority under section 214 of the Act to attach terms and conditions to the grant of international section 214 authority. Section 214(c) of the Act permits the Commission to "attach to the issuance of the [section 214] certificate such terms and conditions as in its judgment the public convenience and necessity may require." If the Commission were to adopt a renewal framework, these authorization holders would be subject to a renewal requirement as a condition of their international section 214 authority. The Commission would either grant or deny an application to renew the international section 214 authority. The Commission seeks comment on this proposed approach.

30. *Authorization Holders With Existing Authorizations Before Effective Date of Rules.* With respect to authorization holders whose international section 214 authority was or is granted prior to the effective date of new rules adopted in this proceeding, the Commission tentatively finds that it may apply a similar renewal requirement pursuant to its statutory authority under sections 214, 201, and 4(i) of the Act, but that a denial of an application to renew a carrier's existing international section 214 authority granted prior to the effective date of any new rules would entail the same process that is due in a case of revocation. If the Commission were to apply a renewal requirement to these authorization

holders, the Commission would either grant or deny an application to renew the international section 214 authority. A denial of such renewal application, however, would functionally be a revocation of an authorization holder's existing authority and require the same process that is due in a case of revocation, including notice and opportunity to respond. The Commission seeks comment on this proposed approach.

31. *Other Matters.* The Commission seeks comment on whether an existing authorization that is subject to a substantial and/or *pro forma* assignment or transfer of control should be considered a new authorization for purposes of adopting terms and conditions for that authorization, such as requiring the renewal of the international section 214 authority. The Commission also seeks comment as to whether and/or how a carrier's domestic blanket section 214 authority should be affected if the Commission were to deny the renewal of the carrier's international section 214 authority or revoke the carrier's international section 214 authority.

#### 6. Public Interest Standard

32. *Renewals.* The Commission tentatively concludes that it will apply the same standard of review for applications for renewal of international section 214 authority as that applied to initial applications for international section 214 authority and to applications for modification, assignment, or transfer of control of international section 214 authority. Consistent with the Commission's public interest review of these applications, the Commission's grant of an application for renewal of international section 214 authority will be based on a finding by the Commission that the public interest, convenience, and necessity would be served by the renewal of that authority. The Commission also proposes to codify the same standard of review for initial applications for international section 214 authority and to applications for modification, assignment, or transfer of control of international section 214 authority. As discussed above, the Commission has long found that national security, law enforcement, foreign policy, and trade policy concerns are important to its public interest analysis of international section 214 authority, and these concerns warrant continued consideration of the public interest in view of evolving and heightened threats to the nation's telecommunications infrastructure. Accordingly, the Commission proposes

that it, as part of its public interest analysis, will examine the totality of the circumstances in each renewal application and consider, as its primary concerns, national security, law enforcement, foreign policy, and/or trade policy concerns, including in relation to an applicant's reportable foreign ownership as reflected by the Commission's proposal to structure the renewal process based on reportable foreign ownership.<sup>12</sup> Furthermore, the Commission has found that although a section 214 application from a World Trade Organization (WTO) Member applicant is entitled to a rebuttable presumption that grant of the application is in the public interest on competition grounds, "no such presumption applies to national security and law enforcement concerns, which are separate, independent factors the Commission considers in its public interest analysis." The Commission tentatively finds that consideration of these issues is consistent with its longstanding practice and its ongoing responsibility to evaluate all aspects of the public interest, including any national security, law enforcement, foreign policy, and/or trade policy concerns associated with potential renewal of international section 214 authority. The Commission further proposes that examination of competition and any other relevant issues that come to the Commission's attention is not foreclosed by its continuing assessment of the aforementioned concerns.

33. As with other applications involving international section 214 authority, the Commission proposes that it will also consider whether an applicant seeking renewal of its international section 214 authority has the requisite character qualifications, including whether the applicant has violated the Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has

been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.<sup>13</sup> The Commission has found that such conduct demonstrates that a carrier may fail to comply with the Commission's rules and policies as well as any conditions on its authorization. The public interest may therefore require, in a particular case, that the Commission denies the application of a carrier that has violated Commission rules, the Act, or other laws that may be indicative of a carrier's truthfulness and reliability. The Commission believes consideration of an authorization holder's regulatory compliance and adherence to other relevant laws is also consistent with the Commission's review of renewal applications in other contexts and is important to the Commission's assessment as to whether the public interest, convenience, and necessity would be served by the renewal of international section 214 authority.

34. The Commission seeks comment on the standard that the Commission proposes to adopt for the renewal of international section 214 authority. Should the Commission consider factors in addition to those identified above, in determining whether to grant or deny a renewal application for international section 214 authority? Should the Commission consider a standard similar to that of broadcast station renewals, that renewal would serve "the public interest, convenience, and necessity" and the renewal applicant has had no serious violations of the Act or the Commission's rules or multiple violations that would constitute a "pattern of abuse"? In the alternative, the Commission seeks comment on whether an applicant seeking renewal of

international section 214 authority should be granted a renewal expectancy in any circumstance as long it can make a specific showing, and if so, what factors should be included in such a showing. The Commission's existing rules provide for any interested party to file a petition to deny an application. The Commission proposes to afford the same opportunity with respect to renewal applications. What showings must an opposing party make in support of its position?

35. *Failure to Meet Public Interest Standard.* The Commission tentatively concludes that it would institute appropriate proceedings to deny an application seeking renewal of international section 214 authority if the Commission determines that an applicant has failed to meet the public interest standard. The Commission proposes that if it denies the renewal of an authorization holder's international section 214 authority, the international section 214 authorization will be treated as expired without further administrative action by the Commission. Should the Commission apply the same approach to authorization holders whose authorization was or is granted prior to the effective date of new rules? The Commission seeks comment on these approaches.

36. *Periodic Review Alternative.* In the event the Commission adopts a periodic review process, the Commission seeks comment on the extent such framework should incorporate the same public interest standards and processes as those proposed herein, or those the Commission might ultimately adopt, for renewal applications. For example, should the public interest standard for determining whether to revoke an authorization be the same as the standard for renewal? Should the Commission apply the same approach to authorization holders whose authorization was or is granted prior to the effective date of new rules?

37. *Failure to Meet Public Interest Standard.* The Commission tentatively concludes that it would institute appropriate proceedings to revoke an international section 214 authorization if the Commission determines that an authorization holder has failed to meet the public interest standard under a periodic review process. The Commission seeks comment on this tentative conclusion.

<sup>12</sup> The Commission finds that none of the proposals in this document, including its proposal to adopt periodic renewal requirements, affects the Committee's review of an authorization holder's section 214 authority. Consistent with the Commission's formal review process, the Commission will refer to the Executive Branch those renewal applications where an applicant has reportable foreign ownership, pursuant to the rules adopted in the *Executive Branch Process Reform Order*. *Executive Branch Process Reform Order*, 35 FCC Rcd at 10934 through 35, paragraph 17; 47 CFR 1.40001. The Commission also proposes in this Notice to routinely refer to the Committee certain renewal applications where the applicant does not have reportable foreign ownership but other aspects of the application may raise national security or law enforcement concerns that require the input of the Committee to assist the Commission's public interest determination.

<sup>13</sup> See generally *Policy Regarding Character Qualifications in Broadcast Licensing*, 102 FCC 2d 1179 (1986) (*Character Qualifications*), modified, 5 FCC Rcd 3252 (1990) (*Character Qualifications Modification*). The term "non-FCC misconduct" refers to misconduct other than a violation of the Rules or the Act. *Character Qualifications*, 102 FCC 2d at 1183 n.11, paragraph 7. The Commission and the courts have recognized that "[t]he FCC relies heavily on the honesty and probity of its licensees in a regulatory system that is largely self-policing." See *Contemporary Media, Inc., v. FCC*, 214 F.3d 187, 193 (D.C. Cir. 2000). Reliability is a key, necessary element to operating a broadcast station in the public interest. See *Character Qualifications*, 102 F.C.C.2d at 1195, paragraph 35. An applicant or licensee's propensity to comply with the law generally is relevant because a willingness to be less than truthful with other government agencies, to violate other laws, and, in particular, to commit felonies, is potentially indicative of whether the applicant or licensee will in the future conform to the Commission's rules or policies. See *Character Qualifications Modification*, 5 FCC Rcd at 3252, paragraph 3.

### C. Renewal Process and Implementation

#### 1. Prioritizing the Renewal Applications and Other National Security and Law Enforcement Concerns

38. The Commission proposes to adopt a renewal schedule that prioritizes the filing and review of renewal applications based on whether the carrier currently has reportable foreign ownership,<sup>14</sup> the length of the time since the Commission's most recent review of the authorization, and whether the authorization is subject to a mitigation agreement. The Commission also proposes to prioritize the filing and review of renewal applications where the authorization holder does not have reportable foreign ownership but the application raises other issues that require coordination with the Executive Branch agencies, including the Committee, to assist the Commission's public interest review, as discussed below. This should simplify the renewal process and minimize administrative burdens while prioritizing the Commission's consideration of those authorizations that most likely raise national security, law enforcement, foreign policy, and/or trade policy concerns. The Commission currently prioritizes the processing of renewal applications for broadcast station licenses and wireless licenses to promote administrative efficiency. For broadcast renewal applications, the filing dates and license expiration dates for radio and television station licenses are based on geographical groupings of states. In the context of wireless licensing, WCS licenses have different license terms based on different spectrum bands, yet all renewal applications must be filed no later than the expiration date of the authorization and no sooner than 90 days prior to the expiration date. Similarly, the Commission seeks to adopt a process in consultation with the Executive Branch agencies, including the Committee, to streamline and simplify the renewal filing procedures. The Commission proposes to apply these same principles to the extent the Commission adopts a periodic review process rather than a renewal framework. The Commission seeks comment on the process described below both as it may apply in a renewal context and in a periodic review context.

<sup>14</sup> The Commission refers here, in Section IV.C.1., to "reportable foreign ownership" to signify the ownership interests that an authorization holder or applicant is required to disclose as part of an application or notification required by § 63.18(h) and/or § 63.24 of the Commission's rules. See 47 CFR 63.18(h), 63.24.

39. *Other National Security, Law Enforcement, and Other Concerns.* As discussed further below, the Commission proposes to routinely refer to the Executive Branch agencies, including the Committee, certain renewal applications or, in the alternative, periodic review submissions, where the authorization holder does not have reportable foreign ownership but other issues associated with the filing may separately raise national security, law enforcement, foreign policy, and/or trade policy concerns that require input from the Executive Branch agencies to assist the Commission's public interest review. This would include, for example, international section 214 authorization holders without reportable foreign ownership that certify that they use or will use foreign-owned MNSPs and/or report cross border facilities that may separately raise national security, law enforcement, foreign policy, and/or trade policy concerns. The Commission seeks comment on this proposal.

40. *Priority Categories—Groups 1 to 5.* Specifically, the Commission proposes to prioritize the renewal applications or any periodic review filings and deadlines based on: (1) reportable foreign ownership, including any reportable foreign interest holder that is a citizen of a foreign adversary country, (2) the year of the oldest to most recent Commission action (*i.e.*, initial grant, modification, assignment, or transfer of control), divided in fixed intervals, and (3) whether or not the authorizations are conditioned on a mitigation agreement. The Commission also proposes to prioritize any filings that raise other national security, law enforcement, or other concerns. The Commission proposes as well to have authorization holders with separate authorizations that fall into more than one group below to file for all their authorizations, perhaps in a single filing, based on the deadline for the highest priority group. The Commission proposes to delegate authority to the Office of International Affairs to establish the deadlines and make necessary modifications, if needed, and to consult with the Executive Branch agencies concerning prioritizing the renewal applications or any periodic review filings.

- *Group 1: All Authorization Holders with Reportable Foreign Ownership, Including Foreign Ownership from Foreign Adversary Country/No Mitigation Agreement/Authorization Granted over 10 Years Ago/Raises Other National Security, Law Enforcement, or Other Concerns.* The Commission proposes that the filing deadline for Group 1 will apply to

authorizations where the authorization holder: (1) has reportable foreign interest holders, including those that are citizens or government organizations of any foreign adversary country; (2) the authorization is not conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such authorization (*i.e.*, initial grant, modification, assignment, or transfer of control) occurred over 10 years ago; or (4) for any other national security, law enforcement, or other concerns.

- *Group 2: All Authorization Holders with Reportable Foreign Ownership, Including Foreign Ownership from Foreign Adversary Country/Mitigation Agreement/Authorization Granted over 10 Years Ago.* The Commission proposes that the filing deadline for Group 2 will apply to authorizations where the authorization holder: (1) has reportable foreign ownership; (2) the authorization is conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such authorization (*i.e.*, initial grant, modification, assignment, or transfer of control) occurred over 10 years ago.

- *Group 3: All Authorization Holders with Reportable Foreign Ownership, Including Foreign Ownership from Foreign Adversary Country/No Mitigation Agreement/Authorization Granted less than 10 Years Ago.* The Commission proposes that the filing deadline for Group 3 will apply to authorizations where the authorization holder: (1) has reportable foreign ownership; (2) the authorization is not conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such authorization (*i.e.*, initial grant, modification, assignment, or transfer of control) occurred less than 10 years ago.

- *Group 4: All Authorization Holders with Reportable Foreign Ownership, Including Foreign Ownership from Foreign Adversary Country/Mitigation Agreement/Authorization Granted less than 10 Years Ago.* The Commission proposes that the filing deadline for Group 4 will apply to authorizations where the authorization holder: (1) has reportable foreign ownership; (2) the authorization is conditioned on a mitigation agreement with the Executive Branch agencies; and (3) the Commission's most recent review of such authorization (*i.e.*, initial grant, modification, assignment, or transfer of control) occurred less than 10 years ago.

- *Group 5: No Reportable Foreign Ownership/No Other National Security, Law Enforcement, or Other Concerns.* The Commission proposes that the filing

deadline for Group 5 will apply to all other authorizations where: (1) the authorization holder does not currently have reportable foreign ownership; and (2) the authorization does not raise other national security, law enforcement, or other concerns.

41. *FCC's Preliminary Review and Referral to the Executive Branch Agencies of International Section 214 Authorizations.* Based on the Commission's records, the best estimate is that the number of active international section 214 authorization holders is approximately 1,500. The Commission notes that it is also seeking comment below on other new rules, such as proposing to require authorization holders to have only one authorization and seeking comment on decreasing the reportable ownership threshold to 5% that, if adopted, likely would affect the number of filings to be reviewed. The Commission estimates that approximately 375 of the 1,500 authorization holders have reportable foreign ownership.<sup>15</sup> The Commission proposes to prioritize the submission of filings with reportable ownership based on the Commission's preliminary review and refer to the Executive Branch agencies, including the Committee, the first four groupings (Group 1 to Group 4) set out above. In addition, the Commission proposes to process in Group 1 any filings where the authorization holder does not have reportable foreign ownership but the application raises national security, law enforcement, foreign policy, and/or trade policy concerns, such as applications that certify that they use or will use foreign-owned MNSPs and/or report cross border facilities. The filing and review of submissions without reportable foreign ownership (Group 5) would occur after consideration of the priority submissions. The Commission seeks comment on this approach.

42. *Renewal Application or Periodic Review Submission Deadline.* The Commission proposes that, upon approval by the OMB of the information collections under the new rules proposed herein, the Office of International Affairs will establish filing deadlines for Groups 1 to 5 that require the first submissions of renewal applications by authorization holders within six months of OMB approval. The Commission proposes to apply

these same principles to the extent the Commission adopts a periodic review process rather than a renewal framework. The Commission seeks comment generally from applicants and the Executive Branch agencies on the proposed approach for structuring the renewal process or, in the alternative, periodic review process and filing deadlines. The Commission also seeks comment on what filing deadlines would be feasible for applicants and the Executive Branch agencies, including the Committee, in consideration of the recent timeframes and rules adopted in the *Executive Branch Process Reform Order*. The Commission seeks comment on these proposals and what potential burdens, if any, would be imposed upon authorization holders under any of these approaches.

43. The Commission seeks comment on how best to structure the filing and review of renewal applications or, in the alternative, periodic review submissions to prioritize those authorizations most likely to raise current national security, law enforcement, foreign policy, and/or trade policy issues. The Commission believes that carriers' compliance with the one-time information collection required in the Order will be crucial for the Commission's efficient administration of a renewal process or, in the alternative, periodic review process. Through the Commission's assessment of the one-time information collection, the Commission proposes to delegate authority to the Office of International Affairs to (1) identify which authorization holders are existing and active and would undergo the renewal or other periodic review process; (2) identify which authorization holders fail to respond to the Order and thus presumptively are no longer in operation, and cancel their authorizations pursuant to the process proposed above; (3) identify, among the respondents, which authorization holders currently have or do not have reportable foreign ownership or other relevant indicia and designate them accordingly in Groups 1 to 5; and (4) determine which authorization holders in Groups 1 to 5 must file renewal applications or, in the alternative, periodic review submissions by each respective filing deadline based on a 10-year requirement. Therefore, the results of the one-time information collection will inform the Commission's determination of the best processing and timing approach for the renewal process or, in the alternative, periodic review process. In addition, the Office of International Affairs may release the results of the one-time information

collection to improve the comment record or seek further comment based on the results of the one-time information collection, as needed.

44. *Periodic Review Alternative.* The Commission proposes to apply these same principles to the extent the Commission adopts a periodic review process rather than a renewal framework. The Commission proposes, for example, to prioritize the filing of the required information submissions and the review of specific authorizations in the same manner as proposed for a renewal framework. The Commission seeks comment on these proposals and how best to minimize administrative burdens and maximize the effectiveness of the Commission's review. The Commission seeks other suggestions on how best to prioritize and simplify the process. Should the Commission consider other options?

## 2. Processing Procedures

45. *Streamlined Renewal Processing Procedures.* The Commission proposes that it adopt streamlined processing for renewal applications in Group 5 in certain situations. For instance, § 63.12(a) of the Commission's rules provides that, "[e]xcept as provided by paragraph (c) of this section, a complete application seeking authorization under § 63.18 of this part shall be granted by the Commission 14 days after the date of public notice listing the application as accepted for filing." In current practice, once filed, Commission staff review the application for compliance with the Commission's rules and place the application on an Accepted for Filing public notice at that point. The Commission proposes to adopt similar streamlined processing procedures for renewal applications that are in Group 5, where the authorization holder does not currently have reportable foreign ownership and the application does not raise other national security, law enforcement, or other considerations. With regard to those authorization holders in Group 5, the Commission would place the renewal application on streamlined Accepted for Filing public notice and the application would be granted by the Commission 14 days after the date of the public notice if: (1) the Commission does not refer the application to the Executive Branch agencies because the applicant does not have reportable foreign ownership and the application does not raise other national security, law enforcement, or other considerations; (2) the application does not raise other public interest considerations, including regulatory compliance; (3) the Executive Branch agencies do not separately request

<sup>15</sup> This estimate is based on the percentage of applications out of the total international section 214 applications (*i.e.*, applications for international section 214 authority and applications for modification and substantial assignment and transfer of control of international section 214 authority) filed with the Commission where an applicant has reportable foreign ownership.

during the comment period that the Commission defer action and remove the application from streamlined processing; and (4) no objections to the application are timely raised by an opposing party. The Commission seeks comment on this proposal. The Commission believes a streamlined process for renewal applications in Group 5 would decrease the burdens on applicants and ensure a faster review process.

46. *Authorizations Pending Renewal.* As with Title III licensees pursuant to section 307(c) of the Act, and consistent with the Administrative Procedure Act, the Commission proposes that an applicant that has timely applied for renewal of its international section 214 authority may continue providing service(s) under its international section 214 authority while its renewal application is pending review. The Commission seeks comment on this proposal.

47. *Referral of Applications with Reportable Foreign Ownership to the Executive Branch Agencies, Including the Committee.* Consistent with the Commission's formal review process, the Commission proposes to refer to the relevant Executive Branch agencies, including the Committee agencies, those applications for renewal of international section 214 authority where the applicant has reportable foreign ownership. For these referrals, the Commission proposes to apply the same time frames that were adopted in the *Executive Branch Process Reform Order*, a 120-day initial review period followed by a discretionary 90-day secondary assessment. The Commission anticipates that a referral of a renewal application with reportable foreign ownership may result in a mitigation agreement, or modification of an existing mitigation agreement, or a recommendation by the Committee or other relevant Executive Branch agencies to deny the application. The Commission seeks comment on these proposals.

48. *Referral of Certain Applications Without Reportable Foreign Ownership to the Executive Branch Agencies, Including the Committee.* The Commission recognizes, in view of evolving and heightened threats to U.S. telecommunications infrastructure, that national security, law enforcement, foreign policy, and/or trade policy risks may also be associated with an authorization holder irrespective of whether it has foreign ownership. The Commission proposes in this document that all applicants provide information concerning foreign-owned MNSPs. The Commission proposes and seeks

comment on rules that would require applicants to provide information on the facilities they use and/or will use to provide services between the United States and Canada and/or Mexico (cross border), and also propose to require applicants to disclose whether they use equipment or services identified on the Commission's "Covered List." If the Commission adopts such requirements, the Commission would propose to routinely refer to the Executive Branch agencies, including the Committee, to assist the Commission's public interest determination, those applications where an applicant discloses that it:

- uses and/or will use a foreign-owned MNSP;
- has cross border facilities; and/or
- uses equipment or services identified on the Commission's "Covered List" of equipment and services pursuant to the Secure and Trusted Communications Networks Act.

For these referrals, the Commission proposes to apply the same time frames that were adopted in the *Executive Branch Process Reform Order*, a 120-day initial review period followed by a discretionary 90-day secondary assessment. The Commission seeks comment on these proposals. The Commission reaffirms, however, that it retains discretion to determine which applications it will refer to the Executive Branch agencies for review.

49. *Non-Referral of Certain Applications.* As noted above, the Commission is applying the same rules for renewal applications as the Commission has applied to initial applications for international section 214 authority and applications to modify, assign, or transfer control of international section 214 authority. As an example, the Commission's current rules provide that it will generally exclude from referral to the Executive Branch agencies, including the Committee, certain categories of applications that present a low or minimal risk to national security, law enforcement, foreign policy, or trade policy. Here, the Commission similarly seeks comment on whether there are categories of renewal applications where the Commission can leverage prior national security determinations to minimize burdens on the Executive Branch agencies, including the Committee, without sacrificing the ability to conduct comprehensive review. Are there categories of applications that the Commission should not refer to the Executive Branch agencies, including applications concerning which the Commission on its own motion could take action and institute appropriate proceedings

without referral? What prior national security determinations may be relevant to this analysis? For example, can the Commission leverage the list of foreign adversary countries as defined in the Department of Commerce rule, 15 CFR 7.4, in determining which applications to refer to the Executive Branch agencies and which applications it could act on without referral? The Commission seeks comment on these potential categories, the potential benefits and drawbacks of such an approach, as well as the Commission's legal authority to do so.

50. *Failure to Timely File Renewal Applications.* The Commission proposes that if an authorization holder fails to timely file an application for renewal of its international section 214 authority, the Commission will deem the international section 214 authorization expired and cancelled by operation of law. The Commission proposes to delegate authority to the Office of International Affairs to provide notice in advance of the renewal deadline. The Commission has similar procedures where it automatically terminates an earth station license upon the expiration of the license term if a renewal application was not timely filed. In the case of a space station license, the license is "automatically terminated in whole or in part without further notice to the licensee" upon the expiration date unless an application for extension of the license term has been filed with the Commission. The Commission's rules allow the reinstatement of an earth station license or a space station license or authorization that is automatically terminated if the Commission determines that reinstatement would best serve the public interest, convenience and necessity, but a petition for reinstatement will only be considered if, among other things, it explains the failure to file a timely notification or renewal application. When a broadcast licensee fails to file a timely renewal application, the authorization is cancelled pursuant to a public notice issued by the Media Bureau shortly after the expiration date of the license; a renewal application filed after such public notice may be processed provided that the applicant successfully petitions for reinstatement of license and the renewal application is filed within 30 days of the cancellation public notice. The Media Bureau may commence an enforcement action for untimely filing and unauthorized operation. In the wireless radio services context, if a renewal application is not filed in a timely manner, a licensee must request a waiver of the filing deadline, pursuant to § 1.925 of the

Commission's rules, along with its late-filed renewal application. The Commission will grant the waiver and renewal application *nunc pro tunc* if they are filed up to thirty days after the expiration date and if the application is otherwise sufficient, but the licensee may be subject to enforcement action for untimely filing and unauthorized operation. The Commission will grant applications filed after this period under certain circumstances.

51. The Commission seeks comment on this proposed approach. Would this procedure be adequate as applied to international section 214 authorizations in effect as of the effective date of any new rules? The Commission seeks comment on alternative approaches. Would any of the procedures used in the other contexts, such as those discussed above, be appropriate or desirable in the international section 214 context? The Commission proposes that an authorization holder whose authorization expires due to its failure to timely file a renewal application may file an application for a new international section 214 authorization.

52. *Periodic Review Alternative/Processing.* The Commission generally proposes to apply similar processing to the extent the Commission adopts a periodic review process rather than a renewal framework. For instance, the Commission proposes to prioritize review of specific authorizations in the same manner as proposed under a renewal framework. The Commission seeks comment on these proposals and how best to minimize administrative burdens and maximize the effectiveness of the Commission's review under this alternative. The Commission seeks other suggestions on how best to prioritize and simplify the periodic review process. Should the Commission consider other options?

53. *Periodic Review Alternative/Failure to Timely File Required Information.* The Commission proposes that the Office of International Affairs initiate a revocation process against an authorization holder that, absent good cause, fails to timely file periodic review information with the Commission. The Commission seeks comment on this proposed approach. What procedures would ensure that the authorization holder has the opportunity to demonstrate good cause, and what factors should the Commission consider in evaluating a good cause showing? Should the Commission accept late filings instead of initiating revocation proceedings? The Commission further seeks comment on whether and under what circumstances an authorization holder

whose authorization is revoked for its failure to timely file periodic review information be barred from applying for a new international section 214 authorization.

### 3. Due Process and Procedural Requirements

54. *Due Process and Procedural Requirements.* The Commission seeks comment on the procedural measures necessary to ensure the development of an adequate administrative record, including procedures for participation by other interested parties, and on the appropriate procedural safeguards to ensure due process with regard to the Commission's proposed renewal or, in the alternative, a periodic review process. To determine what process is due involves consideration of the *Mathews v. Eldridge* three-part test: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;" and (3) "the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." The Commission notes that neither the Act, the Commission's rules, nor the Administrative Procedure Act requires trial-type hearing procedures. Congress has granted the Commission broad authority to "conduct its proceedings in such manner as will best conduce to the proper dispatch of business and to the ends of justice." The Commission has broad discretion to craft its own rules "of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties." Furthermore, the Act gives the Commission the power of ruling on facts and policies in the first instance. In exercising that power, the Commission may resolve disputes of fact in an informal hearing proceeding on a written record. In particular, the Commission seeks comment on the extent to which the Commission's proposed renewal or in the alternative, a periodic review process should incorporate the procedures the Commission recently utilized—and which the Court of Appeals for the D.C. Circuit approved—in revoking, and in certain cases terminating, four Chinese government-owned carriers' section 214 authority.

55. The Commission stated in those cases that the Act does not specify any procedures for revoking a section 214 authorization. Nor has the Commission promulgated any regulations setting

forth any such procedures. The Commission explained that although the Commission adopted regulations prescribing certain procedures for the revocation of station licenses and construction permits pursuant to Part 1, Subpart B of its rules, those regulations do not apply to the revocation of a section 214 authorization and that hearing rights for common carriers under section 214 are limited.<sup>16</sup> In the recent revocation proceedings, the Commission exercised its discretion to "resolve disputes of fact in an informal hearing proceeding on a written record," and reasonably determined that the issues raised in those cases could be properly resolved through the presentation and exchange of full written submissions before the Commission itself. The Commission determined, among other things, that the fiscal and administrative burden on the government would be especially heavy in those cases, as a trial before an administrative law judge could require participation by officials from other agencies. More importantly, given the national security issues at stake, any resulting unwarranted delay could be harmful. Accordingly, to provide affected carriers with due process, the Commission allowed them to submit evidence and arguments in writing and determined the need for the revocation and/or termination of 214 authorizations on the basis of a written record. The court of appeals affirmed the Commission's use of these procedures.

56. The Commission seeks comment on the procedures applicable to international section 214 renewal applications and, in the alternative, to the periodic review applications. To the extent the Commission adopts a periodic review process framework under which an order instituting revocation procedures might ensue, the Commission proposes to implement the approach the Commission used in its most recent section 214 revocation proceedings. The Commission has stated that if it is considering revoking an authorization, it will "provide the authorization holder such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and

<sup>16</sup>The hearing requirements applicable to Title III applications do not apply to section 214 applications. *Procedural Streamlining of Administrative Hearings*, Notice of Proposed Rulemaking, 34 FCC Rcd 8341, 8343, paragraph 4 & n.16 (2019); *Oklahoma W. Tel. Co. Order*, 10 FCC Rcd at 2243 through 44, paragraph 6 (finding no substantial public interest questions existed to justify hearing on section 214 application) (citing *ITT World Commc'ns v. FCC*, 595 F.2d 897, 900 through 01 (2d Cir. 1979)).

circumstances.” Is there any reason the Commission should not use the same procedures if it adopts a renewal framework? The Commission notes that the Commission’s Part 1, Subpart B provides procedures for hearings in appropriate circumstances. Those procedures do not automatically apply to section 214 authorizations, but they provide a possible model for incorporating such procedures should the Commission determine they are appropriate in a specific case. Under what circumstances, if any, should any such procedures be incorporated in a renewal or periodic review hearing? If the Commission tentatively determines that renewal might not be warranted, it will provide the authorization holder such notice and an opportunity to respond as is required by due process and applicable law, and appropriate in light of the facts and circumstances. Should the procedures be different for authorization holders whose international section 214 authority was or is granted prior to the effective dates of the new rules, and if so, in what way?

57. *Burden of Proof/Renewal.* The Commission proposes to assign the burden of proof to the applicant seeking renewal of its international section 214 authority. Should the Commission use the same approach where a renewal applicant was or is granted international section 214 authority prior to the effective date of the new rules? Section 63.18 of the Commission’s rules requires that an application for international section 214 authority “include information demonstrating how the grant of the application will serve the public interest, convenience, and necessity.” The Commission has stated that the applicant for an international section 214 authorization bears the burden of demonstrating that grant of its application would serve the public interest in accordance with § 63.18 of the Commission’s rules. The Commission believes the same burden of proof is appropriate with respect to applicants seeking renewal of international section 214 authority. If the Commission adopts a renewal requirement for existing authorization holders that were or are granted international section 214 authority prior to the effective date of new rules, should the applicant or the Commission bear the burden of proof in a proceeding to deny renewal?<sup>17</sup>

<sup>17</sup> For example, in broadcast renewal proceedings, licensees bear the burden of proof in demonstrating that renewal is in the public interest, *see, e.g., Entercom License, LLC*, Hearing Designation Order and Notice of Opportunity for Hearing, 31 FCC Rcd 12196, 12231, paragraph 92 (2016), *subsequent hist. omitted*, whereas in a broadcast revocation

58. *Periodic Review Alternative/Burden of Proof.* If the Commission adopts a periodic review process framework for both existing and new authorization holders, how should the burden of proof be allocated? Should the Commission determine the burden of proof on a case-by-case basis at the time of review?

#### D. Renewal Application Requirements

59. Given the increasing concerns about ensuring the security and integrity of U.S. telecommunications infrastructure, the Commission proposes or seeks comment on new requirements that it anticipates will help it acquire critical information from applicants including additional certifications to create accountability for applicants and to improve the reliability of the information that they provide. The Commission tentatively concludes that the new requirements that the Commission proposes or seeks comment on would improve the Commission’s assessment of evolving public interest risks. The Commission proposes to apply the requirements applicable to initial applications for international section 214 authority to the proposed rules for renewal applications and thus harmonize the application requirements. The Commission notes that, whereas a renewal framework would require the filing of renewal applications, a periodic review process would require the Commission to obtain relevant information in a different manner. The Commission proposes that any periodic review process would require authorization holders to submit the same information as that required for a renewal application. Is there any reason the Commission would not require authorization holders subject to periodic review to file the same information required in a renewal application? The Commission seeks comment on whether the two types of filings should be different in any

proceeding, the Commission bears the burden of proof, 47 U.S.C. 312(d); *see, e.g., Acumen Communications, Licensee of Various Authorizations in the Wireless Radio Services, Applicant for Modification of Various Authorizations in the Wireless Radio Services, Applicant for Renewal of Authorization in the Wireless Radio Services*, Order to Show Cause, Hearing Designation Order and Notice of Opportunity for Hearing, WTB Docket No. 17–17, 32 FCC Rcd 243, 248 through 49, paragraphs 16, 21 (MD–WTB 2017) (stating, among other things, that the burden of proceeding with the introduction of evidence and the burden of proof with regard to revocation of various Wireless Radio Service authorizations shall be on the Commission’s Enforcement Bureau and the burden of proceeding with the introduction of evidence and the burden of proof with regard to various applications, including an application for renewal, shall be on the applicant).

respect, and if so, what purpose such differences would serve.

60. The Commission proposes, as a baseline, to apply the requirements applicable to initial applications for international section 214 authority to the proposed rules for renewal applications. Section 63.18 of the Commission’s rules, which implements section 214 of the Act, requires that an application for international section 214 authority “include information demonstrating how the grant of the application will serve the public interest, convenience, and necessity,” and “[s]uch demonstration shall consist of the following information as applicable.” Specifically, the current application rules provide important information and attestations concerning an applicant’s contact information, the specific type of authority that each applicant seeks, any foreign carrier affiliations, and any competition issues, among other things. The Commission proposes to apply these provisions of § 63.18 to the application rules that the Commission proposes for renewal applicants.<sup>18</sup> The Commission believes these information and certification requirements are necessary for the Commission’s public interest review of applications for renewal of international section 214 authority. Furthermore, the Commission’s proposal would require renewal applicants to provide the same information as applicants for international section 214 authority and the Commission believe such harmonization would advance the public interest. The Commission seeks comment on these proposals and the draft rule provisions in Appendix A.

61. Specifically, the Commission proposes to require renewal applicants to submit the same application information and certifications that are set out in § 63.18,<sup>19</sup> including:

<sup>18</sup> Specifically, the Commission proposes to apply the requirements of § 63.18(a) through (k), (m) through (o), (q) through (r) to the application rules that the Commission proposes for renewal applicants. *See* 47 CFR 63.18(a) through (k), (m) through (o), (q) through (r). As discussed further below, the Commission proposes or seeks comment on amendments to the current requirements in § 63.18(h) and 63.18(o).

<sup>19</sup> The Commission tentatively concludes that the Commission will not add two provisions of § 63.18 to the proposed rules for renewal applications. The Commission will not add § 63.18(l), as it no longer contains a rule provision. In addition, the Commission will not add § 63.18(p), which requires, “[i]f the applicant desires streamlined processing pursuant to § 63.12, a statement of how the application qualifies for streamlined processing.” 47 CFR 63.18(p) (emphasis added). As discussed in Section IV.C.2, the Commission proposes to adopt streamlined processing procedures for renewal applications in certain circumstances. The Commission proposes to add a new rule specifically for renewal applications that

• *Applicant Information.* Section 63.18(a) through (c) of the rules requires basic information about the applicant and contact information.<sup>20</sup>

• *Type of International Section 214 Authority.* Section 63.18(d) through (f) of the rules requires information pertaining to an applicant's previous receipt of international section 214 authority and the specific authority, either facilities-based and/or resale-based and/or other authorization, that it seeks in the application. An applicant for global facilities-based authority must certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22. An applicant for global resale authority must certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22 and 63.23. An applicant for authority to acquire facilities or to provide services not covered by § 63.18(e)(1) and (e)(2) must provide a description of the facilities and services for which it seeks authorization and certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22 and/or 63.23, as appropriate. An applicant may apply for any or all of the authority provided for in § 63.18(e) of the rules in the same application.<sup>21</sup>

• *Ownership and Interlocking Directorates.* Section 63.18(h) requires that applicants provide information about any person or entity that directly or indirectly holds 10% or greater ownership interest in the applicant and identify any interlocking directorates with a foreign carrier.<sup>22</sup> While the

would address any streamlined processing procedures that the Commission adopts for renewal applications.

<sup>20</sup> Section 63.18(a) requires the "name, address, and telephone number of each applicant." 47 CFR 63.18(a). Section 63.18(b) requires identification of "[t]he Government, State, or Territory under the laws of which each corporate or partnership applicant is organized." *Id.* 63.18(b). Section 63.18(c) requires the "name, title, post office address, and telephone number of the officer and any other contact point, such as legal counsel, to whom correspondence concerning the application is to be addressed." *Id.* 63.18(c). Collecting minimum contact information allows the Commission to communicate with the applicant including to address any questions or concerns that the Commission has.

<sup>21</sup> 47 CFR 63.18(f). An applicant seeking facilities-based authority under § 63.18(e)(3) must provide a statement as to whether an authorization of the facilities is categorically excluded from environmental processing as defined by § 1.1306 of the rules. *Id.* 63.18(g). Section 63.18(g) provides that "[i]f answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application." *Id.*

<sup>22</sup> *Id.* 63.18(h). The *Executive Branch Process Reform Order* amended § 63.18(h), as discussed below, and redesignated these requirements as § 63.18(h)(1) through (3). See *Executive Branch Process Reform Order*, 35 FCC Rcd at 10985 through 87, Appx. B; *Order Erratum*, 35 FCC Rcd at 13173 through 74. As discussed below, the Commission

seeks comment on modifying the ownership disclosure requirements from 10% to 5%, as discussed below, the Commission proposes to require renewal applicants to provide ownership information consistent with § 63.18(h) as well as identification of any interlocking directorates with a foreign carrier.

• *Foreign Carrier Affiliation.* Section 63.18(i) through (k) and (m) of the rules requires applicants to provide information and certifications relating to whether an applicant is, or is affiliated with, a foreign carrier. Section 63.18(i) requires an applicant to certify whether it is or is affiliated with a foreign carrier and identify each foreign country in which the applicant is or is affiliated with a foreign carrier. Section 63.18(j) requires an applicant to certify whether it seeks to provide international telecommunications services to any destination country where the applicant is or controls a foreign carrier in that country; or any entity that owns more than 25% of the applicant, or that controls the applicant, controls a foreign carrier in that country; or two or more foreign carriers (or parties that control foreign carriers) own, in the aggregate, more than 25% of the applicant and are parties to, or the beneficiaries of, a contractual relation affecting the provision or marketing of international basic telecommunications services in the United States. If any country identified by the applicant in the certification under § 63.18(j) is not a member of the World Trade Organization (WTO), the applicant must demonstrate whether the foreign carrier has market power or lacks market power. Any applicant that is or is affiliated with a foreign carrier in a country identified in the certification under § 63.18(i), and which seeks to be regulated as non-dominant for the provision of particular international telecommunications services to such country, should demonstrate that it qualifies for non-dominant classification.

• *No Special Concessions.* Section 63.18(n) of the rules requires an applicant to certify that it has not agreed to accept special concessions directly or indirectly from any foreign carrier with respect to any U.S. international route where the foreign carrier possesses market power on the foreign end of the route and will not enter into such agreements in the future.

• *Not Subject to Denial of Federal Benefits.* Section 63.18(o) of the rules requires "[a] certification pursuant to

seeks comment on making changes to the ownership reporting requirements.

§§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to [s]ection 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 853a." The Commission proposes to require renewal applicants to provide a certification that is consistent with the amendments the Commission proposes for § 63.18(o), as discussed in Section IV.F.

• *Other Requirements.* Section 63.18(q) of the current rules requires that applicants provide "[a]ny other information that may be necessary to enable the Commission to act on the application."<sup>23</sup> Section 63.18(r) of the current rules requires that applications must be filed electronically through ICFS.<sup>24</sup>

62. The Commission also proposes to apply the application requirements that were adopted in the *Executive Branch Process Reform Order*, with regard to international section 214 authorizations, to renewal applications. The Commission anticipates that these requirements will improve the Commission's assessment of evolving national security, law enforcement, foreign policy, and/or trade policy risks associated with applications for renewal of international section 214 authority.

• *Calculation of Equity Interests Held Indirectly in the Carrier.* The *Executive Branch Process Reform Order* adopted a new subsection (1)(i) in § 63.18(h), which directs that equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. The new § 63.18(h)(1)(i) includes an example.

<sup>23</sup> 47 CFR 63.18(q). In the *Executive Branch Process Reform Order*, the Commission adopted a new § 63.18(q) and redesignated the current requirements of § 63.18(q) as § 63.18(s). *Executive Branch Process Reform Order*, 35 FCC Rcd at 10985, Appx. B, paragraph 11; *Order Erratum*, 35 FCC Rcd at 13173, paragraph 11. The amended rule is not yet effective.

<sup>24</sup> 47 CFR 63.18(r) ("Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Communications Filing System (ICFS). A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.") In the *Executive Branch Process Reform Order*, the Commission redesignated the current requirements of § 63.18(r) as § 63.18(t). *Executive Branch Process Reform Order*, 35 FCC Rcd at 10985, Appx. B, paragraph 11; *Order Erratum*, 35 FCC Rcd at 13173, paragraph 11. The amended rule is not yet effective.

• *Calculation of Voting Interests Held Indirectly in the Carrier.* The *Executive Branch Process Reform Order* adopted a new subsection (1)(ii) in § 63.18(h), which directs that voting interests that are held through one or more intervening entities shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50% or represents actual control, it shall be treated as if it were a 100% interest.<sup>25</sup> The new § 63.18(h)(1)(ii) includes an example.

• *Ownership Diagram.* The *Executive Branch Process Reform Order* adopted a new subsection (2) in § 63.18(h), which requires applicants to provide an ownership diagram that illustrates the applicant's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to § 63.18(h)(1).<sup>26</sup> The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

• *Responses to Standard Questions.* The *Executive Branch Process Reform Order* adopted a new § 63.18(p), which requires that each applicant for which an individual or entity that is not a U.S. citizen holds a 10% or greater direct or indirect equity or voting interest, or a controlling interest, in the applicant, must submit responses to Standard Questions, prior to or at the same time the applicant files its application with the Commission, directly to the Committee. While the Commission seeks comment on modifying the ownership disclosure requirements, as discussed below, the Commission proposes to require renewal applicants

<sup>25</sup> See *Order Erratum*, 35 FCC Rcd at 13173 through 74, paragraph 11; see also *Executive Branch Process Reform Order*, 35 FCC Rcd at 10986, Appx. B, paragraph 11. A general partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. *Order Erratum*, 35 FCC Rcd at 13173, paragraph 11; see also *Executive Branch Process Reform Order*, 35 FCC Rcd at 10986, Appx. B, paragraph 11. A partner of a limited partnership (other than a general partner) shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest. *Order Erratum*, 35 FCC Rcd at 13173, paragraph 11; see also *Executive Branch Process Reform Order*, 35 FCC Rcd at 10986, Appx. B, paragraph 11.

<sup>26</sup> See *Order Erratum*, 35 FCC Rcd at 13174, paragraph 11; see also *Executive Branch Process Reform Order*, 35 FCC Rcd at 10987, Appx. B, paragraph 11. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. *Order Erratum*, 35 FCC Rcd at 13174, paragraph 11; see also *Executive Branch Process Reform Order*, 35 FCC Rcd at 10987, Appx. B, paragraph 11.

to comply with the requirements consistent with the new § 63.18(p), including the amendments on which the Commission seeks comment herein.

• *Certifications.* The *Executive Branch Process Reform Order* adopted a new § 63.18(q) that requires each applicant to make the following certifications by which they agree:

○ (1) to comply with all applicable Communications Assistance for Law Enforcement Act (CALEA) requirements and related rules and regulations;

○ (2) to make communications to, from, or within the United States, as well as records thereof, available in a form and location that permits them to be subject to a valid and lawful request or legal process in accordance with U.S. law;

○ (3) to designate a point of contact who is located in the United States and is a U.S. citizen or lawful U.S. permanent resident, for the execution of lawful requests and as an agent for legal service of process;

○ (4)(A) that the applicant is responsible for the continuing accuracy and completeness of all information submitted, whether at the time of submission of the application or subsequently in response to either the Commission or the Committee's request, as required in § 1.65(a), and that the applicant agrees to inform the Commission and the Committee of any substantial and significant changes while an application is pending;

○ (4)(B) after the application is no longer pending for purposes of § 1.65 of the rules, the applicant must notify the Commission and the Committee of any changes in the authorization holder or licensee information and/or contact information promptly, and in any event within thirty (30) days; and

○ (5) that the applicant understands that if the applicant or authorization holder fails to fulfill any of the conditions and obligations set forth in the certifications set out in § 63.18(q) or in the grant of an application or authorization and/or that if the information provided to the U.S. government is materially false, fictitious, or fraudulent, applicant and authorization holder may be subject to all remedies available to the U.S. government, including but not limited to revocation and/or termination of the Commission's authorization or license, and criminal and civil penalties, including penalties under 18 U.S.C. 1001.

**63. Application Fees.** The Commission proposes to adopt a fee for renewal applications and, in the alternative, a fee for periodic review submissions for international section

214 authority that is consistent with the fee for applications for new international section 214 authorizations.<sup>27</sup> The proposed fee is consistent with the established fee category of "International Service" and will follow the fee calculation methodology adopted by the Commission in the *2020 Application Fee Report and Order*. Currently, the fee for an application for a new international section 214 authorization is \$875.<sup>28</sup> Since the Commission envisions the level of Commission resources required to review a renewal application or periodic review submission will be consistent with review of an application for new international 214 authority, the Commission proposes to adopt a fee of \$875. The Commission seeks comment on the Commission's proposed application fee for a renewal application or periodic review submission.

64. The Commission seeks comment on these proposals and the draft rule provisions in Appendix A. The Commission proposes to incorporate almost all of the application requirements in § 63.18 to the proposed rules for renewal applications or, in the alternative, periodic review submissions. Are there other related provisions of Part 63 that the Commission should require of authorization holders that file a renewal application or periodic review submission? Are there any reasons to modify certain information requirements in Part 63 as applied to renewal applications or periodic review submissions?

<sup>27</sup> See 47 U.S.C. 158(a); 47 CFR 1.1101; 47 CFR 1.1107. Section 8(c) of the Act requires the Commission to, by rule, amend the application fee schedule if the Commission determines that the schedule requires amendment so that: (1) such fees reflect increases or decreases in the costs of processing applications at the Commission or (2) such schedule reflects the consolidation or addition of new categories of applications. 47 U.S.C. 158(c). Section 8(c) of the Act does not mandate a timeframe for making any such amendments under section 8(c). If the Commission determines that the application fee schedule may require an amendment pursuant to section 8(c), the Commission will initiate a rulemaking to seek comment on any proposed amendment(s) to the application fee schedule. The Commission does so here. *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission's Rules*, Order, FCC 22-94, 2022 WL 17886514, at n.2 (rel. Dec. 16, 2022) (*2022 Application Fee Order*).

<sup>28</sup> *2022 Application Fee Order* at Appx.; 47 CFR 1.1107. This fee rate became effective on March 2, 2023. See Federal Communications Commission, *Schedule of Application Fees*, 88 FR 6169 (Jan. 31, 2023).

*E. New Application Requirements for All International Section 214 Applicants and Authorization Holders*

65. The Commission proposes or seeks comment on adopting new application requirements to improve the Commission's assessment of evolving national security, law enforcement, foreign policy, and/or trade policy risks following a grant of international section 214 authority. The Commission seeks comment on whether to adopt a new 5% ownership reporting threshold for all initial applications for international section 214 authority and applications for modification, assignment, transfer of control, and renewal of international section 214 authority for certain cases.<sup>29</sup> The Commission also proposes to require each applicant to provide information about its services, geographic markets, and facilities crossing the United States' borders with Canada and Mexico (cross border facilities), and certify that their facilities-based equipment meets certain requirements.<sup>30</sup> Prior to the current global international section 214 licensing scheme, the Commission granted authorizations on a country-by-country basis and collected facilities

<sup>29</sup>The Commission notes that § 63.04(b) of the Commission's rules, pertaining to applications for transfer of control of domestic section 214 authorizations, permits joint international and domestic section 214 transfer of control filings and requires applicants filing such joint applications to satisfy the requirements in both §§ 63.04 and 63.18 addressing ownership. See 47 CFR 63.04(b), 63.18. This document does not propose to modify § 63.04(a)(4), which addresses ownership information required to be disclosed for domestic-only section 214 transfer of control applications. If the Commission adopts a 5% reporting requirement for international section 214 authorizations, the Commission proposes to require that applicants filing a joint international and domestic section 214 transfer of control application must continue to submit information that satisfies the requirements in both §§ 63.04 and 63.18, including ownership information that would be required by § 63.18(h) under the proposed 5% ownership reporting threshold.

<sup>30</sup>Unless indicated otherwise, the Commission refers to "applicant" or "applicants" in this subsection, Section IV.E., to refer to (1) applicants that file an initial application for international section 214 authority or an application for modification, assignment, transfer of control, or renewal of international section 214 authority, and (2) authorization holders that file a notification of *pro forma* assignment or transfer of control. See 47 CFR 63.18; *id.* 63.24(e) ("Applications for substantial transactions"); *id.* 63.24(f) ("Notifications for non-substantial or *pro forma* transactions"). Unless indicated otherwise, the Commission refers to "application" or "applications" in this subsection, Section IV.E., to refer to applications for international section 214 authority; applications for modifications, assignments, transfers of control, and renewals of international section 214 authority; and *pro forma* notifications of assignments and transfers of control of international section 214 authority.

information.<sup>31</sup> That was over 25 years ago. Since that time, the Commission has not collected and does not have any information on critical infrastructure that is used by international section 214 authorization holders to provide services under their international section 214 authority. Additionally, the Commission proposes or seeks comment on requiring all authorization holders to report their reportable ownership and other information on an ongoing basis, starting every three years after grant of a renewal application. The Commission tentatively concludes that these requirements that the Commission proposes or seeks comment on are important and necessary for informing the Commission's evaluation of an applicant's request for international section 214 authority or the modification, assignment, transfer of control, or renewal thereof and would serve the public interest given evolving risks identified by the Commission and the Executive Branch.

1. Five (5) Percent Threshold for Reportable Interests

66. The Commission seeks comment on whether to adopt a new ownership reporting threshold that would require disclosure of certain 5% or greater direct and indirect equity and/or voting interests with respect to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority. Over twenty years ago, the Commission found that a 10% reporting threshold would assist the Commission in determining whether a particular international section 214 application raises issues of national security, foreign policy, or law enforcement risks. The national security and law enforcement environment, however, has changed dramatically during this timeframe. The current 10% reporting threshold may not capture all foreign interests that may present national security, law enforcement, foreign policy, and/or trade policy concerns. In the *2021 Standard Questions Order*, the Commission noted, with respect to the Standard Questions, the views of Committee staff that "5% threshold is appropriate because in some instances a less-than-

<sup>31</sup>The Commission adopted global facilities-based international section 214 authorizations in 1996. *1996 Streamlining Order*, 11 FCC Rcd at 12888 through 94, paragraphs 9–20. Prior to the *1996 Streamlining Order*, the Commission's rules required that applications for international section 214 authority specify the geographic market (*i.e.*, the country) to be served, the particular services to be provided, and the facilities to be used. See *1995 Streamlining NPRM*, 10 FCC Rcd at 13481, paragraph 8.

ten percent foreign ownership interest—or a collection of such interests—may pose a national security or law enforcement risk." The Commission further noted, "[t]he Committee staff states that a group of foreign entities or persons, each owning nine percent and working together, could easily reach a controlling interest in a company without having to disclose any of their interests to the Committee for certain FCC application types."

67. In furtherance of the Commission's objective in this proceeding, and as the Commission reviews the current rules and their applicability to the proposed renewal or, in the alternative, periodic review process, the Commission seeks comment on whether a 5% reporting threshold would better capture foreign interests, including and especially any such interests that are associated—either individually or in the collective—with a foreign adversary country. The Commission seeks comment whether the 5% reporting threshold as described would improve the Commission's assessment of evolving public interest risks. In the alternative, the Commission seeks comment whether the Commission should only require disclosure of foreign ownership at the 5% level by citizens, entities, and government organizations from foreign adversary countries, as defined in the Department of Commerce's rule, 15 CFR 7.4.

68. The Commission seeks comment on whether to apply the 5% reporting threshold to encompass all equity and voting interests, regardless whether the interest holder is a domestic or foreign individual or entity. The Commission notes that in the context of foreign ownership rulings under section 310(b) of the Act, the Commission does not require the identification of certain foreign investors if their investment meets insulation criteria set out in the Commission's rules.<sup>32</sup> The Commission seeks comment on whether the Commission should adopt such an approach for identifying ownership in international section 214 authorizations. In other words, should the Commission require reporting only where the 5% or greater ownership interest is not passive or otherwise insulated? The Commission notes the potential for

<sup>32</sup>See 47 CFR 1.5001. The insulation criteria are set out in 47 CFR 1.5003. See Letter from Andrew D. Lipman, Ulises Pin, and Patricia Cave, Counsel to DigitalBridge Group, Inc., Morgan, Lewis & Bockius LLP, and Matthew Brill and Elizabeth Park, Counsel to Searchlight Capital Partners, Latham & Watkins LLP, to Marlene H. Dortch, Secretary, FCC, IB Docket No. 23–119 and MD Docket No. 20–270, at 3 (filed Apr. 12, 2023) (DigitalBridge and Searchlight Apr. 12, 2013 *Ex Parte* Letter).

certain ownership of U.S. entities by foreign adversaries may pose unique national security and/or law enforcement risks. In light of these concerns, the Commission seeks comment on whether applicants that include ownership of 5% or greater by an entity or citizen of a foreign adversary country should be required to disclose those holdings regardless of whether they are passive or insulated or not. In the *Executive Branch Process Reform Order*, the Commission rejected arguments to seek, for purposes of the Standard Questions, only information regarding foreign investors with 5% or greater interests, noting, “the Executive Agencies’ review extends beyond just foreign policy considerations; the review process also involves national security and law enforcement issues as well, which could be implicated regardless of whether the equity interest holder is a domestic or foreign entity.”

69. Currently, the ownership reporting threshold in § 63.18(h) of the Commission’s rules requires applicants for international section 214 authority to disclose the name, address, citizenship, and principal businesses of any person or entity that directly or indirectly owns at least 10% of the equity of the applicant, and the percentage of equity owned by each of those entities (to the nearest 1%).<sup>33</sup> Applicants seeking an assignment or transfer of control of an international section 214 authorization are also subject to the ownership disclosure requirement in § 63.18(h) pursuant to § 63.24 of the Commission’s rules. If the Commission adopts a 5% threshold, the Commission proposes to amend the ownership disclosure requirement in § 63.18(h) of the rules to require that all applicants that file an application or notification required by § 63.18 and/or § 63.24 of the Commission’s rules must disclose all individuals and entities with 5% or greater direct and/or indirect equity and/or voting interest in the applicant, as specified in each rule. Where no individual or entity directly or indirectly owns 5% or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, the Commission proposes

that the application must include a statement to that effect.

70. The Commission seeks comment on the burdens that would be placed on applicants to report direct and indirect equity and/or voting ownership at a 5% threshold. A reporting threshold of 5% would be consistent with other similar relevant federal reporting requirements. A reporting threshold of 5% would be consistent with the ownership threshold used by the Committee in its review of applications that are referred by the Commission, to obtain information from applicants concerning their 5% or greater owners. Are there relevant differences between the FCC’s section 214 review process and the Committee’s processes that the Commission should take into account? In the *Executive Branch Process Reform Order*, the Commission declined to add to its application forms additional questions regarding an applicant’s investors with 5% or more equity that were suggested by NTIA, given “they are inconsistent with the Commission’s ownership disclosure requirements” for applications concerning international section 214 authorizations, among other applications.<sup>34</sup> In light of the Commission’s goal in this proceeding to establish a formalized and systemized process by which the Commission can reassess and continually account for evolving public interest risks, the Commission takes this opportunity to review the current ownership disclosure requirement for such applications and tentatively find that an ownership reporting threshold of 5% is consistent with the views previously expressed by the Committee and would better inform the Commission’s foreign ownership analysis.

71. A reporting threshold of 5% is also consistent with information that U.S. public companies and their shareholders provide to the SEC. The Exchange Act Rule 13d–1 requires a person or “group” that becomes, directly or indirectly, the “beneficial owner” of more than 5% of a class of equity securities registered under Section 12 of the Exchange Act to report the acquisition to the SEC.<sup>35</sup> The

Commission further notes that various SEC forms filed by issuers, including their annual reports (or proxy statements) and quarterly reports, require the issuer to include a beneficial ownership table that contains, *inter alia*, the name and address of any individual or entity, or “group,” who is known to the issuer to be the beneficial owner of more than 5% of any class of the issuer’s voting securities.

72. In addition, a reporting threshold of 5% is consistent with information that the Committee on Foreign Investment in the United States (CFIUS)<sup>36</sup> requires of parties to a voluntary notice filed with CFIUS. Specifically, CFIUS regulations require that if an ultimate parent of a foreign person that is a party to the transaction is a public company, the parties to the transaction must provide in the voluntary notice, the name, address, and nationality (for individuals) or place of incorporation or other legal organization (for entities) of “any shareholder with an interest of greater than five percent in such parent.”<sup>37</sup> Thus, the

Exchange Act Rule 13d–1, Exchange Act Rule 13d–3(a) defines a beneficial owner of a security to include any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares voting power, which includes the power to vote, or to direct the voting of, such security; and/or investment power, which includes the power to dispose, or to direct the disposition of, such security. *Id.* at n.128; 17 CFR 240.13d–3(a). Exchange Act Rule 13d–1(i) defines the term “equity security” as any equity security of a class which is registered pursuant to section 12 of that Act as well as certain equity securities of insurance companies and equity securities issued by closed-end investment companies registered under the Investment Company Act of 1940. *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11293, n.128; 17 CFR 240.13d–1(i).

<sup>36</sup> CFIUS is “an interagency committee authorized to review certain transactions involving foreign investment in the United States and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on the national security of the United States.” U.S. Department of Treasury, *The Committee on Foreign Investment in the United States (CFIUS)*, <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius> (last visited Apr. 12, 2023); see U.S. Department of Treasury, *CFIUS Overview*, <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius/cfius-overview> (last visited Apr. 12, 2023).

<sup>37</sup> 31 CFR 800.502(c)(1)(v)(C), 802.502(b)(1)(vi)(C). Additionally, CFIUS regulations require that a voluntary notice filed under 31 CFR 800.501 must provide, with respect to the foreign person engaged in the transaction and its parents, the following information for any individual that has “an ownership interest of five percent or more in the acquiring foreign person engaged in the transaction and in the foreign person’s ultimate parent”: (1) a “curriculum vitae or similar professional synopsis,” and (2) “personal identifier information,” including full name, date of birth, and place of birth, among other things. *Id.* 800.502(c)(5)(vi); see also *id.* 802.502(b)(3)(vi).

<sup>33</sup> 47 CFR 63.18(h). In the *2020 Executive Branch Process Reform Order*, the Commission amended its rules to require that applicants for domestic section 214 transactions, international section 214 authorizations, and submarine cable licenses must identify the voting interests, in addition to the equity interests, of individuals or entities with 10% or greater direct or indirect ownership in the applicant. *2020 Executive Branch Process Reform Order*, 35 FCC Rcd at 10963 through 64, paragraph 95; *Order Erratum*, 35 FCC Rcd at 13173, paragraph 11. The amended rule is not yet effective.

<sup>34</sup> *Executive Branch Process Reform Order*, 35 FCC Rcd at 10945, paragraph 47 (noting, however, that they are part of the sample triage questions that the Commission will use as a basis for the Standard Questions); see, e.g., *2021 Standard Questions Order*, 36 FCC Rcd at 14855 through 57, 14833 through 96, 14897 through 911, paragraphs 14, 16 through 17, Attach. A (Standard Questions for an International Section 214 Authorization Application), Attach. B (Standard Questions for an Application for Assignment or Transfer of Control of an International Section 214 Authorization).

<sup>35</sup> *2016 Foreign Ownership Report and Order*, 31 FCC Rcd at 11293, paragraph 45. For purposes of

Commission tentatively concludes that the Commission's proposal to adopt a reporting threshold of 5% would be consistent with other federal agencies and impose minimal burdens on applicants. The Commission seeks comment on what, if any, potential burdens would be imposed on applicants under the 5% equity and/or voting interest reporting threshold that the Commission seeks comment on here.

73. The Commission seeks comment on whether a reporting threshold of 5% equity and/or voting interest as described here adequately captures the relationship, association, and/or extent of influence that a foreign investor, including foreign governments, may have with respect to an applicant and/or other individuals or entities in the applicant's chain of ownership. For instance, would a reporting threshold of 5% equity and/or voting interest sufficiently account for circumstances where a foreign government interest holder with comparatively smaller ownership interests may have a disproportionately significant influence on the applicant and its operations, such as through "golden shares"? Should the Commission require additional information about an applicant's reportable interest holders? For example, should the Commission require applicants to identify other types of interests or interest holders in addition to equity interests and voting interests, such as management agreements? Is there any other information the Commission could require to fully capture interest holders that are either foreign governments or foreign state-owned entities? What additional ownership information would fully inform and assist the Commission's assessment of national security, law enforcement, foreign policy, and trade policy risks raised by such interest holders?

74. The Commission seeks comment on minimizing burdens on all applicants generally, including small entities, if the Commission adopts a 5% ownership reporting threshold. For instance, if the Commission adopts a 5% reporting threshold, the Commission seeks comment on whether the Commission should treat the disclosure of certain ownership interests of 5% and up to less than 10% as presumptively confidential,<sup>38</sup> without

<sup>38</sup> Other Commission requirements, such as supply chain annual reporting, provide for a checkbox certification and the submission of information that is presumptively confidential. *2020 Protecting Against National Security Threats Order*, 35 FCC Rcd at 14369 through 70, paragraph 214 ("We believe that the public interest in

requiring the authorization holder to file a request for confidentiality. The Commission notes that the information must be not publicly available elsewhere either in this country or another in order for us to make it confidential. Alternatively, should the Commission limit the public disclosure of ownership interests of 5% and up to less than 10% to only those interest holders that are citizens, entities, or government organizations of foreign adversary countries, as defined in the Department of Commerce's rule, 15 CFR 7.4? Since the Commission's ability to guarantee confidentiality may also be limited by other legal requirements, should the Commission allow relevant information about the identities of 5–10% foreign interests to be omitted from filings with the Commission and instead filed directly with the Committee?

## 2. Services and Geographic Markets

75. The Commission proposes to adopt rules requiring applicants to include in all initial applications for international section 214 authority and applications for modification, assignment, transfer of control, and renewal of international section 214 authority, information about their current and/or expected future services and the geographic markets where the authorization holder offers service in the United States under its international section 214 authority. The Commission's rules currently only require an applicant for international section 214 authority to indicate whether it seeks facilities-based authority, resale authority, and/or authority to acquire facilities or to provide services not covered by § 63.18(e)(1) or (e)(2) of the rules. The Commission's rules for modifications, assignments, and transfers of control of international section 214 authority only require that the applicant state "whether the applicant previously received authority under Section 214 of the Act and, if so, a general description of the categories of facilities and services authorized." The current rules do not require applicants to provide the Commission with specific information about the services they provide and/or will provide under the international section 214 authority, the facilities they use and/or will use, or other

knowing whether providers have covered equipment and services in their networks outweighs any interest the carrier may have in keeping such information confidential . . . . Other information, such as location of the equipment and services; removal or replacement plans that include sensitive information; the specific type of equipment or service; and any other provider specific information will be presumptively confidential."

information related to their operations in the United States and abroad.

76. This information will further help the Commission to properly assess evolving national security, law enforcement, foreign policy, and/or trade policy risks associated with an applicant. In recent revocation actions, the Commission specifically assessed the risks associated with the particular services offered pursuant to international section 214 authority. In addition, the Commission notes that the Executive Branch agencies seek "detailed and comprehensive information" from applicants with reportable foreign ownership, including services to be provided.<sup>39</sup> The Commission believes information about an applicant's current and/or planned future services would be important for the Commission's review of applicants to meaningfully assess national security, law enforcement, and other considerations.

77. Specifically, the Commission proposes to require applicants to provide the following information with respect to services they provide and/or expect to provide using the international section 214 authority: (1) identification and description of the specific services they provide and/or will provide using the international section 214 authority; (2) types of customers that are and/or will be served; (3) whether the services will be provided through the facilities for which the applicant has an ownership, indefeasible-right-of use or leasehold interest or through the resale of other companies' services; and (4) identification of where they currently and/or in the future expect to market, offer, and/or provide services using the particular international section 214 authority, such as a U.S. state or territory and/or U.S.-international route or globally. The Commission notes that the Office of International Affairs retains the authority to request additional information during the course of its review and, as discussed above, the Commission proposes to adopt a similar rule for the Commission's review of renewal applications. The Commission seeks comment on these proposals and the potential burdens on applicants. The Commission seeks comment on whether

<sup>39</sup> See e.g., *Executive Branch Process Reform Order*, 35 FCC Rcd at 10943, paragraph 42; *id.* at 10981, Appx. C, paragraph 7; *Order Erratum*, 35 FCC Rcd at 13170, paragraph 7; *2021 Standard Questions Order*, 36 FCC Rcd at 14883 through 96, 14897 through 911, Attach. A (Standard Questions for an International Section 214 Authorization Application), Attach. B (Standard Questions for an Application for Assignment or Transfer of Control of an International Section 214 Authorization). The Standard Questions are not yet effective.

the Commission should instead require authorization holders to provide this information on an as-needed basis.

### 3. Foreign-Owned Managed Network Service Providers

78. In this proceeding, the Commission considers managed network service providers (MNSPs) to be third parties with access to telecommunications network, systems, or records to provide Managed Services that support core domestic and international telecommunications services, functions, or operations. The Commission relies on international section 214 authorization holders to protect U.S. records, such as customer proprietary network information (CPNI), and ensure the security and reliability of U.S. telecommunications networks. In October 2021, the Commission adopted an Order that will require certain applicants and petitioners with reportable foreign ownership—including applicants seeking international section 214 authority or modification, assignment, or transfer of control of international section 214 authority—to provide answers to a set of standardized national security and law enforcement questions (Standard Questions). The Standard Questions will require an applicant, prior to or at the same time the applicant files its application with the Commission, to submit answers to those Questions directly to the Committee, including whether “any third-party Individual or Entity [has] Remote Access to the Applicant’s network, systems, or records to provide Managed Services.” Those applicants without reportable foreign ownership are not routinely referred to the Committee or to other relevant Executive Branch agencies. Such applicants, however, also may reach contractual agreements or have other arrangements with foreign-owned MNSPs, thereby granting such foreign-owned MNSPs access to U.S. networks and potentially allowing them to take actions in ways that are contrary to U.S. interests, without the Committee ever being informed.

79. Given the potential vulnerabilities raised by a foreign-owned entity’s access to critical telecommunications infrastructure in the United States, the Commission proposes to require all applicants, including those without reportable foreign ownership, to identify in their application whether or not they use and/or will use foreign-owned MNSPs. The Commission also proposes to adopt this requirement for applicants seeking international section 214 authority and modification, assignment,

transfer of control, and renewal of international section 214 authority.

80. The Commission proposes that any applicant with or without foreign ownership that indicates it uses and/or will use foreign-owned MNSPs will need to answer Standard Questions and those applications would be routinely referred to the Executive Branch agencies, including the Committee. Should the Commission ask additional questions, such as requiring applicants to provide ownership information with respect to each foreign-owned MNSP that they use and/or will use? Should the Commission require applicants to identify all entities and/or individuals that hold 5% or greater direct or indirect equity and/or voting interests in the foreign-owned MNSP? Should an MNSP be considered “foreign-owned” only if it is majority-owned and/or controlled by one or more non-U.S. individual(s) or entity(ies)? Should the Commission require applicants to explain in detail the foreign individuals’ or entities’ involvement and management roles in the foreign-owned MNSP? How best can the Commission obtain additional information with regard to these arrangements for purposes of this proceeding? For instance, should the Commission conduct a one-time collection targeted to the use of foreign-owned MNSPs?

81. The Commission seeks comment on whether the Commission should evaluate the character qualifications of foreign-owned MNSPs using the same standards that the Commission proposes herein to rely on for the Commission’s assessment of applicants seeking international section 214 authority or modification, assignment, transfer of control, or renewal of international section 214 authority. Because MNSPs are not seeking Commission authorizations, and the Commission’s character policy is meant to ensure that the Commission can rely on regulated entities to deal truthfully with the Commission and comply with the Act and the Commission’s rules, should the Commission be concerned about different types of past misconduct when the Commission assesses an authorization holder’s relationship with a foreign-owned MNSP?<sup>40</sup> Should the

<sup>40</sup> Examples of past misconduct by an MNSP the Commission might consider relevant to the Commission’s assessment include deceptive sales practices, violations of consumer protection statutes and any regulations, and/or other fraud or abuse practices in violation of federal, state, and/or local law; and violations of federal, state, or local law in connection with the provision of telecommunications services, equipment, and/or products, and/or any other practices regulated by the Telecommunications Act of 1996 and/or by public utility commissions in the United States. See

Commission require applicants, similar to the questions set out in the Standard Questions as applied to applicants, to identify whether or not the foreign-owned MNSP or any entity and/or individual with any ownership or controlling interest in such MNSP has “been investigated, arraigned, arrested, indicted, or convicted” of criminal violations that are indicative of a propensity to engage in behavior that may jeopardize the security and reliability of U.S. telecommunications networks?<sup>41</sup> Should the Commission limit any information requirement regarding MNSPs to a specific prior period of time?

82. Are there other considerations regarding MNSPs that should factor into the Commission’s analysis? For example, to what extent do applicants, both facilities-based and resale-based authorization holders, contract with foreign-owned MNSPs? Should the Commission collect information on authorization holders’ use of MNSPs in any other context? Should applicants identify in their application whether they use and/or will use a non-foreign-owned MNSP(s), or an MNSP with foreign ownership that is less than a reportable threshold, if that MNSP routes or manages traffic using facilities outside of the United States? Wireless carriers with international section 214 authorizations may provide international services to their customers. Are there any special concerns raised by use of foreign-owned MNSPs by wireless carriers, including by CMRS providers?

83. If the Commission adopts such requirements, the Commission would propose to routinely refer to the Executive Branch agencies, including the Committee agencies, to assist the Commission’s public interest determination, an application for a new international section 214 authorization as well as an application to modify,

<sup>41</sup> 2021 Standard Questions Order, 36 FCC Rcd at 14883 through 96, Attach. A (Standard Questions for an International Section 214 Authorization Application).

<sup>41</sup> Such criminal violations of U.S. law would include violations of the Espionage Act (18 U.S.C. 792 *et seq.*), the International Traffic in Arms Regulations (22 CFR parts 120 through 130), and/or the Export Administration Regulations (15 CFR part 730 *et seq.*). See 2021 Standard Questions Order, 36 FCC Rcd at 14889, Attach. A, Standard Questions for an International Section 214 Authorization Application (“Has the Applicant or any Individual or Entity with an Ownership Interest in the Applicant, or any of their Corporate Officers, Senior Officers, Directors ever been investigated, arraigned, arrested, indicted, or convicted of any of the following: (a) Criminal violations of U.S. law, including espionage-related acts or criminal violations of the International Trade in Arms Regulations (ITAR) or the Export Administration Regulations (EAR) . . .”).

assign, transfer control of, or renew the international section 214 authority where an applicant discloses that it uses and/or will use a foreign-owned MNSP. Similar to the Commission's current practice, the Commission proposes to delegate to the Office of International Affairs the authority to develop Standard Questions, to modify and harmonize existing questions on MNSPs and other matters, and to require applicants to submit answers to the Standard Questions, including personally identifiable information (PII), directly to the Committee prior to or at the same time the applicant files its application with the Commission. The Commission seeks comment on these proposals.

#### 4. Cross Border Facilities Information

84. The Commission proposes to collect from current international section 214 authorization holders information on critical infrastructure that is used by authorization holders to provide service crossing the U.S.-Mexico and U.S.-Canada borders, including the location, ownership, and type of facilities, and to require authorization holders to continue to update this information as part of the ongoing three-year reporting requirement proposed below. The Commission also proposes to share this information with relevant Executive Branch agencies, including the Committee agencies. The Commission currently receives this information for submarine cables that land in the United States pursuant to its rules. With this proposed new information collection, the Commission would then have an understanding of not only submarine fiber cable connections to U.S. facilities, but also facilities information for terrestrial fiber cables that cross the U.S.-Mexico and U.S.-Canada borders. Below, the Commission also proposes to conduct a one-time information collection concerning cross border facilities and proposes to require updates in the ongoing reports as well as sharing this information with the Commission's federal partners. The proposed rules would ensure that the Commission has knowledge of the critical infrastructure at the nation's borders. The Commission seeks comment on this proposal.

85. Congress created the Commission, among other reasons, "for the purpose of the national defense [and] for the purpose of promoting safety of life and property through the use of wire and radio communications . . . ." Throughout the past decade, Congress and the Executive Branch have repeatedly stressed the importance of

identifying and eliminating potential security vulnerabilities in U.S. communications networks and supply chains. Recently, the Commission has taken a number of targeted steps as part of its ongoing efforts to protect the security of the networks that provide telecommunications services. The Commission has taken significant steps by blocking access to U.S. communications networks, pursuant to its authority under section 214 of the Act, to providers posing a substantial and serious security threat to U.S. communications networks, and continues its efforts to identify and eliminate potential security vulnerabilities in U.S. telecommunications networks and supply chains.

86. The security of physical telecommunications facilities is essential to maintaining resilient infrastructure, not only for its role in ensuring that people can communicate but also because it enables all other critical infrastructure sectors, especially the energy, information technology, financial services, emergency services, and transportation systems sectors. The Presidential Policy Directive on Critical Infrastructure Security and Resilience (Directive), released in 2013, called for the federal government to strengthen the security and resilience of critical infrastructure in an "integrated, holistic manner to reflect this infrastructure's interconnectedness and interdependency." The Directive also highlighted the federal government's plan to engage with international partners to protect U.S. critical infrastructure. Recent guidance by the DHS Cybersecurity & Infrastructure Security Agency (CISA) on the convergence between cybersecurity and physical security warns against siloing information/cybersecurity and physical security, instead recommending integrated threat management. In addition, with respect to applicants with reportable foreign ownership, the Standard Questions adopted in the 2021 *Standard Questions Order* include questions about the "present and anticipated physical locations" concerning applicants' network equipment, data centers, and infrastructure, whether applicants' network equipment, data centers, and infrastructure is owned or leased; descriptions of equipment used; network architecture diagrams, if the applicant will be operating any physical and/or virtual telecommunications switching platforms; and whether any entities, including foreign-based

entities, will be able to control the infrastructure.

87. The Commission has emphasized the importance of security and sensitivity of physical infrastructure relating to carriers' provision of telecommunications service in view of significant national security and law enforcement risks. For example, in the *China Unicom Americas Order on Revocation*, the Commission stated that China Unicom (Americas) Operations Limited's physical Points of Presence (PoPs) in the United States "are highly relevant to its ability to access, monitor, store, disrupt, and/or misroute communications to the detriment of U.S. national security and law enforcement." In the *China Telecom Americas Order on Revocation and Termination*, the Commission addressed concerns, among other things, that China Telecom (Americas) Corporation's (CTA) PoPs in the United States "are highly relevant to the national security and law enforcement risks associated with CTA" and that "CTA, like any similarly situated provider, can have both physical and remote access to its customers' equipment." In the *Pacific Networks and ComNet Order on Revocation and Termination*, the Commission stated that the physical location of Pacific Networks Corp.'s and ComNet (USA) LLC's operations with respect to their points of presence in the United States "is relevant to identified national security and law enforcement risks." Given the potential vulnerabilities associated with carriers' physical presence and proximity to U.S. communications networks, the Commission seeks to collect information and better understand cross border facilities, bringing it in line with information that the Commission already collects in the context of submarine cable landing licenses.

88. Additionally, collecting more information on cross border facilities would assist the Commission and its partners in the federal government in understanding potential vulnerabilities in U.S. telecommunications networks involving traffic rerouting. The Commission is especially concerned about the ability of service providers to move traffic outside of the United States when normal internet Protocol (IP) routing protocols would not normally take such traffic outside of the United States (for example, when the origination and destination points are both located within the country). The Commission notes that misrouting of traffic outside of the United States can be done without the authorization and knowledge of the customer, and may

result in traffic that is sent to locations that are not under U.S. legal protection. Cross border facilities are particularly significant because of potential threats raised by U.S.-inbound traffic, such as possible disruption to U.S. telecommunications service through bad actors inserting malware into U.S. networks or inbound denial of service attacks. Improved awareness of these facilities would provide needed insight into the international upstream networks sending traffic into the United States.

89. Based on the Commission's concerns above, the Commission proposes to require all applicants for facilities-based international section 214 authority to identify in their initial application for international section 214 authority and the application for renewal of their international section 214 authority, the facilities, services, and other information concerning the facilities that they use and/or will use to provide services under their international section 214 authority from the United States into Canada and/or Mexico. The Commission proposes to require the same information in applications for modifications, assignments, or transfers of control of facilities-based international section 214 authorizations. Similarly, the Commission proposes to require all applicants for resale-based international section 214 authority to identify in their initial application for international section 214 authority and the renewal application, the facilities they lease and/or will lease to provide services under their international section 214 authority from the United States into Canada and/or Mexico. The Commission proposes to require the same information in applications for modifications, assignments, or transfers of control of resale-based international section 214 authorizations.

90. Specifically, the Commission proposes requiring the collection of the following information from applicants for international section 214 authority, regardless of whether they seek facilities-based or resale-based authorizations, and applicants for modification, assignment, transfer of control, and renewal of international section 214 authority:

- Location of each cross border facility (street address and coordinates);
- Name, street address, email address, and telephone number of the owner(s) of each cross border facility, including the Government, State, or Territory under the laws of which the facility owner is organized;
- Identification of the equipment to be used in the cross border facilities,

including equipment used for transmission, as well as servers and other equipment used for storage of information and signaling in support of telecommunications;

- Identification of all IP prefixes and autonomous system domain numbers used by the facilities that have been acquired from the American Registry for Internet Numbers (ARIN); and
- Identification of any services that are and/or will be provided by an applicant through these facilities pursuant to international section 214 authority.

91. Would the public interest be served by requiring less or more specific information? The Commission encourages parties to address whether this information would enhance the Commission's ability to protect U.S. telecommunications infrastructure. Should the Commission share this information with, for example, state and local governments? Are there other sources of information for infrastructure at the U.S.-Canada and U.S.-Mexico borders? What other ways can the Commission ensure that it has information about all critical infrastructure facilities that are used by international section 214 authorization holders to provide services, under their international section 214 authority, crossing the U.S.-Canada and U.S.-Mexico borders?

92. The Commission recognizes that non-common carrier facilities located across the U.S.-Canada and U.S.-Mexico borders are an important component of cross border infrastructure security. The Commission proposes to require applicants to also provide the information set out above about their non-common carrier facilities offered across the U.S.-Canada and U.S.-Mexico borders. The security and safety of telecommunications network is critical and if the Commission grants an international section 214 authorization, it is essential for the Commission and its federal partners to also receive non-common carrier information to assist in the goals of this proceeding. The Commission currently assesses fees on international non-common carrier circuits. The Commission seeks comment generally on this proposal, including the nature and extent of any burdens on applicants and authorization holders. The Commission asks commenters to address whether this would ensure the collection of almost all facilities at the borders. Are there less burdensome alternatives that would achieve the Commission's national security objectives?

93. Finally, if the Commission adopts such requirements, it would propose to

routinely refer to the Executive Branch agencies, including the Committee, an application for a new international section 214 authorization as well as an application to modify, assign, transfer control of, or renew those authorizations where an applicant reports cross border facilities. These applications may separately raise national security, law enforcement, and other concerns that require input from the Executive Branch agencies to assist the Commission's public interest review. The Commission seeks comment on this proposal.

94. *Cross Border Facilities—Initial Information Collection and Updates in the Ongoing Reports.* The Commission proposes requiring all current international section 214 authorization holders to report the information specified above sixty (60) days after the effective date of the rule, following OMB approval. The Commission further proposes to require all current and future international section 214 authorization holders to report this information to the Commission as part of the ongoing reporting process discussed further below.

95. *Sharing with Federal Agencies.* The Commission anticipates sharing the information gathered on cross border facilities with the Executive Branch agencies and other federal agencies to improve the Commission's understanding of the information and to augment the Executive Branch's understanding of cross border telecommunications security issues. To the extent that any of the information is confidential, the Commission notes that its existing rules already provide for the sharing of business confidential information with Executive Branch agencies, including the Committee, in the context of reviews within the scope of the Executive order. The rules also provide for sharing of confidential information with other federal agencies upon notice to the party seeking confidential treatment of the information. The Commission seeks comment on whether sharing of the confidential information with other federal agencies should be subject to the same provisions regarding sharing confidential information with the Committee.<sup>42</sup> Disclosure of this information to other federal agencies, if adopted, may require modifications to

<sup>42</sup> The Commission will, to the extent required, modify the applicable System of Records Notice under the Privacy Act to account for, among other things, the collection of new information types (e.g., information regarding cross border facilities) or new disclosures (e.g., to new federal partners) as discussed throughout this Notice. See Federal Communications Commission, *Privacy Act of 1974; System of Records, IB-1, International Bureau Filing System*, 86 FR 43237 (Aug. 6, 2021).

the applicable System of Record Notice's routine uses.

96. *Updated Facilities Information.* The Commission seeks comment on requiring all authorization holders to notify the Commission within thirty (30) days after commencing service in the new facility or commencing service with an underlying facilities provider. The Commission also seeks comment on whether it should require applicants for initial international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to report, within thirty (30) days, pursuant § 1.65(a), any changes that occur during the pendency of an application relating to the cross border information that was provided in the application with respect to existing facilities, as specified above, and/or new facilities they are using or will use to provide services, under their international section 214 authority, crossing the U.S.-Canada and U.S.-Mexico borders.<sup>43</sup>

97. The Commission believes collecting updated timely information would promote equitable compliance for all entities subject to this requirement. In light of evolving national security, law enforcement, foreign policy, and trade policy threats, it is important for the Commission to collect this information as soon as practicable to ensure that the Commission and its federal partners have the most up-to-date information for their continued efforts to protect this nation's telecommunications infrastructure.

98. The Commission seeks comment on this information collection generally. For example, the Commission seeks comment as to whether other information should be submitted. The Commission seeks comment on whether subsequent updates by carriers concerning facilities equipment should be limited to identifying changes in or new additions to the types of equipment (e.g., next generation firewalls) and manufacturers, instead of a detailed list of equipment. Given the broad scope of the Commission's proposed approach, should the Commission instead narrow the information collection and how? As discussed below, should the Commission require authorization holders to report updated information in ongoing reports required every three years instead of requiring it within 30 days after commencing service in the new facility or commencing service

with an underlying facilities provider? The Commission seeks comment on whether it should reserve the right to request detailed lists of equipment at the time of the Commission's choosing.

#### 5. Facilities-Based Equipment, Resellers, and Service Certification

99. *Facilities Cybersecurity Certification.* The Commission proposes to require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify in the application that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards such as those provided by CISA or the Department of Commerce's National Institute of Standards and Technology (NIST). The Commission tentatively concludes that baseline security requirements would help mitigate national security and law enforcement concerns associated with threats to the security of U.S. communications infrastructure. The Commission seeks comment on this proposal.

100. Other federal government agencies, namely CISA and NIST, have put forward cross-sector security standards. The Commission seeks comment on whether there are other universally recognized baseline cybersecurity standards comparable to the security standards provided by CISA and NIST, and whether applicants should be allowed to certify instead that they will adopt those alternative cybersecurity standards. The Commission seeks comment on whether the proposed certification requirement should take into account the size of the applicant and its operations. For example, should the Commission allow large facilities-based providers and small resellers to certify adherence to different baseline security standards? The Commission seeks comment on these proposals and the potential burdens, if any, that would be imposed upon applicants.

101. *Facilities "Covered List" Certification.* The Commission proposes to require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify in the application as to whether or not they use equipment or services identified on the Commission's "Covered List" of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national security of the United States or the security and safety of United States

persons. The Commission proposes that this certification would apply to covered equipment or services purchased, rented, leased, or otherwise obtained on or after August 14, 2018 (in the case of Huawei, ZTE, Hikvision, Dahua, and Hytera), or on or after 60 days after the date that any equipment or service is placed on the Covered List. The Commission seeks comment on whether applicants must provide notification to the Commission within 30 days prior to implementing any plan to add new vendors to provide equipment or services that are on the Covered List or plan to add/remove such services for existing or new customers. The Commission also seeks comment on whether applicants must provide notification to the Commission within 30 days after they add new vendors to provide equipment or services that are on the Covered List or add/remove such services for existing or new customers.

102. The Commission proposes to require applicants for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority to certify that they will not purchase and/or use equipment made by entities (and their subsidiaries and affiliates) on the "Covered List" as a condition of the potential grant of the application. The Commission seeks comment on these proposals and generally on what other certifications the Commission should adopt concerning the "Covered List."

103. Finally, if the Commission adopts such requirements, the Commission would propose to routinely refer to the Executive Branch agencies, including the Committee agencies, applications for new international section 214 authorizations as well as applications to modify, assign, transfer control of, or renew those authorizations where an applicant certifies that it uses equipment or services identified on the Commission's "Covered List" of equipment and services pursuant to the Secure and Trusted Communications Networks Act. These applications may separately raise national security, law enforcement, foreign policy, and trade policy concerns that require input from the Executive Branch agencies to assist the Commission's public interest review. The Commission seeks comment on this proposal.

#### 6. Regulatory Compliance Certification

104. The Commission proposes that all applicants seeking international section 214 authority or modification, assignment, transfer of control, or renewal of international section 214

<sup>43</sup> Any change to an applicant's cross border facilities information as discussed herein would be deemed substantial and significant, including deactivation of facilities.

authority must certify in the applications whether or not they are in compliance with the Commission's rules and regulations, the Act, and other laws. The Commission proposes to consider whether an applicant that files any application involving international section 214 authority has the requisite character qualifications. Specifically, the Commission proposes to require each applicant to certify in its application whether or not the applicant has violated the Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder. The Commission seeks comment on these proposals. The Commission also seeks comment on whether it should require applicants to disclose any pending FCC investigations, including any pending Notice of Apparent Liability, and any adjudicated findings of non-FCC misconduct.

#### F. Other Changes to Part 63 Rules

105. The Commission proposes additional changes to its rules concerning international section 214 authorizations to ensure that the Commission has current and accurate information about which authorization holders are providing service under their international section 214 authority. As discussed above, although the Commission's records indicate there are approximately 7,000 international 214 authorization holders, the Commission estimates the more accurate number is closer to approximately 1,500 active authorization holders. The Commission tentatively concludes that a substantial majority of international section 214 authorizations are in disuse, including those that may have never commenced use. Without accurate information about who is providing U.S.-international service and how that service is being provided, it is difficult for the Commission to ensure that such service does not raise national security, law enforcement, foreign policy, and/or trade policy concerns. The Commission seeks comment on a number of proposals to improve the information that the Commission has about authorization holders that provide service under their international section 214 authority and the service that they are providing. The Commission also seeks comment on whether there are specific rules in Part 63 where the benefits do not outweigh the burdens

and whether the Commission should eliminate or modify such rules.

#### 1. Permissible Number of Authorizations

106. The Commission proposes to adopt a rule that would allow an authorization holder to hold only one international section 214 authorization except in certain limited circumstances. The Commission proposes that, if an authorization holder currently has more than one international section 214 authorization, that carrier must surrender the excess authorization(s). As explained below, an authorization holder may have acquired different types of authorizations and under different circumstances. The Commission's records indicate that approximately 3% of authorization holders hold more than one authorization. Under the Commission's current rules, there may be various circumstances through which an authorization holder acquired more than one authorization. An authorization holder may have acquired multiple authorizations as a result of an assignment or transfer of control. Or, an authorization holder may have obtained different types of authorizations, such as global facilities-based authority, global resale authority, and/or other authorization pursuant to § 63.18(e)(1)–(3) of the Commission's rules. The Commission's concern is that carriers may have duplicative authorizations that are not required for them to provide U.S.-international service. The Commission recognizes that in certain limited circumstances, a carrier may need more than one authorization, such as authority for overseas cable construction for a common carrier submarine cable or if the carrier is affiliated with a foreign carrier with market power on a U.S.-international route. However, the Commission tentatively finds that in most circumstances, a carrier only requires one international section 214 authorization to provide service(s) under that authority.

107. The Commission seeks comment on this proposal. How should the Commission consider for these purposes multiple authorizations held by commonly controlled entities? Should carriers be allowed to hold more than one authorization in certain circumstances? If so, commenters should explain in detail why carriers should hold more than one authorization. Would a carrier need a different authorization for each type of authority enumerated in § 63.18(e)(1)–(3)? The Commission seeks comment on any additional exceptions that it should

consider. Should the Commission replace multiple authorizations held by a carrier with a single, consolidated authorization that includes all of the authority and conditions enumerated in each of the multiple authorizations? The Commission seeks comment on whether such a proposed measure is feasible under the Commission's current rules, and the reasons therefor.

#### 2. Commence Service Within One Year

108. Currently an entity can obtain an international section 214 authorization and never provide U.S.-international service pursuant to the authorization. This may occur because business plans change or the entity goes out of business, and this has led to a large number of authorizations in the Commission's records where the authorization is not being used to provide service. The Commission notes that it has requirements for other licensees of regulated services where the licensee must begin providing service within a set period of time or its license is cancelled. The Commission proposes to adopt similar requirements for international section 214 authorization holders. This proposed requirement would also provide the Commission with more accurate information as to who is actually providing U.S.-international service and improve the administration of the Commission's rules.<sup>44</sup>

109. The Commission tentatively concludes that authorization holders should retain their authorization only if service is being provided to the public under that authorization. Consequently, the Commission proposes to adopt a rule requiring an international section 214 authorization holder to commence service under its international section 214 authority within one year following the grant. Under this proposal, an authorization holder will be required to file a notification with the Commission through ICFS within 30 days of the date when it begins to offer service but in no case later than one year following the grant of international section 214 authority. The Commission proposes that the commencement of service notification must include: (1) a

<sup>44</sup> See also 1996 Streamlining Order, 11 FCC Rcd at 12894, paragraph 20. In the 1996 Streamlining Order, the Commission amended § 63.05 of the rules "so that international common carriers need not commence providing service within a specified time after the Section 214 authorization date." *Id.* The Commission stated that "[i]nternational carriers need to obtain operating agreements from foreign carriers" and "[o]btaining such agreements may be delayed by events outside U.S. carriers' control," adding that, "[c]arriers' traffic reports will advise the Commission of the year that carriers actually initiate service to individual countries." *Id.*

certification by an officer or other authorized representative of the authorization holder that the authorization holder has met the commencement of service requirement; (2) the date that the authorization holder commenced service; (3) a certification that the information is true and accurate upon penalty of perjury; and (4) the name, title, address, telephone number, and association with the authorization holder of the officer or other authorized representative who executed the certifications. The Commission proposes that an authorization holder may obtain a waiver of the one-year time period if it can show good cause why it is unable to commence service within one year following the grant of its authorization and identify an alternative reasonable timeframe when it can commence service. If an authorization holder does not notify the Commission of the commencement of service or file a request for a waiver within one year following the grant of international section 214 authority, the Commission proposes to cancel the authorization.

110. The Commission seeks comment on these proposals, including whether one year is sufficient time to initiate U.S.-international service or if another time period is appropriate in certain situations, such as where an international section 214 authorization is acquired in association with a common carrier submarine cable. The Commission seeks comment on the Commission's proposal that authorization holders may seek a waiver of the one-year requirement. The Commission's rules provide in other contexts that licensees may seek a waiver of certain rules. If an authorization holder seeks a waiver of the one-year time period, what facts would establish good cause to extend the time period for commencing U.S.-international service pursuant to its international section 214 authority? The Commission also seeks comment on whether the Commission should require authorization holders with authorizations that were or are granted prior to the effective date of the new rules to file with the Commission a commencement of service notification within one year of the effective date of the rules.

### 3. Changes to the Discontinuance Rule

111. The Commission proposes to amend § 63.19 of the Commission's rules to require that all authorization holders that permanently discontinue service under their international section 214 authority must file with the Commission a notification of the

discontinuance and surrender the authorization.<sup>45</sup> Currently, the discontinuance procedures set out in § 63.19 only apply when an authorization holder discontinues the service for which it has customers. Section 63.19 requires that the carrier notify affected customers of the planned discontinuance, reduction, or impairment of service at least 30 days prior to its planned action.<sup>46</sup> When the Commission last revised the discontinuance rules in 2007, the Commission did not address the particular situation where an international section 214 authorization holder does not have customers. As a result, an authorization holder may retain indefinitely an authorization that has never been used or is no longer being used. An authorization holder that ceases to provide international service or goes out of business altogether is not

<sup>45</sup> In 2007, the Commission amended its rules "to reduce the notification period for a non-dominant carrier's discontinuance of international service from 60 days to 30 days, to be more consistent with the minimum period generally allowed before a non-dominant carrier can receive authority to discontinue domestic service." *2007 Amendment of Parts 1 & 63 Order*, 22 FCC Rcd at 11402, paragraph 10. The Commission found that "the further increase in the number of carriers and competition in the U.S. international telecommunications marketplace since 1996 justifies a further reduction in our discontinuance notice period for international services." *Id.* at paragraph 12. The Commission also modified its rules to require international carriers to file a copy of the discontinuance notification with the Commission at the same time they provide notification to their affected customers. *Id.* at 11402, 11403, paragraphs 10, 13. The Order did not address a situation where discontinuance of international service occurred where an authorized carrier had no customers.

<sup>46</sup> 47 CFR. 63.19(a). Section 63.19(a) requires that "any international carrier that seeks to discontinue, reduce, or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines," must: (1) "notify all affected customers of the planned discontinuance, reduction, or impairment at least 30 days prior to its planned action," and (2) file with the Commission "a copy of the notification on the date on which notice has been given to all affected customers." *Id.* 63.19(a)(1)–(2). The notification must "be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice." *Id.* 63.19(a)(1). Section 63.19(b) contains procedural requirements for any international carrier that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. *Id.* 63.19(b). Any such carrier that seeks to retire international facilities, dismantle, or remove international trunk lines, but does not discontinue, reduce, or impair the dominant services being provided through these facilities, shall only be subject to the notification requirements of section 63.19(a). *Id.* If such carrier discontinues, reduces, or impairs the dominant service, or retires facilities that impair or reduce the service, the carrier shall file an application pursuant to §§ 63.62 and 63.500. *Id.* Commercial Mobile Radio Service (CMRS) carriers, "as defined in section 20.9 of the Commission's rules, are not subject to the provisions of" § 63.19. *Id.* 63.19(c).

currently required to notify the Commission and surrender the authorization. This makes it difficult to effectively administer international section 214 authorizations given that the Commission's records indicate that many of the authorizations are no longer being used to provide U.S.-international service.

112. *Permanent Discontinuance of Service.* The Commission proposes to modify § 63.19 by adding a requirement that an authorization holder that permanently discontinues service under its international section 214 authority must surrender the authorization. The Commission proposes to define permanent discontinuance of service as a period of three consecutive months during which an authorization holder does not provide any service under its international section 214 authority. The Commission will continue to require that an authorization holder with existing customers must comply with the requirements of § 63.19(a) to notify all affected customers prior to discontinuance. If a carrier will discontinue part but not all of its U.S.-international services—for example, by discontinuing service only on a particular U.S.-international route—and will continue to provide other U.S.-international service(s) under its international section 214 authority, it must comply with the requirements of § 63.19(a) to notify affected customers prior to discontinuance of those services.

113. The Commission proposes that, if an authorization holder has permanently discontinued service provided pursuant to its international section 214 authority, it must surrender its authorization and file with the Commission a notification that contains the following information: (1) the name, address, and telephone number of the authorization holder; (2) the initial date as of when the authorization holder did not provide service under its international section 214 authority; (3) a statement as to whether any customers were affected, and if so, whether the authorization holder complied with § 63.19(a) of the Commission's rules; (4) whether or not the carrier is also surrendering any ISPCs; and (5) a request to surrender the authorization. The Commission proposes that if an authorization holder has permanently discontinued service provided pursuant to its international section 214 authority, the authorization holder must file this notification with the Commission within 30 days after the discontinuance. This proposed requirement applies to authorization holders regardless of whether or not

they discontinued service with or without customers. The Commission believes this information will give the Commission and the public sufficient information concerning when the discontinuance occurred and whether customers were affected by the discontinuance. The Commission proposes to require authorization holders to file this notification in the ICFS file number associated with their authorization.

114. The Commission seeks comment on its proposed framework regarding permanent discontinuance of service and the costs and benefits to the public, authorization holders, and the Commission. The Commission seeks comment on whether an alternative length of time should be used to define permanent discontinuance of service. The Commission also seeks comment on what may constitute good cause for waiver of these proposed rules.

115. *Additional Changes to § 63.19.* The Commission proposes to modify § 63.19(a) by providing clear and consistent requirements concerning the notification that an authorization holder must provide to affected customers of its planned discontinuance, reduction, or impairment of service. In contrast to the notification requirements that apply to discontinuance, reduction, or impairment of domestic services, § 63.19(a)(1) currently does not specify what an authorization holder must include in a notification to affected customers of its planned discontinuance, reduction, or impairment of service under its international section 214 authority. The Commission proposes to require that an authorization holder that seeks to discontinue, reduce, or impair service under its international section 214 authority must include the following information in the notification to affected customers:

- Name and address of carrier;
- Date of planned service discontinuance, reduction, or impairment;
- Points of geographic areas of service affected (inside of the United States and U.S.-international routes);
- Brief description of type of service(s) affected; and
- Brief explanation as to whether the service(s) will be discontinued, reduced, or impaired.

116. These proposed requirements are similar to the notification requirements that apply to discontinuance, reduction, or impairment of domestic services. The Commission seeks comment on this proposal and whether carriers should include any additional information in

the notification of planned discontinuance to affected customers.

117. The Commission proposes to modify § 63.19(a) to allow an authorization holder to provide notice by email to affected customers of its planned discontinuance, reduction, or impairment of service, if the authorization holder has the email addresses of those affected customers. The Commission's rules concerning discontinuance, reduction, or impairment of domestic service, provide that notice by email constitutes notice in writing. The Commission seeks comment on whether it is appropriate to similarly allow an authorization holder to provide notice by email to affected customers of its planned discontinuance, reduction, or impairment of service under its international section 214 authority. Alternatively, are there reasons to require different approaches for notifying affected customers of the planned discontinuance, reduction, or impairment of U.S.-international service and domestic service? The Commission also seeks comment on whether the Commission should further amend § 63.19 to allow an authorization holder that seeks to discontinue, reduce, or impair any pre-paid calling service that is provided under its international section 214 authority to provide notice by recorded message when a customer makes a call. Would this approach provide sufficient notice for affected customers of pre-paid calling services, or should the Commission also require the authorization holder to provide notice by email and/or letter to affected customers?

118. If the Commission modifies § 63.19(a)(1) to provide that notice by email to affected customers of planned discontinuance, reduction, or impairment of service constitutes notice in writing for purposes of § 63.19, the Commission proposes to require that an authorization holder must also comply with the following requirements:

- The carrier must have previously obtained express, verifiable, prior approval from customers to send notices via email regarding their service in general, or planned discontinuance, reduction, or impairment in particular;
- The carrier must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email; and
- Any email notice returned to the carrier as undeliverable will not constitute the provision of notice to the customer.

119. These proposed requirements are similar to the requirements that apply to discontinuance of domestic services.

The Commission seeks comment on these proposals and whether an authorization holder should comply with any additional requirements if the Commission were to modify § 63.19(a) to allow an authorization holder to provide notice by email to affected customers of its planned discontinuance, reduction, or impairment of service, subject to the requirements proposed herein.

120. The Commission proposes to modify § 63.19(a)(2) to require an authorization holder to provide the Commission with a copy of the notification to affected customers through ICFS rather than by letter to the Office of the Secretary. Section 63.19(a)(2) provides that this filing with the Commission "shall identify the geographic areas of the planned discontinuance, reduction or impairment and the authorization(s) pursuant to which the carrier provides service." The Commission proposes to require an authorization holder to also include the following information in a filing accompanying the copy of the notification to affected customers: (1) brief description of the dates and methods of notice to all affected customers; (2) whether or not the authorization holder is surrendering any ISPCs; and (3) any other information that the Commission may require. The Commission proposes to require that an authorization holder must file a copy of the notification to affected customers and the accompanying filing proposed herein in the ICFS file number associated with its authorization. The Commission seeks comment on these proposals.

121. The Commission proposes to make conforming edits to § 63.19(c) to specifically state that CMRS carriers are not subject to the provisions of paragraphs (a) and (b) of the section as modified. Section 63.19(c) states, "Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not subject to the provisions of this section."<sup>47</sup>

122. *Implementation.* The Commission proposes that these rule changes become effective at the same time for all authorization holders. The Commission also proposes to require that applicants seeking renewal of their international section 214 authority must specifically certify in the renewal

<sup>47</sup> 47 CFR 63.19(c). As discussed further below, the Commission proposes to delete the citation to § 20.9, consistent with the Commission's removal of this provision from the rules, and replace the citation with a citation to § 20.3, which defines "Commercial mobile radio service." The proposed amendments to § 63.19, including the addition of paragraphs (d) and (e), are reflected in Appendix A.

application whether or not they discontinued service for three consecutive months at any time during the preceding renewal timeframe, in addition to certifying whether or not they are in compliance with the Commission's rules and regulations, the Act, and other laws as proposed in this document. The Commission tentatively concludes that requiring authorization holders to affirmatively report on their provision of service for the preceding renewal timeframe would help to ensure that authorization holders are in compliance with these proposed requirements concerning the discontinuance, reduction, or impairment of service. The Commission seeks comment on these proposals.

#### 4. Ongoing Reporting Requirements

123. The Commission proposes to require authorization holders to provide updated ownership information and other information every three years following the grant of a renewal application filed with the Commission, until the next grant of a renewal application. The Commission further proposes to establish a three-year reporting requirement that would commence as of the date that the Commission grants an application for international section 214 authority or modification, assignment, or transfer of control. The Commission proposes that an authorization holder must file the required report every three years based on the date of such grant, until and unless the Commission grants a subsequent application filed by the authorization holder, at which point the three-year reporting cycle would commence anew as of the date of the new grant. The Commission proposes that these reports must contain information that is current as of thirty (30) days prior to the date of the submission. The Commission notes that Commission staff may require any information prior to the three-year reporting deadline. The Commission seeks comment on these proposals and whether the Commission should adopt a longer or shorter reporting cycle, instead of three years. Should the Commission instead require authorization holders to submit the reports starting three years after the effective date of the new rules? If so, the Commission would propose to require international section 214 authorization holders to continue to file the reports while its renewal application or other international section 214 application is pending with the Commission. The Commission seeks comment on the potential burdens of a periodic reporting requirement as part of a renewal

framework on authorization holders, including small businesses. The Commission proposes that these reports must contain information that is current as of thirty (30) days prior to the date of the submission.

124. The Commission seeks comment on the nature and extent of the potential burdens of this requirement. Does any information the Commission addresses below involve confidential business information or other confidential, proprietary, or private information? As an alternative to this ongoing reporting requirement, should carriers instead provide updated information only when there is a material change in ownership or other relevant information? If so, how should the Commission define what are material changes and relevant information? Are there any other alternatives that would allow for the provision of adequate information on a periodic basis with fewer burdens?

125. The Commission's proposed ongoing reporting requirements will help ensure that the Commission and the Executive Branch agencies have the information necessary to continually account for ownership changes for purposes of assessing any evolving national security, law enforcement, foreign policy, and/or trade policy risks and compliance with the Commission's rules. The Commission proposes to require that all authorization holders must file a report every three years providing current and accurate information about their reportable ownership, consistent with the ownership disclosure requirements on which the Commission seeks comment in this proceeding.

126. *Five (5) Percent Reportable Interest Update.* Specifically, the Commission seeks comment on whether the authorization holder should provide updated information concerning those who hold 5% or greater direct and indirect equity and/or voting interests, or a controlling interest, in the authorization holder. In the alternative, if the Commission does not adopt an ongoing reporting requirement at a 5% threshold, the Commission would propose that the authorization holder must provide updated information concerning those who hold 10% or greater direct and indirect equity and/or voting interests, or a controlling interest, in the authorization holder.<sup>48</sup> The Commission proposes that the reports be submitted through ICFS, or its successor system, and that authorization holders with reportable foreign

ownership as of thirty (30) days prior to the date of the submission must also file a copy directly with the Committee. The Commission seeks comment on whether an ongoing reporting requirement every three years should be broader and include additional information about ownership, control, and/or influence by foreign governments or foreign state-owned entities. Additionally, the Commission proposes that failure to submit timely, consistent, accurate, and complete information would constitute grounds for enforcement action against the authorization holder, up to and including cancellation or revocation of the authorization.

127. *Cross-Border Facilities Information.* The Commission proposes to require international section 214 authorization holders to file updated information on their cross border facilities in their three-year reports. The Commission seeks comment on whether it should require this information in these reports or whether an alternative reporting framework for providing updated information to the Commission would be preferable, and the reasons therefor.

128. *Current Services/Geographic Market.* The Commission proposes to require international section 214 authorization holders to include in their three-year reports updated information concerning the services they currently provide to customers using their international section 214 authority and the geographic markets where they currently market, offer, and/or provide services using the particular international section 214 authority, consistent with the changes the Commission proposes to the application requirements. The Commission proposes to require authorization holders to disclose whether or not they have discontinued service as of the most recent renewal process or the most recent report.

129. *Facilities-Based Equipment, Resellers, and Service Certification.* The Commission proposes to require international section 214 authorization holders to make certifications in the three-year reports. First, the Commission proposes to require authorization holders to certify in the report that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards such as those provided by the CISA or the NIST. Second, the Commission seeks comment on whether to require authorization holders to certify in the report as to whether or not they use equipment or services identified on the Commission's "Covered List."

<sup>48</sup> The Commission's current rules require disclosure of 10% or greater interests. 47 CFR 63.18(h).

130. *Regulatory Compliance and Character Qualifications.* The Commission proposes in Section IV.E.6. that all applicants seeking international section 214 authority or modification, assignment, transfer of control, or renewal of international section 214 authority must certify in the applications whether or not they are in compliance with the Commission's rules and regulations, the Act, and other laws. The Commission proposes to require each applicant to certify in its application as to whether or not the applicant has violated the Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder. The Commission proposes to require authorization holders to also certify as to their compliance in the three-year reports. The Commission seeks comment on this proposal.

131. *Data Storage Information.* Serious national security, law enforcement, foreign policy, and/or trade policy concerns are presented where a foreign government may have access to U.S. telecommunications records through data stored in that foreign country or through the routing of data through such country. The Commission seeks comment on whether, as part of their three-year reporting requirement, authorization holders should report, with respect to services provided pursuant to their international section 214 authority, the current location(s) of their data storage facilities; the foreign countries where they currently store U.S. records; the foreign countries from which their infrastructure in the United States is currently and/or can be accessed, controlled, and/or owned; and the countries in which their employees, subsidiaries, and/or offices are currently located. The Commission seeks comment on whether authorization holders should also disclose the equipment such as the hardware and software that they currently use to store U.S. records for services provided pursuant to their international section 214 authority. The Commission seeks comment on whether it should require applicants to provide any of this information in the initial application for international section 214 authority and the renewal application or, in the alternative, periodic review submission.

132. *Other Information.* The Commission seeks comment on what

other information the Commission should require generally for all applicants so that the Commission can address evolving national security, law enforcement, foreign policy, and/or trade policy risks. The Commission seeks comment on the types of ongoing information that the Commission should refer to the Executive Branch agencies for review. For example, should the Commission require authorization holders to periodically notify the Commission of any criminal convictions involving the authorization holder? The Commission notes that a similar requirement applies to broadcast licensees.

#### 5. International Signaling Point Codes (ISPCs)

133. The Commission proposes to adopt a rule requiring that applicants seeking to assign or transfer control of their authorization must identify in their application any ISPCs that they hold and whether the ISPC will be subject to the assignment or transfer of control. As the Commission previously stated, "ISPCs are a scarce resource that are used by international Signaling System 7 (SS7) gateways as addresses for routing domestic voice traffic to an international provider."<sup>49</sup> The Commission is the Administrator of ISPCs for SS7 networks for the United States consistent with the ITU-T Recommendation Q.708. Anyone seeking an ISPC assignment is required by rule to file an application with the Commission.<sup>50</sup>

<sup>49</sup> *China Telecom (Americas) Corporation*, GN Docket No. 20-109, File Nos. ITC-214-20010613-00346, ITC-214-20020716-00371, ITC-T/C-20070725-00285, Order Instituting Proceedings on Revocation and Termination and Memorandum Opinion and Order, 35 FCC Rcd 15006, 15040, paragraph 58 (2020); *China Telecom Americas Order on Revocation and Termination*, 36 FCC Rcd at 16054, paragraph 135, *aff'd*, *China Telecom (Americas) Corp. v. FCC*; see *China Unicom Americas Order on Revocation* at \*50, paragraph 121; *Reporting Requirements for U.S. Providers of International Telecommunications Services—Amendment of Part 43 of the Commission's Rules*, IB Docket No. 04-112, Notice of Proposed Rulemaking, 19 FCC Rcd 6460, 6474, paragraph 36, n.83 (2004). ITU-T Recommendation Q.708 defines a signaling point code as a "code with a unique 14-bit format used at the international level for [signaling] message routing and identification of [signaling] points involved." See International Telecommunication Union, ITU-T Recommendation Q.708 (03/99), Series Q: Switching and Signalling, Specifications of Signalling System No. 7—Message Transfer Part (MTP), Assignment procedures for international signalling point codes, at 1, <https://www.itu.int/rec/recommendation.asp?lang=en&parent=T-REC-Q.708-199903-I> (ITU-T Recommendation Q.708).

<sup>50</sup> ITU-T Recommendation Q.708. The Commission has adopted rules requiring applicants to submit ISPC applications electronically via the International Communications Filing System (ICFS) and stating that the Commission will take action on

134. In its letters provisionally assigning the ISPCs to carriers, the Office of International Affairs imposes conditions that require carriers to be in compliance with the ITU-T Recommendation Q.708. Notably, the ITU also advises that ISPCs "may not be transferred, except in the case of a merger, acquisition, divestiture, or joint venture" and that "[t]he Administrator(s) shall be notified of any such transfer by the signalling point operators." Based on the Commission's experience, carriers may have assigned or transferred control of their ISPCs to other carriers without filing with the Commission the requisite notification of such assignment or transfer of control. In fact, on June 1, 2020, China Unicom (Americas) Operations Limited admitted that it had failed to notify the Commission of the transfer of ISPC 3-194-2 from China Netcom (USA) Operations Limited to China Unicom USA Corporation in August 2009. The ISPC authorization holders must comply with the ITU guidelines, which clearly require ISPC operators to inform the Commission of any transfers. Currently, the Commission asks carriers informally. The Commission believes, however, that a rule would help to ensure that the carrier provides the required notice if an ISPC is also being transferred in a transaction. The Commission believes this proposal would ensure the Commission has accurate information about current ISPC holders. The Commission seeks comment on this proposal and what potential burdens, if any, would be imposed on carriers.

#### 6. Enforcement of International Section 214 Authorization Rules

135. The Commission proposes that even if an authorization holder fails to file a notification of discontinuance and surrender the authorization, an authorization will be cancelled if the Commission determines that the authorization holder has permanently discontinued service under the international section 214 authority.<sup>51</sup> The Commission seeks comment on what facts would warrant cancellation

ISPC applications via a letter issued to the applicant. See 47 CFR 1.10007(a), 1.10014(h).

<sup>51</sup> For instance, with respect to Wireless Radio Service licenses, the Commission's rules provide that "[a]n authorization will automatically terminate, without specific Commission action, if service or operations are permanently discontinued as defined in this section, even if a licensee fails to file the required form requesting license cancellation." 47 CFR 1.953(f); 47 CFR 1.953(a) ("A licensee's authorization will automatically terminate, without specific Commission action, if the licensee permanently discontinues service or operations under the license during the license term.").

and the process for such cancellation. For example, if an authorization holder fails to respond to Commission requests, and has not otherwise interacted with the Commission during the same time period, could the Commission conclude that the entity is no longer in business and cancel the authorization? How should the Commission notify the authorization holder of its intent to cancel the authorization and how much time should the Commission afford to such authorization holder for any response?

136. The Commission also proposes that the authorizations of authorization holders that fail to comply with other reporting requirements should be subject to cancellation under similar circumstances, *i.e.*, where there are no other indications that the carrier remains in business. Should the Commission adopt a rule that conditions international section 214 authorizations on an authorization holder's compliance with the three-year reporting requirements or cross border reporting requirements proposed herein, whereupon failure to file timely and sufficient ongoing reports is grounds for termination?

137. The Commission proposes to direct the Office of International Affairs to release an informative public notice announcing the proposed cancellation of the authorization. The authorization holder would have 30 days to respond and explain why the authorization should not be cancelled. If the authorization holder does not respond, the authorization would be automatically cancelled at the end of the 30-day period.<sup>52</sup> The Commission proposes that an international section 214 authorization holder whose authorization is cancelled for the foregoing reasons may file an application for a new international section 214 authorization. The Commission notes that authorization holders that fail to comply with reporting and notification requirements are subject to forfeitures in addition to cancellation. The Commission seeks comment on this process.

#### 7. Other Administrative Modifications

138. *Section 214(b) of the Act.* The Commission proposes to clarify the requirements of § 1.763(b) of the rules, which implements section 214(b) of the Act, and to amend § 63.18 to incorporate the requirements of § 1.763. Section 214(b) of the Act requires, “[u]pon

receipt of an application for any such certificate, the Commission shall cause notice thereof to be given to, and shall cause a copy of such application to be filed with, the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State in which such line is proposed to be constructed, . . . acquired, or operated . . . .” Section 1.763(b) in turn states, “[i]n cases under this section requiring a certificate, notice is given to and a copy of the application is filed with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. Hearing is held if any of these persons desires to be heard or if the Commission determines that a hearing should be held. Copies of applications for certificates are filed with the regulatory agencies of the States involved.” The Commission proposes to amend § 1.763(b) to clarify that an applicant must give notice and file a copy of the application with the Secretary of Defense, the Secretary of State, and the Governor of each State involved, and must file copies of applications for certificates with the regulatory agencies of the State involved.

139. The Commission also proposes to amend § 63.18 of the rules by adding a subsection that expressly references the requirement in § 1.763(b) and requires applicants for international section 214 authority to certify service to the Secretary of Defense, the Secretary of State, and the Governor of each State involved on a service list attached to the application or other filing. The Commission seeks comment on these proposals.

140. *Anti-Drug Abuse Act Certification.* The Commission proposes to amend § 63.18(o) of the Commission's rules to reflect changes in underlying rule and statutory provisions referenced in § 63.18(o). Section 63.18(o) requires “[a] certification pursuant to §§ 1.2001 through 1.2003 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 853a.” Specifically, the Commission proposes to delete the citation to § 1.2003, consistent with the Commission's removal of this provision from the rules. In addition, the Commission proposes to replace the citation to 21 U.S.C. 853a with a citation to 21 U.S.C. 862, consistent with the redesignation of section 5301 of the Anti-Drug Abuse Act of 1988 as section 421 of the Controlled Substances Act.

141. *Section 63.19(c).* The Commission proposes to amend § 63.19(c) of the Commission's rules to reflect changes in an underlying rule referenced in § 63.19(c). Section 63.19(c) states, “Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.9 of this chapter, are not subject to the provisions of this section.” Section 20.9 no longer contains a rule provision. The Commission proposes to delete the citation to § 20.9, consistent with the Commission's removal of this provision from the rules, and replace the citation with a citation to § 20.3, which defines “Commercial mobile radio service.”

142. *Applications for Substantial Transactions.* The Commission proposes to make an administrative correction to § 63.24(e)(1) of the Commission's rules by removing the word “shall,” which was previously included in the rule in error. Section 63.24(e)(1) states, “[i]n the case of an assignment or transfer of control shall of an international section 214 authorization that is not pro forma, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.”

143. *Transfers of Control.* The Commission proposes to make an administrative correction to § 63.24(c) of the Commission's rules. The Commission also proposes to move existing notes into regulatory text as necessary to conform with the Office of **Federal Register** requirements. This may entail the creation of new subsections. Section 63.24(c) describes what constitutes a transfer of control and states, in part, “[i]n all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis with reference to the factors listed in Note to paragraph (c).” The Commission proposes to amend the reference to Note to paragraph (c) given that § 63.24 no longer contains a Note to paragraph (c). Specifically, the Commission proposes to change the citation to paragraph (d) and thus replace the reference to “Note to paragraph (c)” with a reference to what is currently reflected as “Note 1 to paragraph (d).” This reference to Note 1 to paragraph (d) would be consistent with a similar reference set forth in § 63.24(d) of the rules, which describes what constitutes a *pro forma* assignment or transfer of control and includes the statement, “[w]hether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in Note 1 to this paragraph (d).” Note 1 to paragraph (d) states, “[b]ecause the issue of control inherently involves

<sup>52</sup> Under the Commission's rules, the authorization holder would have 30 days to file a petition for reconsideration of this action. 47 CFR 1.106.

issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than fifty percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment." As discussed below, and reflected in Appendix A, the Commission proposes to further convert Notes into respective subsections. The Commission seeks comment on these proposed amendments to § 63.24(c) of the rules.

144. *Section 63.24(f)*. Consistent with the proposal in this document, the Commission proposes to make conforming edits to § 63.24(f) to state that a single notification may be filed for an assignment or transfer of control of more than one authorization if each authorization is identified by the file number under which it was granted, subject to the Commission's proposed requirement that each authorization holder may hold only one authorization except in certain limited circumstances.

145. *Section 63.18(q)*. The Commission proposes to amend the current § 63.18(q) to clarify that an application must include any other information that "the Commission or Commission staff have advised will" be necessary to enable the Commission to act on the application. Section 63.18(q) states, "[a]ny other information that may be necessary to enable the Commission to act on the application."

146. *Section 63.21(g)*. The Commission proposes to amend § 63.21(g) of the rules to state that the Commission reserves the right to review a carrier's authorization "at any time" and to impose additional requirements on U.S. international carriers "where national security, law enforcement, foreign policy, trade policy, and/or other public interest concerns are raised by the U.S. international carrier's international section 214 authority." Section 63.21 states, "[t]he Commission reserves the right to review a carrier's authorization, and, if warranted, impose additional requirements on U.S. international carriers in circumstances where it appears that harm to

competition is occurring on one or more U.S. international routes."

147. *Other Administrative Changes*. Throughout Appendix A, the Commission has proposed various ministerial, non-substantive changes not individually discussed in this document. These changes include, among other things, the conversion of Notes into respective subsections for consistency with the Office of **Federal Register** requirements; the inclusion of references to a successor system in relation to ICFS; and corrections to errors in spelling.

148. *Conforming Changes*. The Commission proposes to adopt or seek comment on conforming changes to rules that were adopted in the *Executive Branch Process Reform Order* if the Commission adopts the rule changes proposed in this document.<sup>53</sup>

• *Section 63.12(c)*. The *Executive Branch Process Reform Order* amends § 63.12(c) of the rules by adding a new subsection (c)(3), which provides that the streamlining processing procedures provided by § 63.12(a) and (b) shall not apply where "[a]n individual or entity that is not a U.S. citizen holds a ten percent or greater direct or indirect equity or voting interest, or a controlling interest, in any applicant." The Commission seeks comment on further amending § 63.12(c) by changing "ten percent or greater" to "five percent or greater," consistent with the Commission's request for comment on changing the ownership reporting threshold for international section 214 applications from 10% to 5%.

• *Section 63.18(p)*. The *Executive Branch Process Reform Order* amends § 63.18 of the rules by adding a new § 63.18(p), which requires that "[e]ach applicant for which an individual or entity that is not a U.S. citizen holds a ten percent or greater direct or indirect equity or voting interest, or a controlling interest, in the applicant, must submit": (1) responses to standard questions, prior to or at the same time the applicant files its application with the Commission, pursuant to Part 1, Subpart CC, directly to the Committee, and (2) a complete and unredacted copy of its FCC application(s) to the Committee within three (3) business days of filing it with the Commission. The Commission seeks comment on further amending § 63.18(p) by changing "ten percent or greater" to "five percent or greater," consistent with the Commission's request for comment on changing the ownership reporting

threshold for international section 214 applications from 10% to 5%.

• *Section 1.40001(a)(1)*. The *Executive Branch Process Reform Order* adds a new § 1.40001(a)(1), which provides that "[t]he Commission will generally refer to the executive branch applications filed for an international section 214 authorization and submarine cable landing license as well as an application to assign, transfer control of, or modify those authorizations and licenses where the applicant has reportable foreign ownership . . . pursuant to §§ 1.767, 63.18 and 63.24 of this chapter, and 1.5000 through 1.5004." The Commission proposes to amend § 1.40001(a)(1) by adding applications to renew international section 214 authority where the applicant has reportable foreign ownership to the types of applications that the Commission will generally refer to the Executive Branch. The Commission also proposes to amend § 1.40001(a)(1) to include that the Commission will generally refer applications for renewal of cable landing licenses.

• The Commission further proposes, to the extent the Commission adopts a periodic review process, to amend the foregoing section to state that periodic review process submissions where the filer has reportable foreign ownership generally will be referred to the Executive Branch, unless the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities.

• *Section 1.40001(a)(2)(ii)*. The *Executive Branch Process Reform Order* adds a new § 1.40001(a)(2)(ii), which provides that the Commission will generally exclude from referral to the Executive Branch, when the applicant makes a specific showing in its application, "[a]pplications filed pursuant to §§ 1.767 and 63.18 and 63.24 of this chapter if the applicant has reportable foreign ownership and petitions filed pursuant to §§ 1.5000 through 1.5004 where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities." The Commission proposes to amend § 1.40001(a)(2)(ii) by adding a reference to § 63.27 where the Commission proposes to codify the renewal requirements adopted in this proceeding.

• *Section 1.40001(a)(2)(iii)*. The *Executive Branch Process Reform Order* adds a new § 1.40001(a)(2)(iii), which provides that when the applicant makes

<sup>53</sup> Some of the rule changes adopted in the *Executive Branch Process Reform Order* have not gone into effect yet.

a specific showing in its application, the Commission will generally exclude from referral to the Executive Branch “[a]pplications filed pursuant to §§ 63.18 and 63.24 of this chapter where the applicant has an existing international section 214 authorization that is conditioned on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement, there are no new reportable foreign owners of the applicant since the effective date of the agreement, and the applicant agrees to continue to comply with the terms of that agreement.” The Commission proposes to amend the new § 1.40001(a)(2)(iii) by adding a reference to § 63.27 where the Commission proposes to codify the renewal application requirements adopted in this proceeding. The Commission notes, however, that all applications filed pursuant to §§ 63.18 and 63.24 and the new renewal rules will be subject to a new ownership reporting threshold of 5%, if adopted, upon the effective date of the proposed rules.

- *Section 1.40001(a)(2)(iv)*. The *Executive Branch Process Reform Order* adds a new § 1.40001(a)(2)(iv), which provides that when the applicant makes a specific showing in its application, the Commission will generally exclude from referral to the Executive Branch “[a]pplications filed pursuant to §§ 63.18 and 63.24 of this chapter where the applicant was reviewed by the executive branch within 18 months of the filing of the application and the executive branch had not previously requested that the Commission conditions the applicant’s international section 214 authorization on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement and there are no new reportable foreign owners of the applicant since that review.” The Commission proposes to amend the new § 1.40001(a)(2)(iv) by adding a reference to § 63.27 where the Commission proposes to codify the renewal application requirements adopted in this proceeding.

- *Section 1.40001(d)*. The *Executive Branch Process Reform Order* adds a new § 1.40001(d), which provides that “[a]s used in this subpart, ‘reportable foreign ownership’ for applications filed pursuant to §§ 1.767 and 63.18 and 63.24 of this chapter means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h) . . . .” The Commission proposes to amend § 1.40001(d) by adding a reference to § 63.27 where the Commission proposes to codify the

renewal requirements adopted in this proceeding, including a reference to the provision, if adopted, that would require renewal applicants to disclose individuals or entities with a 5% or greater direct and/or indirect equity and/or voting interest in the applicant. The Commission also seeks comment on amending § 1.40001(d) to distinguish between “reportable foreign ownership” as it would be applied to international section 214 applications under the new reporting threshold, if adopted, and submarine cable landing license applications.

- The Commission also proposes conforming changes to § 63.18(h)(1), as adopted in the *Executive Branch Process Reform Order*, which requires, “[t]he name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those entities (to the nearest one percent). Where no individual or entity directly or indirectly owns ten percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect.” The Commission proposes to include the word “individuals and” in the first sentence to state, “the percentage of equity and/or voting interest owned by each of those individuals and entities” for consistency within that subsection.

149. *Submarine Cable Reportable Ownership*. The Commission notes that the Commission’s rule regarding the ownership information required in submarine cable landing license applications refers to the requirement set out in § 63.18(h). The Commission seeks comment on changing the requirement in § 63.18(h) to disclose individuals or entities with a 5% or greater direct and/or indirect equity and/or voting interest in the applicant. This document does not address the Commission’s cable landing license rules. The Commission seeks comment on amending § 1.767(a)(8)(i) of the rules to remove the reference to § 63.18(h) and retain the current 10% reporting threshold for submarine cable landing license applications.<sup>54</sup> The Commission seeks comment on incorporating into § 1.767(a)(8)(i) the language that is reflected in § 63.18(h)(1)–(3) as adopted

<sup>54</sup> The Commission refers in this paragraph to “submarine cable landing license applications” to include applications for a new cable landing license or modification, assignment, transfer of control, or renewal of a cable landing license, and notifications of *pro forma* assignment or transfer of control of a cable landing license.

in the *Executive Branch Process Reform Order* with an administrative change discussed above.

150. Consistent with this approach, the Commission also seeks comment on amending § 1.40001(d), which provides that, “[a]s used in this subpart, ‘reportable foreign ownership’ for applications filed pursuant to §§ 1.767 and 63.18 and 63.24 of this chapter means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h) . . . .” Specifically, the Commission seeks comment on removing the reference to § 1.767 in association with § 63.18(h), and including a separate statement that “reportable foreign ownership” for applications filed pursuant to § 1.767 means any foreign owner of the applicant that must be disclosed in the application pursuant to § 1.767(a)(8)(i).

#### G. Costs and Benefits

151. The Commission seeks comment on the potential benefits and costs of the proposals addressed in this document. The rule changes identified in the document would advance U.S. national security, law enforcement, foreign policy, and trade policy interests. As discussed above, the Commission proposes to adopt a 10-year renewal requirement for all international section 214 authorization holders or, in the alternative, adopt a periodic review process. The Commission proposes or seeks comment on other improvements to the Commission’s rules applicable to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority. The Commission also proposes other changes to Parts 1 and 63 of the Commission’s rules that include requiring applicants to: (1) provide information about their current and/or expected future services and geographic markets; (2) identify the facilities that they use and/or will use to provide services under their international section 214 authority from the United States into Canada and/or Mexico; (3) certify in their application that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards; (4) hold only one international section 214 authorization except in certain limited circumstances; and (5) provide updated information every three years. The Commission expects that the resulting changes would improve the Commission’s oversight of international section 214 authorizations and ensure that a carrier’s authorization continues to serve the public interest, as the Act

intended. While the Commission tentatively finds that a renewal process is a critical component of protecting U.S. national security, law enforcement, foreign policy, and trade policy interests against evolving threats, the Commission acknowledges that such a renewal process or other proposals in the document may create economic burdens for international section 214 authorization holders.

152. The Commission recognizes that the benefits of protecting U.S. national security, law enforcement, foreign policy, and trade policy interests are difficult to quantify in monetary terms. The difficulty in quantifying these benefits does not, however, diminish their importance. The Commission believes that a formalized system of periodically reassessing international section 214 authorizations would better ensure that international section 214 authorizations, once granted, continue to serve the public interest. These benefits include improved consistency in the Commission's consideration of evolving public interest risks, completeness of the Commission's information regarding international section 214 authorization holders, and timely Commission attention to issues that warrant heightened scrutiny. Additional benefits include more consistent and complete referral of relevant evolving issues to the Executive Branch agencies, including the Committee, for their review and ultimately, improved protection of U.S. telecommunications infrastructure.<sup>55</sup> These benefits cannot be achieved with *ad hoc* reviews alone. Thus, adopting a periodic and systemized review of international section 214 authorizations is necessary to help ensure that the Commission and the Executive Branch agencies have the necessary information to address evolving national security, law enforcement, foreign policy, and/or trade policy risks on a continuing basis.

153. In addition to the benefits to national security, law enforcement, foreign policy, and trade policy interests, the Commission tentatively finds that its proposed rule changes would provide clear regulatory

guidance, which generally benefits the efficient operation of markets. For example, it is important that the Commission has accurate and timely records about all authorization holders, including which authorization holders are active and which no longer exist or utilize their international section 214 authority. In this regard, the Commission proposes to amend § 63.19 of the Commission's rules to require all authorization holders that permanently discontinue service provided pursuant to their international section 214 authority, to file a notification of the discontinuance and surrender the authorization. This information would help the Commission to better understand the size, scope, and structure of this market, all of which provide valuable input for the public interest considerations of the regulatory process. Further, the ongoing reporting requirements that the Commission proposes or seeks comment on with respect to ownership and other information every three years would be beneficial, as it is possible that certain foreign-owned applicants or other applicants might pose national security, law enforcement, foreign policy, trade policy, and/or competition concerns.

154. Thus, the benefits of the Commission's proposed rule changes include significant contributions to U.S. national security, law enforcement, foreign policy, and trade policy interests, better protection of U.S. telecommunications and sensitive U.S. customer information, as well as administrative efficiencies that improve the regulatory process and safeguard against financial or other manipulation of competitive markets. While it is difficult to quantify these economic benefits, the Commission believes the benefits are far greater than the costs of the proposed renewal process and other proposed rules discussed in the document.

155. The Commission's estimate of costs includes all expected ongoing costs that would be incurred as a result of the rules proposed above.<sup>56</sup> The Commission's estimate of costs is intentionally focused on the higher end of potential outcomes, thus making an overestimate likely. By taking this approach, the Commission can have additional confidence that the costs of the rules being proposed would be less than the benefits as outlined above. The Commission estimates that the annual aggregate cost of the proposed rules

described above could vary, depending on parameters established such as frequency of renewal, filing fees charged, and other factors, but these costs should not exceed approximately \$2,555,000 annually for each of the first 10 years, and approximately \$1,946,000 for each year thereafter. The Commission tentatively concludes that the benefits of establishing the proposed renewal process—which include providing the Commission with critical information that allows it to carry out its role in protecting the nation's telecommunications infrastructure from national security, law enforcement, foreign policy, and trade policy threats—will be well in excess of these costs.

156. The Commission bases its cost estimate on the Commission's records, as described above, that indicate there are nearly 7,400 international section 214 authorizations, held by approximately 7,000 international section 214 authorization holders. The Commission estimates that the number of active international section 214 authorization holders is approximately 1,500—or roughly a fifth of the approximately 7,000 international section 214 authorization holders listed in ICFS. For purposes of the Commission's analysis here, the Commission assumes that 1,500 international section 214 authorization holders would be impacted by the proposed rules. The Commission further assumes that out of approximately 1,500 international section 214 authorization holders, 375 authorization holders have reportable foreign ownership as discussed herein.

157. The Commission's cost estimate assumes that approximately 1,500 authorization holders will undergo the renewal process as described above, each falling into one of multiple groups, over 10 years, resulting, for example, in an average of 150 authorization holders filing renewal applications each year for the first 10 years. The Commission estimates the costs to authorization holders related to applying for renewal of international section 214 authority, would include tasks such as review by legal and support staff of the authorization holder's ownership, current and/or expected future services and geographic markets, compliance with cybersecurity standards, and review of any cross border facilities. The Commission notes that the amount of work associated with preparing an initial renewal application likely will be greater than the work associated with preparing a subsequent renewal application following the initial 10-year timeframe, given that much of the

<sup>55</sup> For reference, the digital economy accounted for \$3.31 trillion of the U.S. economy in 2021, and so preventing a disruption of even 0.000001 (a millionth) of that amount annually would mean that benefits outweigh costs by a wide margin. See Tina Highfill & Christopher Surfield, Bureau of Economic Analysis, U.S. Department of Commerce, *New and Revised Statistics of the U.S. Digital Economy, 2005–2020* (May 2022), <https://www.bea.gov/system/files/2022-05/New%20and%20Revised%20Statistics%20of%20the%20U.S.%20Digital%20Economy%202005-2020.pdf>. See also *Protecting Against National Security Threats Order*, 34 FCC Rcd at 11465, paragraph 109, *aff'd*, *Huawei Technologies USA v. FCC*, 2 F.4th 421.

<sup>56</sup> The Commission notes that this estimate does not include the one-time foreign ownership information collection, as established by the Order herein. That one-time collection is not a rule, and it will not impose ongoing costs.

information already will have been collected by the authorization holder. Additionally, the authorization holder would be required to provide the Commission with updated information every three years.<sup>57</sup> The Commission estimates that the preparation of the initial renewal application by each authorization holder will require 20 hours of work by attorneys and 20 hours of work by support staff, at a cost of \$6,800 per initial renewal application.<sup>58</sup> To this cost, the Commission adds the \$875 administrative fee charged for renewal to obtain a total estimate of this burden at \$7,675 per renewal application (*i.e.*, the first time an authorization holder must apply for renewal of its international section 214 authority). The Commission then multiplies the sum by 150 to produce a total estimate of approximately \$1,152,000 per year for the first 10-year period over which approximately 1,500 authorization holders will undergo the renewal process.<sup>59</sup>

<sup>57</sup> The Commission's cost estimates for both renewal applications prepared in the initial 10-year timeframe and for future renewal applications are based on the rules proposed in the document. The Commission recognizes, however, that the information that authorization holders are required to provide could change in a future order adopted in this proceeding, such that these costs are subject to change.

<sup>58</sup> The Commission's cost data on wages for attorneys are based on the Commission's estimates of labor costs as represented in previous Paperwork Reduction Act (PRA) statements. *International Section 214 Process and Tariff Requirements—47 CFR 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25, and 1.1311*, OMB Control No. 3060–0686 Paperwork Reduction Act (PRA) Supporting Statement at 13 (Mar. 25, 2021), [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=202103-3060-012](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202103-3060-012) (March 2021 Supporting Statement); *International Section 214 Process and Tariff Requirements—47 CFR 63.10, 63.11, 63.13, 63.18, 63.19, 63.21, 63.24, 63.25, and 1.1311*, OMB Control No. 3060–0686 Paperwork Reduction Act (PRA) Supporting Statement at 14 (Nov. 28, 2017), [https://www.reginfo.gov/public/do/PRAViewDocument?ref\\_nbr=201711-3060-029](https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=201711-3060-029) (November 2017 Supporting Statement). Consistent with the Commission's calculations in the PRA statements, the Commission estimates the median hourly wage for attorneys as \$300 for outside counsel. *Id.* The Commission assumes that this wage reasonably represents an average for all attorney labor, across a range of authorization holders with different sizes and business models, used to comply with the rules proposed in the Notice. Also, consistent with the Commission's calculations in PRA statements, the Commission estimates the median hourly wage for support staff (paralegals and legal assistants) as \$40. *Id.* This signifies that, 20 hours of work by attorneys would cost \$6,000.00 and 20 hours of work by support staff would cost \$800.00, for a total of \$6,800.00 per initial renewal application.

<sup>59</sup> Specifically,  $\$6,800.00 + \$875.00 = \$7,675.00$  per authorization holder. With 150 authorization holders filing renewal applications each year, the Commission estimates  $\$7,675.00 \times 150 = \$1,151,250.00$ , which the Commission rounds up to \$1,152,000.00 to avoid giving the false impression of precision.

158. The Commission assumes that after an authorization holder prepares and submits an initial renewal application, upon grant of such application, subsequent preparation of renewal applications (*i.e.*, following the initial 10-year timeframe) will be less financially burdensome. The Commission estimates the tasks related to subsequent renewal applications represent eight hours of work by attorneys and eight hours by support staff per renewal application, for a cost of \$2,720 per renewal application.<sup>60</sup> To this cost, the Commission adds the \$875 administrative fee, to obtain a total estimate of this burden for ongoing renewal applications at \$3,595. The Commission then multiplies the sum by 150 to produce a total estimate of approximately \$540,000 per year after the first 10 years.<sup>61</sup>

159. The Commission further assumes that the Commission will receive applications for new international section 214 authorizations on an ongoing basis.<sup>62</sup> Based on applications filed within the last three years, the Commission estimates that on average approximately 35 new applicants per year will seek a new international section 214 authorization.<sup>63</sup> The Commission notes that these entities will incur costs that are identical to the costs associated with an initial renewal application as described above excluding the \$875 administrative fee.<sup>64</sup> The Commission estimates the aggregate total cost for these 35 new applicants in

<sup>60</sup> Specifically, the Commission estimates eight hours of attorney labor at \$2,400 ( $8 \times \$300$ ) and eight hours of support staff labor at \$320 ( $8 \times \$40$ ), and the sum of this combined labor is \$2,720.00.

<sup>61</sup> The estimated annual cost of 150 renewal applications at this point, after the initial 10-year period, would be \$539,250 ( $\$3,595 \times 150$ ), which the Commission rounds up to \$540,000 to avoid giving the false impression of precision.

<sup>62</sup> The Commission expects that the costs associated with other proposed rules—such as allowing an authorization holder to hold only one international section 214 authorization except in certain limited circumstances, requiring an authorization holder to commence service within one year following the grant, requiring an authorization holder that permanently discontinues service provided pursuant to its international section 214 authority to file a notification of the discontinuance and surrender the authorization, and requiring an authorization holder to identify in its application any ISPCs that it holds and whether the ISPC will be subject to the assignment or transfer of control—are *de minimis* and not separately calculated here. The Commission seeks comment on this assessment.

<sup>63</sup> These estimates are based on the Commission's records as of April 14, 2023. FCC, *MyIBFS*, <https://licensing.fcc.gov/myibfs/welcome.do>.

<sup>64</sup> Applicants for new international section 214 authorizations are already subject to the \$875 fee, which is not subject to change as a result of the rules being proposed herein.

a given year at \$238,000 per year.<sup>65</sup> As above, the Commission assumes that subsequent preparation of renewal applications (*i.e.*, following the initial 10-year timeframe) will be less financially burdensome for these new applicants at renewal. The Commission estimates the aggregate total cost for these 35 new applicants at renewal for each year after the first 10 years to be \$126,000 per year.<sup>66</sup>

160. Based on applications filed within the last three years, the Commission estimates that on average approximately 150 applications per year will be filed for modification, assignment, or transfer of control of an international section 214 authorization.<sup>67</sup> The Commission assumes that these applicants will incur the less burdensome cost that follows the initial 10-year timeframe excluding the \$875 administrative fee.<sup>68</sup> The Commission estimates the aggregate

<sup>65</sup> As described above, the estimated cost to the authorization holder for preparing an initial renewal application is \$6,800 ( $\$7,675 - \$875$ ). Assuming 35 new applicants file applications for a new international section 214 authorization each year,  $\$6,800.00 \times 35 = \$238,000$ .

<sup>66</sup> As described above, the estimated cost to the authorization holder for subsequent renewal application is \$3,595, which includes the proposed \$875 fee. Accounting for 35 new applicants yields,  $\$3,595.00 \times 35 = \$125,825.00$ , which the Commission rounds up to \$126,000 to avoid giving the false impression of precision. The Commission notes that whereas the application fee is not new, in this document, the Commission proposes all future applicants to subsequently apply for renewal of their international section 214 authority on a 10-year basis necessitating future payment of the \$875 application fee.

<sup>67</sup> These estimates are based on the Commission's records as of April 14, 2023. FCC, *MyIBFS*, <https://licensing.fcc.gov/myibfs/welcome.do>.

<sup>68</sup> For the initial 10-year period, the Commission's reasoning is as follows: any applicant for a modification, assignment, or transfer of control of an international section 214 authorization that has already submitted a renewal application should find it less financially burdensome to provide additional information for the aforementioned applications pursuant to the rules that the Commission proposes. Any applicant for a modification, assignment, or transfer of control of an international section 214 authorization that had not yet submitted a renewal application would find doing so more burdensome (with burdens consisting of 20 hours of work each by attorneys and support staff, as discussed above), but would then face a lighter burden (consisting of 8 hours of work each by attorneys and support staff) following an initial renewal application. Because the Commission has already assumed that an applicant would face the higher burden in preparing an initial renewal application, the Commission assumes that an applicant would face a lighter burden when applying for a modification, assignment, or transfer of control of the international section 214 authorization thereafter. Additionally, because the fee that must be paid by applicants for a modification, assignment, or transfer of control of an international section 214 authorization, is not subject to change, the Commission excludes it from the Commission's calculations.

total cost for these 150 applications in a given year at \$408,000 per year.<sup>69</sup>

161. The Commission similarly estimates the number of authorization holders that will need to report cross border facilities pursuant to the ongoing three-year reporting requirement.<sup>70</sup> The Commission expects that 10% of all authorization holders (out of approximately 1,500 authorization holders) have cross border facilities, which represents 150 authorization holders, and must report cross border facilities information every three years. The Commission notes that this would involve an ongoing reporting requirement every three years, and the Commission assumes an average of 50 authorization holders would file cross border facilities information. The Commission estimates the collection of this information consists of three hours of attorney and three hours of support staff time at a cost of approximately \$1,100 per authorization holder. The Commission expects that the effort to comply with this reporting requirement will be low because the Commission is requiring authorization holders to report only information that they routinely have. The Commission calculates that 50 authorization holders, with a cost of \$1,100 per filing, will incur approximately \$55,000 in total costs related to reporting cross border facilities information in a given reporting year.<sup>71</sup>

162. In addition to the tasks described above, the Commission estimates that authorization holders and new applicants for international section 214 authority will pay an additional cost associated with the Commission's proposal to certify compliance to baseline cybersecurity standards. Previously, the Commission had estimated a cost of drafting a cybersecurity risk management plan and submitting a certification as \$820, and the Commission proposes to use this estimate here for individual authorization holders and new applicants for international section 214

<sup>69</sup> Specifically, at \$2,720 (\$3,595 – \$875) per filing, the Commission estimates \$408,000 (\$2,720 × 150) total annual cost related to applications for modification, assignment, or transfer of control.

<sup>70</sup> The other ongoing three-year proposed reporting requirements, such as providing updated information concerning services and geographic markets, certifying compliance with cybersecurity standards, and certifying compliance with the Commission's rules and regulations, the Act, and other laws as well as the Commission's character qualifications, are *de minimis* and not calculated here. The Commission seeks comment on this assessment.

<sup>71</sup> Specifically, at \$1,100 per filing, the Commission estimates \$55,000 (\$1,100 × 50) total annual cost related to cross border filings.

authority.<sup>72</sup> The Commission seeks comment on this estimate. The Commission assumes that during the initial 10-year timeframe, each year, 150 authorization holders will certify compliance as part of initially undertaking the renewal process. Additionally, 35 new applicants for international section 214 authority will need to certify compliance each year, including beyond the initial 10-year timeframe. As such, the Commission calculates a total annual cost of \$152,000 for the initial 10-year timeframe and annual costs \$29,000 thereafter.<sup>73</sup>

163. In this document, the Commission also seeks comment on whether an authorization holder should provide updated information in the proposed ongoing three-year reports concerning those that hold 5% or greater direct and indirect equity and/or voting interests, or a controlling interest, in the authorization holder. Were the Commission to adopt this approach, the Commission also provides an estimate of the costs associated with filing this information every three years. If adopted, these ongoing reports will provide updates to ownership information that would need to be provided in a renewal application that is filed every 10 years, which should be simple to provide in most cases. The Commission therefore assumes a relatively light burden for compliance at three hours of attorney time and three hours of support staff time, or approximately \$1,100 per authorization holder. With 1,500 estimated authorization holders filing every three years, the Commission assumes one third of this total, or 500, will file each

<sup>72</sup> Specifically, the Commission estimated that compliance would take 10 hours of labor from a General and Operations Manager compensated at \$82 per hour (\$820 = \$82 × 10). *Amendment of Part 11 of the Commission's Rules Regarding the Emergency Alert System; Wireless Emergency Alerts; Protecting the Nation's Communications Systems from Cybersecurity Threats*, PS Docket Nos. 15–94, 15–91, 22–329, Notice of Proposed Rulemaking, FCC 22–82, at paragraph 32 (rel. Oct. 27, 2022).

<sup>73</sup> For the initial 10-year timeframe, this consists of, each year, 150 authorization holders certifying compliance together with their initial renewal application and 35 new applicants certifying compliance together with their initial application each facing a cost of \$820 (\$152,000 = \$820 × (150 + 35)). After the initial 10-year timeframe, new applicants will pay the cost of \$820 for a total of \$28,700, which the Commission rounds to \$29,000. For subsequent renewal applications and for applications for modification, assignment, or transfer of control of an international section 214 authorization, the Commission subsumes the cost of cybersecurity certification in the Commission's total annual estimates above (\$540,000 per year for subsequent renewal applications and \$408,000 per year for applications for modification, assignment, or transfer of control).

year. The Commission therefore estimates \$550,000 in annual costs for all authorization holders to comply with the ongoing ownership reporting requirements.<sup>74</sup>

164. Combining the estimated costs of these additional filings on an annual basis, for the initial 10-year timeframe, the Commission adds \$55,000 for authorization holders with cross border facilities to report the requested information; \$152,000 for authorization holders and new applicants to certify compliance to basic cybersecurity standards; \$550,000 for all authorization holders to comply with any ongoing reporting requirements related to ownership information; \$238,000 for new applications for international section 214 authority filed by new applicants; and \$408,000 for applications for modification, assignment, or transfer of control of international section 214 authority for a sum of \$1,403,000. In subsequent years, the Commission estimates that these additional costs will become \$1,406,000.<sup>75</sup> The Commission adds these sums to, respectively, the estimated costs for preparing renewal applications, which the Commission estimates to be \$1,152,000 annually for the initial 10-year period, and \$540,000 annually for subsequent renewal applications. Therefore, to summarize the Commission's estimate of total costs, the Commission expects the initial costs to be \$2,555,000 annually for the first 10 years, and the Commission expects costs to be \$1,946,000 annually for subsequent years.<sup>76</sup>

165. The Commission seeks comment on all these estimates. The Commission also seeks comment on the costs that could also impose potential burdens on authorization holders.<sup>77</sup> Do the Commission's assumptions represent a reasonable estimate of total costs of the proposals in the document? Do the

<sup>74</sup> Specifically, with three hours of attorney time and three hours of staff times estimated as \$1,100, as noted above, the Commission estimates the total cost for 500 authorization holders at \$550,000 (\$1,100 × 500).

<sup>75</sup> Specifically, the cost of certifying compliance falls from \$152,000 per year to \$29,000 per year, but there is an additional \$126,000 annual cost associated with new applicants from the initial 10-year timeframe subsequently submitting renewal applications thereafter. In other words, the annual cost rises by \$3,000 = \$126,000 – (\$152,000 – \$29,000) = \$1,406,000 – \$1,403,000.

<sup>76</sup> For the first 10 years, the Commission estimates total costs as \$2,555,000 (\$1,152,000 + \$1,403,000) annually and for subsequent years the Commission estimates total costs as \$1,946,000 (\$540,000 + \$1,406,000) annually.

<sup>77</sup> For example, the Commission seeks comment on the costs and benefits of requiring all applicants, including those without reportable foreign ownership, to provide information on foreign-owned MNSPs.

Commission's assumptions represent a reasonable estimate of the number of attorney and non-attorney labor hours needed to meet the requirements of the proposed rules? Are there other potential burdens or costs imposed by the proposed rules that the Commission has not captured here? Is the likely number of new applicants for an international section 214 authorization in this market accurate? How would an alternative, periodic review approach, in lieu of a renewal framework, affect the Commission's projected costs and benefits? Are there other approaches that would use alternative means to provide the same benefits, in terms of advancing national security, law enforcement, and other interests, at lower costs? If so, what are those means of obtaining the same benefits and what are the expected costs? Any suggestions for alternative approaches should include clear explanations of the cost estimates, as well as estimates as to whether the benefits under any proposed alternatives would increase or decrease compared to the benefits described above.

#### H. Digital Equity and Inclusion

166. Finally, the Commission, as part of its continuing effort to advance digital equity for all,<sup>78</sup> including people of color, persons with disabilities, persons who live in rural or Tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations<sup>79</sup> and benefits (if any) that may be associated with the proposals and issues discussed herein. Specifically, the Commission seeks comment on how its proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of

<sup>78</sup> Section 1 of the Communications Act of 1934 as amended provides that the FCC "regulat[es] interstate and foreign commerce in communication by wire and radio so as to make [such service] available, so far as possible, to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex." 47 U.S.C. 151.

<sup>79</sup> The term "equity" is used here consistent with Executive Order 13985 as the consistent and systematic fair, just, and impartial treatment of all individuals, including individuals who belong to underserved communities that have been denied such treatment, such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color; members of religious minorities; lesbian, gay, bisexual, transgender, and queer (LGBTQ+) persons; persons with disabilities; persons who live in rural areas; and persons otherwise adversely affected by persistent poverty or inequality. See *Exec. Order No. 13985*, 86 FR 7009, Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government (Jan. 20, 2021).

the Commission's relevant legal authority.

#### I. Conclusion

167. The Commission's action today is intended to protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing to establish a 10-year renewal scheme or, in the alternative, a periodic review process for all international section 214 authorization holders. The Commission tentatively finds that the rules proposed in the document will improve the Commission's oversight of authorization holders while also providing regulatory certainty to authorization holders. Importantly, the Commission believes that changed circumstances mandate that the Commission adopts a renewal process to ensure that an international section 214 authorization continues to serve the public interest in an ever-evolving national security and law enforcement environment.

#### II. Procedural Issues

168. *Ex Parte Rules*. This proceeding this document initiates shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a

method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

169. *Regulatory Flexibility Act*. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Accordingly, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) concerning the potential impact of rule and policy changes in this Notice of Proposed Rulemaking on small entities. The IRFA is set forth in Appendix B. Written public comments are requested on the IRFA. Comments must be filed by the deadlines for comments on the document indicated on the first page of this document and must have a separate and distinct heading designating them as responses to IRFA. Because the Order does not adopt a rule and therefore does not require notice and comment, no Final Regulatory Flexibility Analysis is required.

170. *Final Paperwork Reduction Act Analysis*. This document may contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. All such new or modified information collection requirements will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) and (j) of the PRA. OMB, the general public, and other Federal agencies will be invited to comment on any new or modified information collection requirements contained in this proceeding. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4), the Commission considers how it might further reduce the information collection burden for small business concerns with fewer than 25 employees. In the Order, the Commission has assessed the effects of requiring international section 214 authorization holders to identify reportable foreign ownership and to certify as to the accuracy of the information provided and find that they would have information about their

ownership available in the ordinary course of business, for instance, for purposes of compliance with the Commission's rules. Further, although the Commission does not have an estimated number of authorization holders that will need to obtain an FRN number or to file a surrender letter, the burdens are also low. For instance, obtaining an FRN for this purpose entails only a minimal burden. Therefore, the Commission anticipates that the new collection will not be unduly burdensome.

171. *Initial Paperwork Reduction Act Analysis.* This Notice of Proposed Rulemaking may contain proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the OMB to comment on any information collection requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how the Commission might further reduce the information collection burden for small business concerns with fewer than 25 employees.

172. *Filing of Comments and Reply Comments.* Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998). All comments and reply comments must be filed in IB Docket No. 23–119. Comments and reply comments must also be filed in MD Docket No. 23–134 if they address application fees.<sup>80</sup>

173. *People With Disabilities.* To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

<sup>80</sup>The public draft of the item released on March 30, 2023, identified MD Docket No. 20–270 as one of the docket numbers. The Commission has created a new docket number, MD Docket No. 23–134, associated with this proceeding instead of MD Docket No. 20–270. The Commission will make available in MD Docket No. 23–134 copies of any comments that were previously filed in MD Docket No. 20–270 in response to the public draft to the extent the comments address application fees.

174. *Additional Information.* For further information regarding Notice of Proposed Rulemaking, please contact Gabrielle Kim, Attorney Advisor, Telecommunications and Analysis Division, Office of International Affairs, at [Gabrielle.Kim@fcc.gov](mailto:Gabrielle.Kim@fcc.gov) or 202–418–0730.

#### Initial Regulatory Flexibility Analysis

175. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the document provided in paragraph 195 of the item. The Commission will send a copy of the document, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the document and IRFA (or summaries thereof) will be published in the **Federal Register**.

##### A. Need for, and Objectives of, the Proposed Rules

176. In the document, the Commission takes another important step to protect the nation's telecommunications infrastructure from threats in an evolving national security and law enforcement landscape by proposing comprehensive changes to the Commission's rules that allow carriers to provide international telecommunications service pursuant to section 214 of the Communications Act of 1934, as amended (Act). The overarching objective of this proceeding is to adopt rule changes that will enable the Commission, in close collaboration with relevant Executive Branch agencies, to better protect telecommunications services and infrastructure in the United States in light of evolving national security, law enforcement, foreign policy, and trade policy risks. By this document, the Commission proposes rules that would require carriers to renew, every 10 years, their international section 214 authority. In the alternative, the Commission seeks comment on adopting rules that would require all international section 214 authorization holders to periodically update information enabling the Commission to review the public interest and national security implications of those authorizations based on that updated information. Through these proposals, the

Commission seeks to ensure that it is exercising appropriate oversight of international section 214 authorization holders to safeguard U.S. telecommunications networks.

177. In 2020, the report of the United States Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations (PSI Report) recommended the periodic review and renewal of foreign carriers' international section 214 authorizations to ensure that the Commission and the Executive Branch account for evolving national security, law enforcement, foreign policy, and trade risks. In particular, the PSI Report highlighted the national security concerns associated with Chinese state-owned carriers operating in the United States. The Commission has taken concrete action to address those risks. Now, based in part on the PSI Report recommendation, the Commission proposes several changes to strengthen the Commission's oversight of international section 214 authorizations and ensure that a carrier's authorization continues to serve the public interest, as the Act intended.

178. *Executive Summary of the Proposed Rules.* To establish an effective and expeditious process for the renewal or, in the alternative, periodic review of international section 214 authorizations, in this document, the Commission proposes and seeks comment on the following issues:

- *Renewal of International Section 214 Authority.* The Commission proposes to adopt a 10-year renewal requirement for all international section 214 authorization holders. In the alternative, the Commission seeks comment on adopting a periodic review process.
  - The Commission proposes to adopt a process that establishes a system of priorities for renewal applications according to the existence and nature of reportable foreign ownership and the likelihood that the applications will raise national security, law enforcement, foreign policy, or trade policy concerns.
  - Consistent with Commission practice, the Commission will continue to coordinate with the Executive Branch agencies for assessment of any national security, law enforcement, foreign policy, and trade policy concerns.
  - To minimize administrative burdens, the Commission proposes to adopt streamlined and simplified procedures for renewal applications that do not have reportable foreign ownership.
  - The Commission proposes, as a baseline, to apply to renewal

applications the same rules applicable to initial applications for international section 214 authority and thus harmonize the application requirements.

- *Proposed Rules Applicable to All Applicants.* In addition, to continue to address evolving national security, law enforcement, foreign policy, and/or trade policy risks, the Commission proposes or seeks comment on other improvements to the Commission's rules applicable to applications for international section 214 authority and modification, assignment, transfer of control, and renewal of international section 214 authority.

- *Five (5) Percent Threshold for Reportable Ownership Interests.* The Commission seeks comment on whether to adopt a new ownership reporting threshold that would require disclosure of 5% or greater direct and indirect equity and/or voting interests.

- *Services and Geographic Markets.* The Commission proposes to adopt rules requiring applicants to provide information about their current and/or expected future services and geographic markets.

- *Foreign-Owned Managed Network Service Providers (MNSPs).* The Commission proposes to require all applicants to provide information on foreign-owned MNSPs.

- *Cross Border Facilities Information.* The Commission proposes to require applicants to identify the facilities that they use and/or will use to provide services under their international section 214 authority from the United States into Canada and/or Mexico and to provide updated information on a periodic basis.

- *Facilities Certifications.*

- *Facilities Cybersecurity Certification.* The Commission proposes to require applicants to certify in their application that they will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards.

- *Facilities "Covered List" Certification.* The Commission proposes to require applicants to certify in their application whether or not they use equipment or services identified in the Commission's "Covered List" of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons.

- *Other Changes to Parts 1 and 63 of the Commission's Rules.* To further ensure that carriers' use of their international section 214 authority is

consistent with the public interest, the Commission proposes and seeks comment on modifications to Part 1 and 63 rules.

- *Permissible Number of Authorizations.* The Commission proposes to adopt a rule that would allow an authorization holder to hold only one international section 214 authorization except in certain limited circumstances.

- *Commence Service Within One Year.* The Commission proposes to adopt a rule requiring an international section 214 authorization holder to commence service under its international section 214 authority within one year following the grant.

- *Changes to the Discontinuance Rule.* The Commission proposes to amend § 63.19 of the Commission's rules to require all authorization holders that permanently discontinue service provided pursuant to their international section 214 authority, to file a notification of the discontinuance and surrender the authorization.

- *Ongoing Reporting Requirements.* The Commission proposes to require authorization holders to provide updated ownership information, cross border facilities information, and other information every three years.

- *International Signaling Point Codes (ISPCs).* The Commission proposes to adopt a rule requiring applicants seeking to assign or transfer control of their international section 214 authorization to identify in their applications any ISPCs that they hold and whether the ISPC will be subject to the assignment or transfer of control.

- *Administrative Modifications.* The Commission proposes to adopt other administrative corrections to Parts 1 and 63 of the Commission's rules.

## B. Legal Basis

179. The proposed action is authorized under §§ 4(i), 4(j), 201, 214, 403, and 413 of the Communications Act as amended, 47 U.S.C. 154(i), 154(j), 201, 214, 403, and 413.

## C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

180. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern"

under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

181. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks.

Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired

telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

182. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees.

Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

183. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies

firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

184. *Interexchange Carriers (IXCs)*. Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

185. *Prepaid Calling Card Providers*. Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size

standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 58 providers that reported they were engaged in the provision of payphone services. Of these providers, the Commission estimates that 57 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

186. *Local Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

187. *Toll Resellers*. Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with an SBA small business size standard. The Telecommunications Resellers industry

comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees.

Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

188. *Other Toll Carriers*. Neither the Commission nor the SBA has developed a definition for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 115 providers that reported they were engaged in the provision of other toll services. Of these providers, the Commission estimates that 113 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

189. *Wireless Telecommunications Carriers (except Satellite)*. This industry

comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

190. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (e.g. dial-up ISPs) or Voice over internet Protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of \$35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than \$25 million. Based on this data, the Commission estimates that the majority of "All Other Telecommunications" firms can be considered small.

#### *D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities*

191. The document is intended to adopt rules that will further the Commission's goal of ensuring that the Commission continually accounts for evolving public interest considerations

associated with international section 214 authorizations following an initial grant of the authority. *First*, the Commission proposes to cancel the authorizations of those authorization holders that fail to respond to the one-time collection required by the *Order*. *Second*, the Commission proposes to implement a formalized renewal framework for the Commission's reassessment of all authorizations or, in the alternative, seek comment on a periodic review process of such authorizations. *Third*, the Commission proposes to adopt a 10-year renewal requirement for international section 214 authorization holders that prioritizes renewal applications with foreign ownership to take into account national security, law enforcement, foreign policy, and trade policy concerns. *Fourth*, the Commission proposes new application rules to capture critical information from applicants and require additional certifications. *Fifth*, to further ensure that carriers' use of their international section 214 authority is in the public interest, the Commission proposes and seeks comment on modifications to related Parts 1 and 63 rules. *Finally*, to further ensure that carriers' use of their international section 214 authority is in the public interest, the Commission proposes and seeks comment on modifications to other Part 63 rules.

192. Given the increasing concerns about ensuring the security and integrity of U.S. telecommunications infrastructure, the Commission proposes or seeks comment on new requirements that the Commission anticipates will help it to acquire critical information from applicants including additional certifications to create accountability for applicants and to improve the reliability of the information that they provide. The Commission proposes to apply the requirements applicable to initial applications for international section 214 authority to the proposed rules for renewal applications and thus harmonize the application requirements. The Commission proposes or seeks comment on adopting new application requirements to improve the Commission's assessment of evolving national security, law enforcement, foreign policy, and/or trade policy risks following a grant of international section 214 authority. The Commission seeks comment on whether to adopt a new 5% ownership reporting threshold for all initial applications for international section 214 authority and applications for modification, assignment, transfer of control, and renewal of international section 214

authority. The Commission also proposes to require each applicant to provide information about its services, geographic markets, and facilities crossing the United States' borders with Canada and Mexico (cross border facilities), and certify that their facilities-based equipment meets certain requirements. The Commission proposes to require all applicants to provide information on foreign-owned MNSPs. The Commission proposes to require applicants to certify in their application whether or not they use equipment or services identified in the Commission's "Covered List" of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national security of the United States or the security and safety of United States persons. The Commission proposes that all applicants seeking international section 214 authority or modification, assignment, transfer of control, or renewal of international section 214 authority must certify in the applications whether or not they are in compliance with the Commission's rules and regulations, the Act, and other laws. The Commission tentatively concludes that these requirements that the Commission proposes or seeks comment on are important and necessary for informing the Commission's evaluation of an applicant's request for international section 214 authority and would serve the public interest given evolving risks identified by the Commission and the Executive Branch.

193. The Commission proposes additional changes to its rules concerning international section 214 authorizations to ensure that the Commission has current and accurate information about which authorization holders are providing service under their international section 214 authority. The Commission proposes to adopt a rule that would allow an authorization holder to hold only one international section 214 authorization except in certain limited circumstances. The Commission proposes to adopt a rule requiring an international section 214 authorization holder to commence service(s) within one year following the grant. The Commission proposes to amend § 63.19 of the Commission's rules to require that all authorization holders that permanently discontinue service provided pursuant to their international section 214 authority, to file with the Commission a notification of the discontinuance and surrender the authorization. The Commission

proposes to require authorization holders to provide updated ownership, cross border facilities information, and other information every three years. The Commission proposes to adopt a rule requiring applicants seeking to assign or transfer control of their international section 214 authorization to identify in their applications any ISPCs that they hold and whether the ISPC will be subject to the assignment or transfer of control.

194. The Commission is especially interested in estimates that address alternative means to provide the same benefits, in terms of advancing national security, law enforcement, foreign policy, and trade policy interests, at lower costs. The Commission invites comment on the costs and burdens of the proposals in the document, including for small entities. The Commission expects the information the Commission receives in comments including, where requested, cost and benefit analyses, to help the Commission identify and evaluate relevant compliance matters for small entities, including compliance costs and other burdens that may result if the proposals and associated requirements discussed in the document are adopted.

*E. Steps Taken To Minimize the Significant Economic Impact on Small Entities and Significant Alternatives Considered*

195. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

196. The document seeks comment from all interested parties on the proposals and what potential burdens, if any, would be imposed on applicants and authorization holders, including small entities. The Commission seeks comment on whether there are compliance costs and other burdens the Commission should consider, particularly for small entities. For example, each authorization holder will require 20 hours of work by attorneys and 20 hours of work by support staff, at a cost of \$6,800 per authorization for

renewal. The Commission also concludes that the \$875 administrative fee charged for renewal to obtain a total estimate of this burden at \$7,675 per authorization (for the first time an authorization holder must file for renewal). The document specifically seeks comment on whether the proposed certification requirement concerning implementation and adherence to baseline cybersecurity standards should take into account the size of the applicant and its operations. Ultimately the Commission multiplies the sum by 150 to produce a total estimate of approximately \$1,152,000 per year for the first ten years. The document seeks comment, for example, whether the Commission should allow large facilities-based providers and small resellers to certify adherence to different baseline security standards. Small entities are encouraged to bring to the Commission’s attention any specific concerns they may have with the proposals outlined in the document.

197. To assist in the Commission’s evaluation of the economic impact on small entities, as a result of actions that have been proposed in the document, and to better explore options and alternatives, the Commission has sought comment from the parties. In particular, the Commission seeks comment on whether any of the burdens associated with the filing, recordkeeping and reporting requirements described above can be minimized for small entities. Additionally, the Commission seeks comment on whether any of the costs associated with the Commission’s proposed requirements can be alleviated for small entities. The Commission expects to more fully consider the economic impact and alternatives for small entities following the review of comments filed in response to the documents.

*F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

198. None.

**List of Subjects in 47 CFR Parts 1 and 63**

Administrative practice and procedure, Authority delegations (government agencies), Communications, Communications common carriers, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

**Marlene Dortch**,  
Secretary.

**Proposed Rules**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1 and 63 to read as follows:

**PART 1—PRACTICE AND PROCEDURE**

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

**Authority:** 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Revise § 1.763(b) to read as follows:

**§ 1.763 Construction, extension, acquisition or operation of lines.**

\* \* \* \* \*

(b) In cases under this section requiring a certificate, applicants shall provide notice to and file a copy of the application with the Secretary of Defense, the Secretary of State (with respect to such applications involving service to foreign points), and the Governor of each State involved. Hearing is held if the Secretary of Defense, the Secretary of State, or the Governor of each State desires to be heard or if the Commission determines that a hearing should be held. The applicants must also file copies of applications for certificates with the regulatory agencies of the States involved.

■ 3. Amend § 1.767 by revising paragraph (a)(8)(i) to read as follows:

**§ 1.767 Cable landing licenses.**

(a) \* \* \*

(8) \* \* \*

(i) The name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns 10 percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those individuals or entities (to the nearest 1 percent). Where no individual or entity directly or indirectly owns 10 percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect. (A)(1) *Calculation of equity interests held indirectly in the carrier.* Equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling

interest in the company positioned in the next lower tier. Example: Assume that an entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a non-controlling 40 percent equity and voting interest in the carrier. The entity's equity interest in the carrier would be calculated by multiplying the individual's equity interest in Corporation A by that entity's equity interest in the carrier. The entity's equity interest in the carrier would be calculated as 12 percent ( $30\% \times 40\% = 12\%$ ). The result would be the same even if Corporation A held a de facto controlling interest in the carrier.

(2) *Calculation of voting interests held indirectly in the carrier.* Voting interests that are held through one or more intervening entities shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. A general partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A partner of a limited partnership (other than a general partner) shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest. Example: Assume that an entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a controlling 70 percent equity and voting interest in the carrier. Because Corporation A's 70 percent voting interest in the carrier constitutes a controlling interest, it is treated as a 100 percent interest. The entity's 30 percent voting interest in Corporation A would flow through in its entirety to the carrier and thus be calculated as 30 percent ( $30\% \times 100\% = 30\%$ ).

(B) An ownership diagram that illustrates the applicant's vertical ownership structure, including the direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to paragraph (a)(8)(i) of this section. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

(C) The applicant shall also identify any interlocking directorates with a foreign carrier.

(D) The information and certifications required in § 63.18(o), (p), and (q) of this chapter.

\* \* \* \* \*

■ 4. Revise § 1.40001 to read as follows:

**§ 1.40001 Executive branch review of applications, petitions, other filings, and existing authorizations or licenses with reportable foreign ownership.**

(a) The Commission, in its discretion, may refer applications, petitions, and other filings to the executive branch for review for national security, law enforcement, foreign policy, and/or trade policy concerns.

(1) The Commission will generally refer to the executive branch:

(i) An application for a new international section 214 authorization as well as an application to modify, assign, transfer control of, or renew those authorizations where the applicant has reportable foreign ownership pursuant to §§ 63.18, 63.24, and 63.27 of this chapter.

(ii) An application for a new international section 214 authorization as well as an application to modify, assign, transfer control of, or renew those authorizations where the applicant with or without reportable foreign ownership certifies that it uses and/or will use facilities to provide services under its international section 214 authority from the United States into Canada and/or Mexico.

(iii) An application for a new submarine cable landing license as well as an application to modify, assign, transfer control of, or renew those licenses where the applicant has reportable foreign ownership pursuant to § 1.767 of this chapter.

(iv) Petitions for section 310(b) foreign ownership rulings for broadcast, common carrier wireless, and common carrier satellite earth station licenses pursuant to §§ 1.5000 through 1.5004.

(2) The Commission will generally exclude from referral to the executive branch certain applications set out in paragraph (a)(1) of this section when the applicant makes a specific showing in its application that it meets one or more of the following categories:

(i) Pro forma notifications and applications;

(ii) Applications filed pursuant to §§ 1.767, 63.18, 63.24, and 63.27 of this chapter if the applicant has reportable foreign ownership and petitions filed pursuant to §§ 1.5000 through 1.5004 where the only reportable foreign ownership is through wholly owned intermediate holding companies and the ultimate ownership and control is held by U.S. citizens or entities;

(iii) Applications filed pursuant to §§ 63.18, 63.24, and 63.27 of this chapter where the applicant has an existing international section 214 authorization that is conditioned on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement, there are no new reportable foreign owners of the applicant since the effective date of the agreement, and the applicant agrees to continue to comply with the terms of that agreement; and

(iv) Applications filed pursuant to §§ 63.18, 63.24, and 63.27 of this chapter where the applicant was reviewed by the executive branch within 18 months of the filing of the application and the executive branch had not previously requested that the Commission condition the applicant's international section 214 authorization on compliance with an agreement with an executive branch agency concerning national security and/or law enforcement and there are no new reportable foreign owners of the applicant since that review.

(3) In circumstances where the Commission, in its discretion, refers to the executive branch an application, petition, or other filing not identified in this paragraph (a)(3) or determines to refer an application or petition identified in paragraph (a)(2) of this section, the Commission staff will instruct the applicant, petitioner, or filer to follow the requirements for a referred application or petition set out in this subpart, including submitting responses to the standard questions to the Committee and making the appropriate certifications.

(b) The Commission will consider any recommendations from the executive branch on pending application(s) for an international section 214 authorization or cable landing license(s) or petition(s) for foreign ownership ruling(s) pursuant to §§ 1.5000 through 1.5004 or on existing authorizations or licenses that may affect national security, law enforcement, foreign policy, and/or trade policy as part of its public interest analysis. The Commission will evaluate concerns raised by the executive branch and will make an independent decision concerning the pending matter.

(c) In any such referral pursuant to paragraph (a) of this section or when considering any recommendations pursuant to paragraph (b) of this section, the Commission may disclose to relevant executive branch agencies, subject to the provisions of 44 U.S.C. 3510, any information submitted by an applicant, petitioner, licensee, or authorization holder in confidence

pursuant to § 0.457 or § 0.459 of this chapter. Notwithstanding the provisions of § 0.442 of this chapter, notice will be provided at the time of disclosure.

(d) As used in this subpart, "reportable foreign ownership" for applications filed pursuant to §§ 63.18 and 63.24 and 63.27 of this chapter means any foreign owner of the applicant that must be disclosed in the application pursuant to § 63.18(h); for applications filed pursuant to § 1.767 "reportable foreign ownership" means any foreign owner of the applicant that must be disclosed in the application pursuant to § 1.767(a)(8)(i); and for petitions filed pursuant to §§ 1.5000 through 1.5004 "reportable foreign ownership" means foreign disclosable interest holders pursuant to § 1.5001(e) and (f).

**PART 63—EXTENSION OF LINES, NEW LINES, AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS**

■ 5. The authority citation for part 63 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 160, 201–205, 214, 218, 403, 571, unless otherwise noted.

■ 6. Amend § 63.12 by revising paragraph (c)(3) to read as follows:

**§ 63.12 Processing of international Section 214 applications.**

\* \* \* \* \*

(c) \* \* \*  
(3) An individual or entity that is not a U.S. citizen holds a 5 percent or greater direct or indirect equity or voting interest, or a controlling interest, in any applicant; or

\* \* \* \* \*

■ 7. Amend § 63.18 by revising paragraphs (h), (k), (o), (p), (s), and (t); redesignating paragraphs (r), (s), and (t) as (w), (x), and (y); adding new paragraphs (r), (s), and (t); and adding paragraphs (u) and (v) to read as follows:

**§ 63.18 Contents of applications for international common carriers.**

\* \* \* \* \*

(h)(1) The name, address, citizenship, and principal businesses of any individual or entity that directly or indirectly owns 5 percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, and the percentage of equity and/or voting interest owned by each of those individuals and entities (to the nearest 1 percent). Where no individual

or entity directly or indirectly owns 5 percent or more of the equity interests and/or voting interests, or a controlling interest, of the applicant, a statement to that effect.

(i) *Calculation of equity interests held indirectly in the carrier.* Equity interests that are held by an individual or entity indirectly through one or more intervening entities shall be calculated by successive multiplication of the equity percentages for each link in the vertical ownership chain, regardless of whether any particular link in the chain represents a controlling interest in the company positioned in the next lower tier. Example: Assume that an entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a non-controlling 40 percent equity and voting interest in the carrier. The entity's equity interest in the carrier would be calculated by multiplying the individual's equity interest in Corporation A by that entity's equity interest in the carrier. The entity's equity interest in the carrier would be calculated as 12 percent (30% × 40% = 12%). The result would be the same even if Corporation A held a de facto controlling interest in the carrier.

(ii) *Calculation of voting interests held indirectly in the carrier.* Voting interests that are held through one or more intervening entities shall be calculated by successive multiplication of the voting percentages for each link in the vertical ownership chain, except that wherever the voting interest for any link in the chain is equal to or exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest. A general partner shall be deemed to hold the same voting interest as the partnership holds in the company situated in the next lower tier of the vertical ownership chain. A partner of a limited partnership (other than a general partner) shall be deemed to hold a voting interest in the partnership that is equal to the partner's equity interest. Example: Assume that an entity holds a non-controlling 30 percent equity and voting interest in Corporation A which, in turn, holds a controlling 70 percent equity and voting interest in the carrier. Because Corporation A's 70 percent voting interest in the carrier constitutes a controlling interest, it is treated as a 100 percent interest. The entity's 30 percent voting interest in Corporation A would flow through in its entirety to the carrier and thus be calculated as 30 percent (30% × 100% = 30%).

(2) An ownership diagram that illustrates the applicant's vertical ownership structure, including the

direct and indirect ownership (equity and voting) interests held by the individuals and entities named in response to paragraph (h)(1) of this section. Every individual or entity with ownership shall be depicted and all controlling interests must be identified. The ownership diagram shall include both the pre-transaction and post-transaction ownership of the authorization holder.

(3) The applicant shall also identify any interlocking directorates with a foreign carrier.

\* \* \* \* \*

(k) For any country that the applicant has listed in response to paragraph (j) of this section that is not a member of the World Trade Organization, the applicant shall make a demonstration as to whether the foreign carrier has market power, or lacks market power, with reference to the criteria in § 63.10(a).

(1) Under § 63.10(a), the Commission presumes, subject to rebuttal, that a foreign carrier lacks market power in a particular foreign country if the applicant demonstrates that the foreign carrier lacks 50 percent market share in international transport facilities or services, including cable landing station access and backhaul facilities, intercity facilities or services, and local access facilities or services on the foreign end of a particular route.

(2) [Reserved]

\* \* \* \* \*

(o) A certification pursuant to §§ 1.2001 through 1.2002 of this chapter that no party to the application is subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988. See 21 U.S.C. 862.

(p) Each applicant for which an individual or entity that is not a U.S. citizen holds a 5 percent or greater direct or indirect equity or voting interest, or a controlling interest, in the applicant, must submit:

\* \* \* \* \*

(r) Each applicant shall provide the following information with respect to services it expects to provide using the international section 214 authority:

(1) Identification and description of the specific services that the applicant will provide using the international section 214 authority;

(2) Types of customers that will be served;

(3) Whether the services will be provided through the facilities for which the applicant has an ownership, indefeasible-right-of use or leasehold interest or through the resale of other companies' services; and

(4) Identification of where the applicant in the future expects to

market, offer, and/or provide services using the particular international section 214 authority, such as a U.S. state or territory and/or U.S.-international route or globally.

(s) Each applicant shall provide the following information concerning facilities crossing the U.S.-Mexico and U.S.-Canada borders (cross border facilities) that it will use or lease:

(1) Location of each cross border facility (street address and coordinates);

(2) Name, street address, email address, and telephone number of the owners of each cross border facility, including the Government, State, or Territory under the laws of which the facility owner is organized;

(3) Identification of the equipment to be used in the cross border facilities, including equipment used for transmission, as well as servers and other equipment used for storage of information and signaling in support of telecommunications;

(4) Identification of all IP prefixes and autonomous system domain numbers used by the facilities that have been acquired from the American Registry for internet Numbers (ARIN); and

(5) Identification of any services that will be provided by an applicant through these facilities using the international section 214 authority.

(t) Each applicant shall certify that it will undertake to implement and adhere to baseline cybersecurity standards based on universally recognized standards such as those provided by the Department of Homeland Security's Cybersecurity & Infrastructure Security Agency (CISA) or the Department of Commerce's National Institute of Standards and Technology (NIST).

(u) Each applicant shall make the following certifications with respect to its regulatory compliance:

(1) Whether or not the applicant is in compliance with the Commission's rules and regulations, the Communications Act, and other laws;

(2) Whether or not the applicant has violated the Communications Act, Commission rules, or U.S. antitrust or other competition laws, has engaged in fraudulent conduct before another government agency, has been convicted of a felony, or has engaged in other non-FCC misconduct the Commission has found to be relevant in assessing the character qualifications of a licensee or authorization holder.

(v) Each applicant shall comply with the requirement of § 1.763 to give notice and file a copy of the application with the Secretary of Defense, the Secretary of State, the Governor of each State involved, and the regulatory agencies of the States involved. Each applicant shall

certify such service on a service list attached to its application for international section 214 authority or other filing with the Commission.

(w) If the applicant desires streamlined processing pursuant to § 63.12, a statement of how the application qualifies for streamlined processing.

(x) Any other information that the Commission or Commission staff have advised will be necessary to enable the Commission to act on the application.

(y) Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Communications Filing System (ICFS) or its successor system. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

■ 8. Revise § 63.19 to read as follows:

**§ 63.19 Special procedures for discontinuances of international services.**

(a) With the exception of those international carriers described in paragraph (b) of this section, any international carrier that seeks to discontinue, reduce, or impair service, including the retiring of international facilities, dismantling or removing of international trunk lines, shall be subject to the following procedures in lieu of those specified in §§ 63.61 through 63.602:

(1) The carrier shall notify all affected customers of the planned discontinuance, reduction or impairment at least 30 days prior to its planned action. Notice shall be in writing to each affected customer unless the Commission authorizes in advance, for good cause shown, another form of notice. For purposes of this section, notice by email constitutes notice in writing. Notice shall include the following information:

(i) Name and address of carrier;

(ii) Date of planned service discontinuance, reduction, or impairment;

(iii) Points of geographic areas of service affected (inside of the United States and U.S.-international routes);

(iv) Brief description of type of service(s) affected; and

(v) Brief explanation as to whether the service(s) will be discontinued, reduced, or impaired.

(2) If an international section 214 authorization holder uses email to provide notice to affected customers, it must comply with the following

requirements in addition to the requirements generally applicable to the notice:

(i) The carrier must have previously obtained express, verifiable, prior approval from customers to send notices via email regarding their service in general, or planned discontinuance, reduction, or impairment in particular;

(ii) The carrier must ensure that the subject line of the message clearly and accurately identifies the subject matter of the email; and

(iii) Any email notice returned to the carrier as undeliverable will not constitute the provision of notice to the customer.

(3) The international section 214 authorization holder shall file with this Commission a copy of the notification on the date on which notice has been given to all affected customers. The notification shall be filed electronically through the International Communications Filing System (ICFS), or its successor system, in the file number associated with the carrier's international section 214 authorization. The authorization holder shall also provide the following information to the Commission in the same filing that includes a copy of the notification:

(i) Identification of the geographic areas of the planned discontinuance, reduction or impairment and the authorization(s) pursuant to which the carrier provides service;

(ii) Brief description of the dates and methods of notice to all affected customers;

(iii) Whether or not the authorization holder is surrendering any International Signaling Point Codes (ISPCs); and

(iv) Any other information that the Commission may require.

(b) The following procedures shall apply to any international carrier that the Commission has classified as dominant in the provision of a particular international service because the carrier possesses market power in the provision of that service on the U.S. end of the route. Any such carrier that seeks to retire international facilities, dismantle or remove international trunk lines, but does not discontinue, reduce or impair the dominant services being provided through these facilities, shall only be subject to the notification requirements of paragraph (a) of this section. If such carrier discontinues, reduces or impairs the dominant service, or retires facilities that impair or reduce the service, the carrier shall file an application pursuant to §§ 63.62 and 63.500.

(c) Commercial Mobile Radio Service (CMRS) carriers, as defined in § 20.3 of this chapter, are not subject to the

provisions of paragraphs (a) and (b) of this section.

(d) For purposes of this section, a period of three consecutive months during which an international section 214 authorization holder does not provide any service under its international section 214 authority is referred to as permanent discontinuance of service.

(1) An international section 214 authorization holder that permanently discontinues service under its international section 214 authority shall surrender the international section 214 authorization.

(2) An international section 214 authorization holder with existing customers shall comply with the requirements of § 63.19(a) to notify all affected customers prior to the planned discontinuance. If a carrier will discontinue part but not all of its U.S.-international services (for example, by discontinuing service only on a particular U.S.-international route) and will continue to provide other U.S.-international service(s) under its international section 214 authority, it shall comply with the requirements of § 63.19(a) to notify affected customers prior to discontinuance of those services.

(3) An international section 214 authorization holder that has permanently discontinued service shall file a notification with the Commission through the International Communications Filing System (ICFS), or its successor system, in the file number associated with the carrier's international section 214 authorization within 30 days after the discontinuance. The notification shall contain the following information:

- (i) The name, address, and telephone number of the authorization holder;
- (ii) The initial date as of when the authorization holder did not provide service under its international section 214 authority;
- (iii) A statement as to whether any customers were affected, and if so, whether the authorization holder complied with section 63.19(a) of the Commission's rules;
- (iv) Whether or not the carrier is also surrendering any International Signaling Point Codes (ISPCs); and
- (v) A request to surrender the authorization.

(e) Even if an international section 214 authorization holder fails to file a notification of discontinuance and surrender its international section 214 authorization, the authorization shall be cancelled if the Commission determines that the authorization holder has permanently discontinued service under

its international section 214 authority. Upon determination that an authorization holder has permanently discontinued service under its international section 214 authority:

(1) The Office of International Affairs shall release an informative public notice announcing the proposed cancellation of the authorization;

(2) The authorization holder shall have 30 days to respond and explain why the authorization should not be cancelled; and

(3) If the authorization holder does not respond, the authorization shall be automatically cancelled at the end of the 30-day period.

(f) An international section 214 authorization holder whose international section 214 authorization is cancelled pursuant to paragraph (e) of this section may file an application for a new international 214 authorization in accordance with the Commission's rules.

(g) Subject to the availability of electronic forms, all filings described in this section must be filed electronically through the International Communications Filing System (ICFS) or its successor system. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

■ 9. Revise § 63.21 to read as follows:

**§ 63.21 Conditions applicable to all international Section 214 authorizations.**

International carriers authorized under Section 214 of the Communications Act of 1934, as amended, must follow the following requirements and prohibitions:

(a) An international section 214 authorization will have a term not to exceed 10 years from the date of grant or renewal. A carrier's international section 214 authority may be renewed for additional periods not to exceed 10 years upon proper application to the Commission pursuant to § 63.27 of this chapter, subject to the Commission's grant of the renewal application. The Commission reserves the discretion to shorten the renewal timeframe on a case-by-case basis where the Commission deems it appropriate to require an international section 214 authorization holder to seek renewal of its international section 214 authority sooner than a 10 year period, or to adopt conditions on renewal where the Commission determines that renewal of the carrier's international section 214

authority otherwise would not be in the public interest.

(b) An international section 214 authorization holder shall hold only one international section 214 authorization except in certain limited circumstances. An authorization holder that holds more than one authorization shall surrender the excess authorization(s) except in certain limited circumstances where a carrier may need more than one authorization for different authority and conditions, such as:

(1) Authority for overseas cable construction for a common carrier submarine cable; or

(2) The carrier is affiliated with a foreign carrier with market power on a U.S.-international route; or

(3) Other limited circumstance as approved by the Commission, or the Office of International Affairs.

(c) An international section 214 authorization holder shall commence service under its international section 214 authority within one year following the grant.

(1) An authorization holder shall file a notification with the Commission through the International Communications Filing System (ICFS), or its successor system, within 30 days of the date when it begins to offer service but in no case later than one year following the grant of international section 214 authority. The commencement of service notification shall include:

(i) A certification by an officer or other authorized representative of the authorization holder that the authorization holder has met the commencement of service requirement;

(ii) The date that the authorization holder commenced service;

(iii) A certification that the information is true and accurate upon penalty of perjury; and

(iv) The name, title, address, telephone number, and association with the authorization holder of the officer or other authorized representative who executed the certifications.

(2) An authorization holder may obtain a waiver of the one-year time period if it can show good cause why it is unable to commence service within one year following the grant of its authorization and identify an alternative reasonable timeframe when it can commence service

(3) If an authorization holder does not notify the Commission of the commencement of service or file a request for a waiver within one year following the grant of international section 214 authority, the authorization shall be cancelled.

(d) Each carrier is responsible for the continuing accuracy of the certifications made in its application. Whenever the substance of any such certification is no longer accurate, the carrier shall as promptly as possible and, in any event, within thirty (30) days, file with the Commission a corrected certification referencing the FCC file number under which the original certification was provided. The information may be used by the Commission to determine whether a change in regulatory status may be warranted under § 63.10. See also § 63.11.

(e) Carriers must file copies of operating agreements entered into with their foreign correspondents as specified in § 43.51 of this chapter and shall otherwise comply with the filing requirements contained in that section.

(f) Carriers regulated as dominant for the provision of a particular international communications service on a particular route for any reason other than a foreign carrier affiliation under § 63.10 shall file tariffs pursuant to Section 203 of the Communications Act, 47 U.S.C. 203, and part 61 of this chapter. Except as specified in § 20.15(d) of this chapter with respect to commercial mobile radio service providers, carriers regulated as non-dominant, as defined in § 61.3 of this chapter, and providing detariffed international services pursuant to § 61.19 of this chapter must comply with all applicable public disclosure and maintenance of information requirements in §§ 42.10 and 42.11 of this chapter.

(g) [Reserved]

(h) Authorized carriers may not access or make use of specific U.S. customer proprietary network information that is derived from a foreign network unless the carrier obtains approval from that U.S. customer. In seeking to obtain approval, the carrier must notify the U.S. customer that the customer may require the carrier to disclose the information to unaffiliated third parties upon written request by the customer.

(i) Authorized carriers may not receive from a foreign carrier any proprietary or confidential information pertaining to a competing U.S. carrier, obtained by the foreign carrier in the course of its normal business dealings, unless the competing U.S. carrier provides its permission in writing.

(j) The Commission reserves the right to review a carrier's authorization at any time, and, if warranted, impose additional requirements on U.S. international carriers in circumstances where it appears that harm to competition is occurring on one or more U.S. international routes or where

national security, law enforcement, foreign policy, trade policy, and/or other public interest concerns are raised by the U.S. international carrier's international section 214 authority.

(k) Subject to the requirement of § 63.10 that a carrier regulated as dominant along a route must provide service as an entity that is separate from its foreign carrier affiliate, and subject to any other structural-separation requirement in Commission regulations, an authorized carrier may provide service through any wholly owned direct or indirect subsidiaries. The carrier must, within thirty (30) days after the subsidiary begins providing service, file with the Commission a notification referencing the authorized carrier's name and the FCC file numbers under which the carrier's authorizations were granted and identifying the subsidiary's name and place of legal organization. This provision shall not be construed to authorize the provision of service by any entity barred by statute or regulation from itself holding an authorization or providing service.

(l) An authorized carrier, or a subsidiary operating pursuant to paragraph (h) of this section, that changes its name (including the name under which it is doing business) must notify the Commission within thirty (30) days of the name change. Such notification shall reference the FCC file numbers under which the carrier's authorizations were granted.

(m) Subject to the availability of electronic forms, all notifications and other filings described in this section must be filed electronically through the International Communications Filing System (ICFS) or its successor system. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

■ 10. Revise § 63.24 to read as follows:

**§ 63.24 Assignments and transfers of control.**

(a) *General.* Except as otherwise provided in this section, an international section 214 authorization may be assigned, or control of such authorization may be transferred by the transfer of control of any entity holding such authorization, to another party, whether voluntarily or involuntarily, directly or indirectly, only upon application to and prior approval by the Commission.

(b) *Assignments.* For purposes of this section, an assignment of an

authorization is a transaction in which the authorization is assigned from one entity to another entity. Following an assignment, the authorization is held by an entity other than the one to which it was originally granted.

(1) The sale of a customer base, or a portion of a customer base, by a carrier to another carrier, is a sale of assets and shall be treated as an assignment, which requires prior Commission approval under this section.

(2) [Reserved]

(c) *Transfers of control.* For purposes of this section, a transfer of control is a transaction in which the authorization remains held by the same entity, but there is a change in the entity or entities that control the authorization holder. A change from less than 50 percent ownership to 50 percent or more ownership shall always be considered a transfer of control. A change from 50 percent or more ownership to less than 50 percent ownership shall always be considered a transfer of control. In all other situations, whether the interest being transferred is controlling must be determined on a case-by-case basis with reference to the factors listed in paragraph (d)(1) of this section.

(d) *Pro forma assignments and transfers of control.* Transfers of control or assignments that do not result in a change in the actual controlling party are considered non-substantial, or "pro forma." Whether there has been a change in the actual controlling party must be determined on a case-by-case basis with reference to the factors listed in paragraph (d)(1) of this section. The types of transactions listed in paragraph (d)(2) of this section shall be considered presumptively pro forma and prior approval from the Commission need not be sought.

(1) Because the issue of control inherently involves issues of fact, it must be determined on a case-by-case basis and may vary with the circumstances presented by each case. The factors relevant to a determination of control in addition to equity ownership include, but are not limited to the following: power to constitute or appoint more than 50 percent of the board of directors or partnership management committee; authority to appoint, promote, demote and fire senior executives that control the day-to-day activities of the licensee; ability to play an integral role in major management decisions of the licensee; authority to pay financial obligations, including expenses arising out of operations; ability to receive monies and profits from the facility's operations; and unfettered use of all facilities and equipment.

(2) If a transaction is one of the types listed further, the transaction is presumptively pro forma and prior approval need not be sought. In all other cases, the relevant determination shall be made on a case-by-case basis. Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests; Assignment from a corporation to its individual stockholders without effecting any substantial change in the disposition of their interests; Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one; Corporate reorganization that involves no substantial change in the beneficial ownership of the corporation (including re-incorporation in a different jurisdiction or change in form of the business entity); Assignment or transfer from a corporation to a wholly owned direct or indirect subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or Assignment of less than a controlling interest in a partnership.

(e) *Applications for substantial transactions.*

(1) In the case of an assignment or transfer of control of an international section 214 authorization that is not pro forma, the proposed assignee or transferee must apply to the Commission for authority prior to consummation of the proposed assignment or transfer of control.

(2) The application shall include:

(i) The information requested in paragraphs (a) through (d) of § 63.18 for both the transferor/assignor and the transferee/assignee;

(ii) The information requested in paragraphs (h) through (q) and (w) of § 63.18 is required only for the transferee/assignee;

(iii) The ownership diagram required under § 63.18(h)(2) shall include both the pre-transaction and post-transaction ownership of the authorization holder. The applicant shall include a narrative describing the means by which the proposed transfer or assignment will take place; and

(iv) The information requested in paragraphs (r) through (v) of § 63.18 is required for the authorization holder whose authorization is subject to the proposed transfer of control or assignment.

(3) The Commission reserves the right to request additional information as to

the particulars of the transaction to aid it in making its public interest determination.

(4) An assignee or transferee must notify the Commission no later than thirty (30) days after either consummation of the proposed assignment or transfer of control, or a decision not to consummate the proposed assignment or transfer of control. The notification shall identify the file numbers under which the initial authorization and the authorization of the assignment or transfer of control were granted.

(f) *Notifications for non-substantial or "pro forma" transactions.*

(1) In the case of a pro forma assignment or transfer of control, the section 214 authorization holder is not required to seek prior Commission approval.

(2) A *pro forma* assignee or a carrier that is subject to a pro forma transfer of control must file a notification with the Commission no later than thirty (30) days after the assignment or transfer is completed. The notification must contain the following:

(i) The information requested in paragraphs (a) through (d) and (h) of § 63.18 for the transferee/assignee;

(ii) The ownership diagram required under § 63.18(h)(2) shall include both the pre-transaction and post-transaction ownership of the authorization holder;

(iii) A certification that the transfer of control or assignment was pro forma and that, together with all previous pro forma transactions, does not result in a change in the actual controlling party; and

(iv) The information requested in paragraphs (r) through (v) of § 63.18 for the authorization holder whose authorization is subject to the transfer of control or assignment.

(3) Subject to § 63.21(b), a single notification may be filed for an assignment or transfer of control of more than one authorization if each authorization is identified by the file number under which it was granted.

(4) Upon release of a public notice granting a pro forma assignment or transfer of control, petitions for reconsideration under § 1.106 of this chapter or applications for review under § 1.115 of this chapter of the Commission's rules may be filed within 30 days. Petitioner should address why the assignment or transfer of control in question should have been filed under paragraph (e) of this section rather than under this paragraph (f).

(g) *International signaling point codes (ISPCs).* An international section 214 authorization holder seeking to assign or transfer control of its international

section 214 authorization must identify in the application any ISPCs that it holds, and state whether the ISPC will be subject to the assignment or transfer of control.

(h) *Involuntary assignments or transfers of control.* In the case of an involuntary assignment or transfer of control to: a bankruptcy trustee appointed under involuntary bankruptcy; an independent receiver appointed by a court of competent jurisdiction in a foreclosure action; or, in the case of death or legal disability, to a person or entity legally qualified to succeed the deceased or disabled person under the laws of the place having jurisdiction over the estate involved; the applicant must make the appropriate filing no later than 30 days after the event causing the involuntary assignment or transfer of control.

(i) *Electronic filing.* Subject to the availability of electronic forms, all applications and notifications described in this section must be filed electronically through the International Communications Filing System (ICFS) or its successor system. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.10000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

■ 11. Add § 63.26 to read as follows:

**§ 63.26 Renewal of International Section 214 Authority**

(a) *Renewal timeframe.* Each international section 214 authorization shall be subject to a renewal timeframe not to exceed 10 years from the date of the grant of international section 214 authority or modification, assignment, transfer of control, or renewal of the international section 214 authority. The Commission reserves its discretion to shorten the renewal timeframe on a case-by-case basis where the Commission deems it appropriate to require the international section 214 authorization holder to seek renewal of its international section 214 authority sooner than otherwise would be required, or to adopt conditions on the renewal of the international section 214 authority where the Commission determines that renewal otherwise would not be in the public interest.

(b) *Filing requirements.* Any party granted authority pursuant to section 214 of the Communications Act of 1934, as amended, to construct a new line, or acquire or operate any line, or engage in transmission over or by means of such additional line for the provision of common carrier communications

services between the United States, its territories or possessions, and a foreign point shall request renewal of the authority by formal application. The application for renewal of international section 214 authority shall contain the information required by § 63.27.

(c) *Streamlined renewal processing procedures.* A complete application seeking renewal of international section 214 authority shall be granted by the Commission 14 days after the date of public notice listing the application as accepted for filing if:

(1) The Commission does not refer the application to the executive branch agencies because the applicant does not have reportable foreign ownership and the application does not raise other national security, law enforcement, or other considerations warranting executive branch review;

(2) The application does not raise other public interest considerations, including regulatory compliance;

(3) The executive branch agencies do not separately request during the comment period that the Commission defer action and remove the application from streamlined processing; and

(4) No objections to the application are timely raised by an opposing party.

(d) *Authorizations pending renewal.* An applicant that has timely applied for renewal of its international section 214 authorization may continue providing service(s) under its international section 214 authority while its renewal application is pending review.

(e) *Referral of applications to the executive branch agencies.*

(1) The Commission will refer to the executive branch agencies an application for renewal of international section 214 authority where the applicant has reportable foreign ownership, consistent with § 1.40002 of this chapter.

(2) The Commission will also refer to the executive branch agencies the following applications for renewal of international section 214 authority, irrespective of whether the applicant has reportable foreign ownership:

(i) Renewal application where an applicant discloses that it uses and/or will use a foreign-owned managed network service provider;

(ii) Renewal application where an applicant discloses it has cross border facilities; and

(iii) Renewal application where an applicant certifies that it uses equipment or services identified on the Commission's "Covered List" of equipment and services deemed pursuant to the Secure and Trusted Communications Networks Act to pose an unacceptable risk to the national

security of the United States or the security and safety of United States persons.

(f) *Expiration and Cancellation of Authorization.* If an authorization holder fails to timely file an application for renewal of its international section 214 authority, the international section 214 authorization shall expire and be cancelled by operation of law. Authority is delegated to the Office of International Affairs to provide notice in advance of the renewal deadline.

(g) *New Application.* An international section 214 authorization holder whose international section 214 authorization is cancelled for failure to timely file a renewal application may file an application for a new international 214 authorization in accordance with the Commission's rules.

■ 12. Add § 63.27 to read as follows:

**§ 63.27 Applications for Renewal of International Section 214 Authority.**

An application for renewal of international section 214 authority shall include information demonstrating how the grant of the application will serve the public interest, convenience, and necessity. The application shall include the following information:

(a) The information requested in paragraphs (a) through (d), (h) through (k), and (m) through (v) of § 63.18;

(b) One or more of the following statements, as pertinent:

(1) *Global facilities-based authority.* If applying for renewal of authority to operate as a facilities-based international common carrier subject to § 63.22, the applicant shall:

(i) State that it is requesting renewal of section 214 authority to operate as a facilities-based carrier pursuant to § 63.27(b)(1) of the Commission's rules;

(ii) List any countries for which the applicant does not request renewal of section 214 authority under this paragraph (see § 63.22(a)); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.22.

(2) *Global Resale Authority.* If applying for renewal of authority to resell the international services of authorized common carriers subject to § 63.23, the applicant shall:

(i) State that it is requesting renewal of section 214 authority to operate as a resale carrier pursuant to § 63.27(b)(2) of the Commission's rules;

(ii) List any countries for which the applicant does not request renewal of section 214 authority under this paragraph (see § 63.23(a) of this part); and

(iii) Certify that it will comply with the terms and conditions contained in §§ 63.21 and 63.23 of this part.

(3) *Other authorizations.* If applying for renewal of authority to acquire operate facilities or to provide services not covered by paragraphs (e)(1) and (e)(2) of this section, the applicant shall provide a description of the facilities and services for which it seeks renewal of authority. The applicant shall certify that it will comply with the terms and conditions contained in § 63.21 and § 63.22 and/or § 63.23, as appropriate. Such description also shall include any additional information the Commission shall have specified previously in an order, public notice or other official action as necessary for authorization. The applicant shall also state whether it has separately filed an application for international section 214 authority to acquire facilities or to provide new services not covered by §§ 63.18(e)(1), 63.18(e)(2), 63.27(e)(1), and 63.27(e)(2) nor covered by the previous grant of authority under § 63.18(e)(3) and explain whether the applicant is seeking approval to hold more than one authorization pursuant to the exception in § 63.21(b)(iii).

(c) An applicant shall apply for renewal of any or all of the authority provided for in paragraph (e) of this section in the same renewal application. The applicant may want to file separate applications for renewal of those services not subject to streamlined processing under § 63.12.

(d) Where the applicant is seeking renewal of facilities-based authority under paragraph (e)(3) of this section, a statement whether an authorization of the facilities is categorically excluded as defined by § 1.1306 of this chapter. If answered affirmatively, an environmental assessment as described in § 1.1311 of this chapter need not be filed with the application.

(e) An applicant must certify whether or not it discontinued service provided pursuant to its international section 214 authority for three consecutive months at any time during the preceding renewal timeframe.

(f) Any other information that the Commission or Commission staff have advised will be necessary to enable the Commission to act on the application.

(g) Subject to the availability of electronic forms, all applications described in this section must be filed electronically through the International Communications Filing System (ICFS) or its successor system. A list of forms that are available for electronic filing can be found on the ICFS homepage. For information on electronic filing requirements, see §§ 1.1000 through 1.10018 of this chapter and the ICFS homepage at <https://www.fcc.gov/icfs>. See also §§ 63.20 and 63.53.

■ 13. Add § 63.28 to read as follows:

**§ 63.28 Ongoing Reporting Requirements for International Section 214 Authorization Holders.**

(a) Each international section 214 authorization holder shall provide updated ownership information and other information to the Commission:

(1) Every three years following the date of the initial grant of an application to renew the international section 214 authority.

(2) Prior to an initial grant of an application to renew an authorization holder's international section 214 authority, the reporting requirement pursuant to this section shall commence three years following the date that the Commission grants an application for international section 214 authority or modification, assignment, or transfer of control of international section 214 authority.

(3) An authorization holder shall file a report every three years based on the date of the initial grant of its renewal application, until and unless the Commission grants a subsequent application for modification, assignment, transfer of control, or renewal of the international section 214 authority as filed by the authorization holder, at which point the three-year reporting cycle shall commence anew as of the date of the new grant.

(b) Each authorization holder shall include the following information in the report. The report must contain information that is current as of thirty (30) days prior to the date of the submission.

(1) The information requested in paragraphs (h) and (r) through (u) of § 63.18;

(2) Whether or not the authorization holder has discontinued service provided pursuant to its international section 214 authority as of the most recent renewal process or the most recent report.

(c) Each authorization holder shall submit its report through the International Communications Filing System (ICFS), or its successor system, in the file number associated with its international section 214 authorization.

(d) An authorization holder that has reportable foreign ownership pursuant to § 63.18(h) as of thirty (30) days prior to the date of the submission must also file a copy of the report directly with the Committee.

(e) Failure to submit timely, consistent, accurate, and complete information shall constitute grounds for enforcement action against the authorization holder, up to and including cancellation or revocation of the international section 214 authorization.

■ 14. Add § 63.29 to read as follows:

**§ 63.29 Cross Border International Telecommunications Facilities.**

*Initial Information Collection.* For purposes of the initial information collection, each international section 214 authorization holder shall report the information required in § 63.18(s) sixty (60) days after the effective date established by the Office of International Affairs following i) the completion of review by the Office of Management and Budget or ii) a determination by the Office of International Affairs that such review is not required. The Office of International Affairs shall revise this paragraph accordingly.

■ 15. Add § 63.30 to read as follows:

**§ 63.30 Failure to Comply with One-Time Information Collection.**

(a) *Automatic Cancellation of International Section 214 Authorization.* An international section 214 authorization will be automatically cancelled upon the authorization holder's failure to file the information required by the Order adopted in FCC 23–28 within thirty (30) days after the

date of publication in the **Federal Register** of a notice identifying the authorization holder as among the international section 214 authorization holders that failed to file the required information by the filing deadline.

(b) *Office of Management and Budget Review.* The information required by the Order adopted in FCC 23–28 shall not be required until the Office of International Affairs announces the completion of review by the Office of Management and Budget and the required compliance date and revises this section accordingly.

(c) *New Application.* An international section 214 authorization holder whose international section 214 authorization is cancelled for failure to timely file the information required by the Order adopted in FCC 23–28, may file an application for a new international 214 authorization in accordance with the Commission's rules.

(d) *Reinstatement Nunc Pro Tunc.* An international section 214 authorization holder whose international section 214 authorization is cancelled for failure to timely file the information required by the Order adopted in FCC 23–28 may file a petition for reinstatement *nunc pro tunc* of the international section 214 authorization. A petition for reinstatement will be considered if:

(1) It is filed within six months after the date of publication in the **Federal Register** of a notice identifying international section 214 authorization holders that failed to file the required information by the deadline described in paragraph (a) of this section;

(2) It demonstrates that the authorization holder is currently in operation and has customers; and

(3) Demonstrates good cause for the failure to timely file the information.

[FR Doc. 2023–13040 Filed 7–31–23; 8:45 am]

**BILLING CODE 6712–01–P**

# Reader Aids

## Federal Register

Vol. 88, No. 146

Tuesday, August 1, 2023

### CUSTOMER SERVICE AND INFORMATION

#### Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids **202-741-6000**

**Laws** **741-6000**

#### Presidential Documents

Executive orders and proclamations **741-6000**

**The United States Government Manual** **741-6000**

#### Other Services

Electronic and on-line services (voice) **741-6020**

Privacy Act Compilation **741-6050**

### ELECTRONIC RESEARCH

#### World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: [www.govinfo.gov](http://www.govinfo.gov).

Federal Register information and research tools, including Public Inspection List and electronic text are located at: [www.federalregister.gov](http://www.federalregister.gov).

#### E-mail

**FEDREGTOC** (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to <https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new>, enter your email address, then follow the instructions to join, leave, or manage your subscription.

**PENS** (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to <http://listserv.gsa.gov/archives/publaws-l.html> and select *Join or leave the list (or change settings)*; then follow the instructions.

**FEDREGTOC** and **PENS** are mailing lists only. We cannot respond to specific inquiries.

**Reference questions.** Send questions and comments about the Federal Register system to: [fedreg.info@nara.gov](mailto:fedreg.info@nara.gov)

The Federal Register staff cannot interpret specific documents or regulations.

### FEDERAL REGISTER PAGES AND DATE, AUGUST

49993-50532 ..... 1

### CFR PARTS AFFECTED DURING AUGUST

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

**7 CFR** 455.....50043  
640.....50043  
27.....49993

**9 CFR** 45 CFR  
93.....49994 620.....50044  
130.....49994

**13 CFR** 47 CFR  
107.....50003 14.....50053  
120.....50003  
142.....50003  
146.....50003  
**Proposed Rules:**  
1.....50486  
63.....50486

**14 CFR** 49 CFR  
39 (4 documents) .....50005, 192.....50056  
50008, 50011, 50014 195.....50056  
71.....50018  
382.....50020

**Proposed Rules:** 50 CFR  
39.....50067 622.....50063  
648.....50065  
**Proposed Rules:**  
275.....50076  
279.....50076

**17 CFR** 50 CFR  
**Proposed Rules:**  
275.....50076  
279.....50076

**21 CFR** 50 CFR  
1300.....50036  
1302.....50036  
1308.....50036

**26 CFR** 50 CFR  
1.....50041

**33 CFR** 50 CFR  
165.....50042

**36 CFR** 50 CFR  
**Proposed Rules:**  
1195.....50096

**40 CFR** 50 CFR  
**Proposed Rules:**  
98.....50282  
745.....50444

**42 CFR** 50 CFR  
417.....50043  
422.....50043  
423.....50043

---

---

**LIST OF PUBLIC LAWS**

---

**Note:** No public bills which have become law were received by the Office of the Federal Register for inclusion

in today's **List of Public Laws**.

Last List July 31, 2023

---

---

**Public Laws Electronic Notification Service (PENS)**

---

**PENS** is a free email notification service of newly

enacted public laws. To subscribe, go to <https://portalguard.gsa.gov/—layouts/PG/register.aspx>.

**Note:** This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.

## TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 2023

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
August 1	Aug 16	Aug 22	Aug 31	Sep 5	Sep 15	Oct 2	Oct 30
August 2	Aug 17	Aug 23	Sep 1	Sep 6	Sep 18	Oct 2	Oct 31
August 3	Aug 18	Aug 24	Sep 5	Sep 7	Sep 18	Oct 2	Nov 1
August 4	Aug 21	Aug 25	Sep 5	Sep 8	Sep 18	Oct 3	Nov 2
August 7	Aug 22	Aug 28	Sep 6	Sep 11	Sep 21	Oct 6	Nov 6
August 8	Aug 23	Aug 29	Sep 7	Sep 12	Sep 22	Oct 10	Nov 6
August 9	Aug 24	Aug 30	Sep 8	Sep 13	Sep 25	Oct 10	Nov 7
August 10	Aug 25	Aug 31	Sep 11	Sep 14	Sep 25	Oct 10	Nov 8
August 11	Aug 28	Sep 1	Sep 11	Sep 15	Sep 25	Oct 10	Nov 9
August 14	Aug 29	Sep 5	Sep 13	Sep 18	Sep 28	Oct 13	Nov 13
August 15	Aug 30	Sep 5	Sep 14	Sep 19	Sep 29	Oct 16	Nov 13
August 16	Aug 31	Sep 6	Sep 15	Sep 20	Oct 2	Oct 16	Nov 14
August 17	Sep 1	Sep 7	Sep 18	Sep 21	Oct 2	Oct 16	Nov 15
August 18	Sep 5	Sep 8	Sep 18	Sep 22	Oct 2	Oct 17	Nov 16
August 21	Sep 5	Sep 11	Sep 20	Sep 25	Oct 5	Oct 20	Nov 20
August 22	Sep 6	Sep 12	Sep 21	Sep 26	Oct 6	Oct 23	Nov 20
August 23	Sep 7	Sep 13	Sep 22	Sep 27	Oct 10	Oct 23	Nov 21
August 24	Sep 8	Sep 14	Sep 25	Sep 28	Oct 10	Oct 23	Nov 22
August 25	Sep 11	Sep 15	Sep 25	Sep 29	Oct 10	Oct 24	Nov 24
August 28	Sep 12	Sep 18	Sep 27	Oct 2	Oct 12	Oct 27	Nov 27
August 29	Sep 13	Sep 19	Sep 28	Oct 3	Oct 13	Oct 30	Nov 27
August 30	Sep 14	Sep 20	Sep 29	Oct 4	Oct 16	Oct 30	Nov 28
August 31	Sep 15	Sep 21	Oct 2	Oct 5	Oct 16	Oct 30	Nov 29