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OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1321

RIN 0348-AB81

Fundamental Responsibilities of Recognized Statistical Agencies and Units

AGENCY: Office of Management and Budget (OMB), Executive Office of the President.

ACTION: Final rule.

SUMMARY: Public trust in Federal statistics is essential to their value and use in informing decisions across public and private sectors. To promote public trust in the statistical agencies and units that produce Federal statistics, the Office of Management and Budget issues this final rule pursuant to Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act) to provide direction to Recognized Statistical Agencies and Units (RSAUs) in carrying out their four fundamental responsibilities: produce and disseminate relevant and timely statistical information, conduct credible and accurate statistical activities, conduct objective statistical activities, and protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses. This final rule also provides direction to other Federal agencies to enable, support, and facilitate RSAUs in carrying out these four fundamental responsibilities.

DATES:

Effective date: December 10, 2024.

Applicability date: This final rule is applicable December 10, 2024.

FOR FURTHER INFORMATION CONTACT:

Kerrie Leslie, 202-395-5898, TrustRegulation@omb.eop.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Foundations for Evidence-Based Policymaking Act of 2018 (Evidence

Act) became law on January 14, 2019.¹ The Evidence Act seeks to “advance[] the evidence building functions in the Federal Government by improving access to data and expanding evaluation capacity.”² Part of advancing evidence-building functions is enhancing the foundation for generating high quality evidence, including improving the ability of Recognized Statistical Agencies and Units (RSAUs) to produce relevant, timely, credible, accurate, and objective statistical information. Title III of the Evidence Act (known as the Confidential Information Protection and Statistical Efficiency Act of 2018, or CIPSEA 2018) updated and enhanced the original Confidential Information Protection and Statistical Efficiency Act of 2002 (known as CIPSEA 2002)³ by, among other things, codifying the four fundamental responsibilities of RSAUs and requiring other Federal agencies to enable, support, and facilitate RSAUs in upholding these responsibilities. The four fundamental responsibilities are as follows:⁴

- (1) produce and disseminate relevant and timely statistical information;
- (2) conduct credible and accurate statistical activities;
- (3) conduct objective statistical activities; and
- (4) protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses.

In August 2023, OMB issued a proposed rule that would provide direction to agencies in carrying out these responsibilities.⁵ After considering comments on the proposed rule, OMB issues this final rule to be codified at 5 CFR part 1321, which sets

forth requirements for RSAUs to carry out their fundamental responsibilities and for agencies to enable, support, and facilitate RSAUs in carrying out their fundamental responsibilities.

A. Statutory Authority

Pursuant to 44 U.S.C. 3563(c) and the general authority in 44 U.S.C. 3562(a) to promulgate rules to ensure consistent interpretation by Federal agencies of the requirements of CIPSEA 2018, OMB finalizes this rule to provide direction to agencies in carrying out the responsibilities described in section 3563. Section 3563 describes the fundamental responsibilities that RSAUs must adhere to and charges all Federal agencies with enabling, supporting, and facilitating RSAUs in meeting these responsibilities.

B. Brief History of the U.S. Federal Statistical System and Related Authorities

Federal statistics have informed decision making in the United States since its founding. The first constitutionally mandated census of population was in 1790.⁶ The 1790 Census planted the seeds for what is referred to today as the Federal statistical system. Over the 19th century, the system continued to blossom into a specialized and decentralized yet interconnected network of agencies, units, programs, and officials across the Government addressing emerging information demands of the Nation, including in the fields of tax, agriculture, education, and labor. The 20th Century presented new policy needs leading to further expansion of the Federal statistical system to include the fields of commerce, public health, energy, justice, transportation, and more. More than two decades into the 21st century, the Federal statistical system continues to provide the gold-standard for impartial, trusted Federal statistics foundational to informing decisions across the public and private sectors. Increasingly, collaboration is required across the Federal statistical system to

¹ Foundations for Evidence-Based Policymaking Act of 2018, Public Law 115-435, 132 Stat. 5529 (2019), available at <https://www.congress.gov/115/plaws/publ435/PLAW-115publ435.pdf>.

² Foundations for Evidence-Based Policymaking Act of 2017, H.R. Rep. No. 115-411, at 1-2 (2017), available at <https://www.congress.gov/congressional-report/115th-congress/house-report/411>.

³ E-Government Act of 2002, Public Law 107-347, title V, 116 Stat. 2962. The E-Government Act of 2002 as codified and amended at 44 U.S.C. 3561-3576 by CIPSEA 2018 is also known generically as “CIPSEA.”

⁴ 44 U.S.C. 3563(a)(1).

⁵ Off. of Mgmt. & Budget, Exec. Off. of the President, Fundamental Responsibilities of Recognized Statistical Agencies and Units, 88 FR 56708 (Aug. 18, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-08-18/pdf/2023-17664.pdf>.

⁶ Carroll Wright, Comm’r of Labor, *The History and Growth of the United States Census*, S. Doc. No. 194, at 12-14 (1900), available at <https://www.census.gov/history/pdf/wright-hunt.pdf>.

unlock greater efficiencies and leverage diverse expertise.⁷

The Federal Statistical System. The Federal statistical system collects and transforms data into useful, objective information and makes it readily and equitably available to data users, while protecting the responses of individual data providers. Federal, State, local, territorial, and Tribal governments; businesses; and the public all trust this information to be credible and reliable and use it to make informed decisions. The Federal statistical system includes the following entities and officials:

- *Office of the Chief Statistician of the United States.* Led by the Chief Statistician of the United States, the Office of the Chief Statistician of the United States at OMB has the statutory authority to coordinate the Federal statistical system to ensure its efficiency and effectiveness, as well as the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes.⁸ The office accomplishes this by promulgating rules, developing and maintaining statistical policies and standards, identifying priorities for improving statistical programs, assessing statistical agency budgets, reviewing and approving collections of information from RSAUs, and coordinating U.S. participation in international statistical activities, among other functions.

- *Sixteen RSAUs.* OMB currently recognizes 16 statistical agencies and units under CIPSEA (See Table 1).⁹ OMB-recognized agencies or units are organizational units of the Executive Branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes,¹⁰ covering topics such as the economy, workforce, energy, agriculture, foreign trade, education, housing, crime, transportation, and health.

- *Approximately 100 other statistical programs.*¹¹ These other Federal

statistical programs produce and disseminate statistics in support of other mission areas and conduct a variety of evidence-building functions, including program evaluation, scientific research, data collection, policy and program analysis, and the provision of funding and other support for external research.

- *Twenty-Four Statistical Officials.* Pursuant to the Evidence Act, each Chief Financial Officers Act (CFO Act) agency¹² has designated a senior staff person in the agency to be the Statistical Official with the authority and responsibility to advise across the agency on statistical policy, techniques, and procedures, and to champion statistical data quality and confidentiality. At the 11 CFO Act agencies that contain an RSAU, the head of that RSAU has been designated the Statistical Official, as required by OMB M–19–23.¹³

- *Interagency Council on Statistical Policy (ICSP).* Chaired by the Chief Statistician of the United States, the ICSP was established to advise and assist OMB, through the Chief Statistician of the United States, in carrying out its statutory responsibility to coordinate the Federal statistical system.¹⁴ The ICSP supports the Federal statistical system's vision to operate as a seamless system and its critical role supporting evidence-based decision making. The ICSP sets strategic goals on issues such as modernizing the statistical system, ensuring data quality and confidentiality, and providing safe and appropriate data access, as well as enhancing coordination and collaboration across the system. The ICSP currently includes 29 members in addition to the Chair, including the head of each RSAU and each Statistical Official; however, 11 of the Statistical Officials are also heads of RSAUs.

Brief History of RSAUs. In June 1997, OMB issued the "Order Providing for the Confidentiality of Statistical Information," (1997 Order) which "clarified and amplified the privileged status afforded 'confidential

statistical data.'"¹⁵ The 1997 Order established a consistent confidentiality policy across statistical agencies and units "whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes" as "determined by the Office of Management and Budget." In the 1997 Order, OMB determined 12 statistical agencies and units would be subject to the order.¹⁶ About five years later, CIPSEA 2002 was enacted, which codified OMB's authority to determine whether an agency or unit is a statistical agency or unit subject to the consistent and heightened protections for confidential statistical data under CIPSEA 2002.¹⁷ In 2007, OMB issued CIPSEA 2002 implementation guidance (2007 guidance) and recognized the 12 statistical agencies and units previously identified in the 1997 Order plus two additional statistical agencies or units.¹⁸ These 14 agencies and units listed in the 2007 guidance were known as recognized statistical agencies and units. Since 2007, OMB added two more units for a total of 16 RSAUs.¹⁹ In accordance with the 2007 guidance, OMB maintains a publicly available list of RSAUs online, now available at

¹⁵ Off. of Mgmt. & Budget, Exec. Off. of the President, Order Providing for the Confidentiality of Statistical Information, 62 FR 35044, 35044 (June 27, 1997), available at <https://www.govinfo.gov/content/pkg/FR-1997-06-27/pdf/FR-1997-06-27.pdf>.

¹⁶ *Id.* at 35049. The term "designated" was used in the 1997 Order. For the purposes of this final rule, OMB uses the term *recognized* in this discussion of the history of OMB's role in identifying these entities to provide consistency across the discussion with the current implementation.

¹⁷ CIPSEA 2018 reauthorized the OMB's authority to make this determination under and codified it at 44 U.S.C. 3562(a). CIPSEA 2018 uses the term "designate" to identify those statistical agencies or units that OMB identifies under section 3562 and therefore are subject to the responsibilities in section 3563. CIPSEA 2018 also uses the term "designated" to identify the three statistical agencies and units given the authority to share business data with each other in section 3576. To avoid confusion in this final rule, the term "recognized" is used, consistent with past practice, to refer to those statistical agencies and units identified under section 3562 and subject to the responsibilities in section 3563.

¹⁸ Off. of Mgmt. & Budget, Exec. Off. of the President, Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA), 72 FR 33362, 33368 (June 15, 2007), available at <https://www.govinfo.gov/content/pkg/FR-2007-06-15/pdf/E7-11542.pdf>.

¹⁹ See About Us: Principal Statistical Agencies and Recognized Units, *StatsPolicy.gov*, <https://www.StatsPolicy.gov/about/#statistical-agencies> (last visited May 21, 2024); see also Off. of Mgmt. & Budget, Exec. Off. of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), available at <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

⁷ For example, recent collaborations have expanded the Federal Statistical Research Data Centers program and launched the Standard Application Process portal.

⁸ 44 U.S.C. 3504(e)(7).

⁹ See 44 U.S.C. 3562(a) (providing OMB the authority to recognize statistical agencies and units).

¹⁰ 44 U.S.C. 3561(12) ("The term 'Statistical purpose' (A) means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and (B) includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in [(A)].").

¹¹ Off. of Mgmt. & Budget, Exec. Off. of the President, Statistical Programs of the United States

Government: Fiscal Years 2021/2022, at 53 (2024), available at <https://www.whitehouse.gov/wp-content/uploads/2024/02/statistical-programs-20212022.pdf>.

¹² 31 U.S.C. 901.

¹³ Off. of Mgmt. & Budget, Exec. Off. of the President, M–19–23, Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance 8 & n.19 (July 10, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf>. In the case of the Departments of Agriculture, Commerce, and Health and Human Services, which each host more than one recognized statistical agency or unit, the Statistical Official role is determined by the CFO Act agency.

¹⁴ 44 U.S.C. 3504(e).

<https://www.StatsPolicy.gov>. Table 1 provides a list of the current 16 RSAUs and their highest-level organization.

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TABLE 1—CURRENT RSAUS

Recognized statistical agency or unit	Highest level organization
Bureau of Economic Analysis	Department of Commerce.
Bureau of Justice Statistics	Department of Justice.
Bureau of Labor Statistics	Department of Labor.
Bureau of the Census	Department of Commerce.
Bureau of Transportation Statistics	Department of Transportation.
Center for Behavioral Health Statistics and Quality	Department of Health and Human Services.
Economic Research Service	Department of Agriculture.
Energy Information Administration	Department of Energy.
Microeconomic Surveys Unit	Board of Governors of the Federal Reserve System.
National Agricultural Statistics Service	Department of Agriculture.
National Animal Health Monitoring System	Department of Agriculture.
National Center for Education Statistics	Department of Education.
National Center for Health Statistics	Department of Health and Human Services.
National Center for Science and Engineering Statistics	National Science Foundation.
Office of Research, Evaluation, and Statistics	Social Security Administration.
Statistics of Income Division	Department of the Treasury.

Related authorities. Critical to a healthy, relevant Federal statistical system has been the development and implementation of statutes, rules, policies, and principles (hereafter collectively referred to as “authorities”) to support its growth. Over the years, recognizing challenges faced by the Federal statistical system as it grew, Congress, the Executive Branch, and outside experts—both nationally and internationally—have built a framework of authorities to address such challenges. In addition, maintaining the public’s trust in the statistical information produced by the Federal statistical system is critical to the usefulness of the statistical information, and authorities have been issued and revised over time to promote the Federal statistical system’s ability to provide relevant, timely, credible, accurate, and objective statistical information. Importantly, many authorities, such as individual entity authorizing statutes and cross-system statutes, co-exist and complement one another to promote a strong, vibrant, interconnected Federal statistical system. These authorities generally support the ability of the Federal statistical system to create relevant, timely, credible, accurate, and objective statistics in a way that promotes the trust of data providers. Some of the most relevant authorities to this final rule include the Evidence Act, CIPSEA 2002, CIPSEA 2018, the Paperwork Reduction Act of 1995 (PRA), the Privacy Act of 1974 (Privacy Act), and OMB Statistical Policy Directive Nos. 1, 3, and 4. In addition, other external entities—both domestic and international—have published their perspectives on how RSAUs should

meet their missions to produce relevant, timely credible, accurate, and objective Federal statistics; including the National Academy of Sciences, Engineering, and Medicine’s Principles and Practices for a Federal Statistical Agency (referred to as Principles and Practices); the United Nations’ Fundamental Principles of Official Statistics;²⁰ the European Statistics Code of Practice;²¹ and the American Statistical Association’s Ethical Guidelines for Statistical Practice.²² The proposed rule preamble includes a longer description of these related authorities.

Over many years and based on lessons learned, certain responsibilities, standards, and protections have been developed and implemented to strengthen the Federal statistical system’s ability to meet its mission reliably and objectively, which requires an appropriate level of autonomy and authority for RSAUs.²³ The concepts of

autonomy and authority as codified in this rule are important for RSAUs to meet the fundamental responsibilities enumerated in 44 U.S.C. 3563. The autonomy and authority of RSAUs must be balanced with the other responsibilities and needs of RSAUs, as well as other affected Federal agencies. Similar to the proposed rule, this final rule aims to explicate where autonomous decision-making authority is important and why.

In addition, CIPSEA 2018 contemplates a common framework for protecting statistical data, acquiring administrative or program data, and disseminating statistical data securely. This rule seeks to lay the foundation for advancing this common framework by facilitating appropriate interagency engagement and coordination and ensuring implementation is successful across the Federal Government.²⁴ The organizational structure of agencies and departments in relation to RSAUs is important for successful implementation of this rule. Currently, each RSAU is part of a larger organization, with varying reporting structures. The heads of some RSAUs are appointed by the President (either with or without Senate confirmation),

and Units in meeting their responsibilities); Comm’n on Evidence-Based Policymaking, *The Promise of Evidence-Based Policymaking* 60–64 (2017), available at <https://bipartisanpolicy.org/wp-content/uploads/2019/03/Full-Report-The-Promise-of-Evidence-Based-Policymaking-Report-of-the-Commission-on-Evidence-based-Policymaking.pdf> (noting the importance of independence).

²⁴ Notably, nothing in CIPSEA 2018 “restrict[s] or diminish[es] any confidentiality protections or penalties for unauthorized disclosure that otherwise apply to data or information collected for statistical purposes or nonstatistical purposes.” 44 U.S.C. 3564(h).

²⁰ United Nations General Assembly, *Fundamental Principles of Official Statistics* (adopted Jan. 29, 2014), available at <https://unstats.un.org/fpos/>.

²¹ European Statistical System Committee, *European Statistics Code of Practice for the National Statistical Authorities and Eurostat* (adopted Nov. 16, 2017), available at <https://ec.europa.eu/eurostat/web/products-catalogues/-/KS-02-18-142>.

²² Am. Stat. Ass’n, *Ethical Guidelines for Statistical Practice* (Feb. 2022), available at <https://www.amstat.org/your-career/ethical-guidelines-for-statistical-practice>.

²³ See Foundations for Evidence-Based Policymaking Act of 2017, H.R. Rep. No. 115–411, at 19 (2017), available at <https://www.congress.gov/congressional-report/115th-congress/house-report/411> (quoting Statistical Policy Directive No. 1); see also Nat’l Acad. of Sci., Eng’g, & Med., *Principles and Practices for a Federal Statistical Agency* 53–58 (7th ed. 2021), available at <https://www.nap.edu/read/25885/> (articulating the importance of independence for Recognized Statistical Agencies

while others are senior career officials. Likewise, the heads of some RSAUs report directly to the Secretary, or equivalent head, of their highest organizational level, such as the Department, while others have several intervening layers of reporting within their organizations.

CIPSEA 2018 also requires OMB to issue guidance on the requirements and processes for seeking and obtaining OMB recognition as a new RSAU. That guidance is forthcoming; however, it should be noted that, at a minimum, agencies and units seeking this designation, along with their parent agencies, will be required to demonstrate a commitment to upholding the requirements in this rule.

C. The Proposed Rule

OMB published an NPRM entitled “Fundamental Responsibilities of Recognized Statistical Agencies and Units” on August 18, 2023 (the proposed rule), with comments requested by October 2, 2023. As a general matter, in developing the proposed rule, OMB followed the approach of adhering to the wider principles and practices contained in Statistical Policy Directive No. 1, which already contained the fundamental responsibilities now codified in CIPSEA 2018 and gave RSAUs specific guidance on how to adhere to those responsibilities.²⁵ Many of the provisions included in the proposed rule were drawn directly or adapted from Statistical Policy Directive No. 1.

After nearly a decade of the Federal Government operating under Statistical Policy Directive No. 1, experience has clarified the fundamental responsibilities and how to ensure RSAUs are able to carry out those responsibilities. In consideration of that experience, the proposed rule sought to address existing and emerging challenges and issues to create a lasting and effective policy. In the proposed rule, OMB acknowledged some overlap between the proposed rule and Statistical Policy Directive No. 1. OMB also clarified the intent of the proposed rule to address existing and emerging challenges and issues that are not addressed by Statistical Policy Directive No. 1, to ensure that RSAUs are able to meet their fundamental responsibilities. For example, the proposed rule included provisions to ensure RSAUs

have their own websites and have an opportunity to participate in discussions with OMB regarding their own budget requests. The proposed rule also included compliance review requirements to promote compliance with the proposed rule’s provisions.

OMB requested comments on all aspects of the proposed rule, as well as a number of specific issues. A total of 30 unique, in-scope public comments were received, and all comments are viewable at <https://www.regulations.gov/docket/OMB-2023-0015>. Commenters included private citizens, professional associations relevant to Federal statistics, former agency leadership, and academics. Many comments expressed support for the proposed rule. Some specifically stated that, even if OMB did not make any changes to the proposed rule, it would be a significant improvement from the status quo.

II. Overview of the Final Rule

In order to implement the legislative mandates under 44 U.S.C. 3563, OMB is finalizing requirements for Federal agencies to enable, support, and facilitate the fundamental responsibilities of RSAUs. After careful consideration of the comments, OMB is codifying the proposed rule at 5 CFR part 1321, with certain modifications made in response to comments and certain modifications to improve the clarity and readability of the rule.

Throughout the rule text, OMB made global modifications to address the following:

- OMB made changes throughout the rule text to update the use of “shall” to “must” for clarity.²⁶ In this rule, uses of “must,” “shall,” or “will” indicate requirements.
- OMB revised the terms “regulation” and “regulations” to “rule” for clarity.
- OMB added titles to all first level provisions within Sections for clarity and readability.
- OMB spelled out the acronyms OMB (Office of Management and Budget), CIPSEA (Confidential Information Protection and Statistical Efficiency Act), and SAOP (Senior Agency Official for Privacy).
- OMB added clarifying phrases such as “in this part” to clarify the scope of certain provisions.
- OMB adjusted language to reflect updated terms with definitions, such as “parent agency head.”

- OMB edited to address grammar issues and typos.

- OMB edited to conform to Office of the Federal Register requirements for references.

This section of the preamble provides a discussion of the comments received on the proposed rule and an explanation of the final rule. OMB notes that the preamble of the proposed rule²⁷ provided detailed background information, much of which is not repeated here, but remains equally relevant, unless changes were made as outlined in this section.

A. § 1321.1—Purpose

OMB issues this rule to implement 44 U.S.C. 3563. The proposed rule stated that the authority for issuing 5 CFR part 1321 is under the Budget and Accounting Procedures Act of 1950;²⁸ the Paperwork Reduction Act of 1995;²⁹ the Information Quality Act;³⁰ and Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), also known as CIPSEA 2018.³¹ OMB did not receive any comments on this section of the proposed rule; however, because the rule as proposed and as finalized includes requirements related to authorities throughout the Evidence Act, and is not limited to Title III (CIPSEA 2018), the final rule at § 1321.1 adds a specific reference to the broader Evidence Act. Otherwise, OMB finalizes § 1321.1 as proposed.

B. § 1321.2—Definitions

The final rule at § 1321.2 defines terms used in this rule. In general, OMB revised the first sentence to remove “for purposes of implementing 5 U.S.C. 314 and all of title III of the Evidence Act” for accuracy because the definitions are for this rule, not for those sections of law. In addition, OMB has removed specific regulatory citations for each definition and reordered definitions so they are alphabetical for clarity. OMB also made updates to use defined terms when available and to follow the Government Printing Office style guide, as well as to remove small typos and duplicative text for clarity and accuracy.

Similar to the proposed rule, definitions in the final rule are aligned with existing statutes and rules

²⁷ The preamble of the proposed rule is available on the **Federal Register** website at <https://www.federalregister.gov/documents/2023/08/18/2023-17664/fundamental-responsibilities-of-recognized-statistical-agencies-and-units>.

²⁸ 31 U.S.C. 1104(d).

²⁹ 44 U.S.C. 3504.

³⁰ Treasury and General Government Appropriations Act, 2001, Tit. V, Sec. 515(a), Public Law 106–554, 114 Stat. 2763A–153 (2000).

³¹ 44 U.S.C. 3561–3583.

²⁵ Off. of Mgmt. & Budget, Exec. Off. of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), available at <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

²⁶ As explained at <https://www.plainlanguage.gov/guidelines/conversational/shall-and-must>, “[t]he legal community is moving to a strong preference for ‘must’ as the clearest way to express a requirement or obligation.”

wherever possible. OMB received comments on the following proposed definitions: *accurate*, *credible*, *confidentiality*, *identifiable form*, *parent agency*, *statistical law*, and *statistical products*. In response to these comments this rule finalizes some definitions as proposed, revises some proposed terms, and includes newly defined terms that were not included in the proposed rule in order to clarify the final requirements of 5 CFR part 1321.

Accurate and Credible. One commenter noted that the proposed rule uses the terms *accurate* and *credible* in a common language way and suggested defining each of the terms in a way that is consistent with more formal statistical concepts like unbiased, consistent, robust, and precise. The proposed rule defined the term *accurate* in the same way the term is defined in 44 U.S.C. 3563(d). OMB believes that it is appropriate for the regulatory definition for *accurate* to be the same as the statutory definition to minimize confusion and is finalizing the definition as proposed. The proposed rule did not include a definition for the term *credible*, and OMB believes adding a definition is unnecessary at this time.

Confidential Statistical Data. The proposed rule defined *confidential statistical data* as “any information that is acquired for exclusively statistical purposes and under an obligation not to disclose the information to an unauthorized party.” One commenter recommended amending the definition of *confidential statistical data* by replacing the word “obligation” with the term “pledge” or defining the term “obligation” to ensure the term is inclusive of the term “pledge.” The commenter asserted without explanation that the term “obligation” is narrow and implies formality and thorough documentation. OMB disagrees with this assertion and considers “obligation” to broadly cover a wide range of methods of obligating the agency, including any law, “pledge,” interagency agreement, memorandum of understanding, contract, or other agreement or requirement to maintain confidentiality. This broader term is used in the definition of confidentiality under 44 U.S.C. 3563, as established in CIPSEA 2018. Notably, Congress used the term “obligation” rather than “pledge” to define confidentiality when it expanded CIPSEA to grant RSAUs greater access to data held by other agencies, and OMB believes the term is intended to include data acquired through means other than direct collection from respondents. At this time, OMB is not defining

“obligation,” but may consider defining this term in the future.

Many agencies have confidential data that they use for statistical purposes which is not considered confidential statistical data under this regulation. For example, an evaluation office in an agency may conduct a survey of program participants as part of a program evaluation of an employment and training program for low-income adults. In doing so, the agency may ensure participants’ confidentiality, and use those data solely for evidence-building³² purposes to assess the effectiveness of the particular intervention. In this example, such data are collected for “research” purposes, which can include statistical activities but is not limited to exclusively statistical purposes. Because these types of activities are not limited to exclusively statistical purposes, the data are not considered confidential statistical data and are not subject to the requirements for confidential statistical data under this regulation.

Identifiable form. In the proposed rule, the term *identifiable form* is defined to mean “any representation of information that permits the identity of the individual or entity to whom the information applies to be reasonably inferred by either direct or indirect means,” as the term is defined in 44 U.S.C. 3561. One commenter highlighted the need for continued evolution in relation to how the term *identifiable form* is defined. This commenter suggested clarifying to what degree statistical agencies are obligated to protect against even partial reidentification in order to shed light on ways in which Federal statistical agencies can safely innovate with new methods as well as modernize data governance practices. Although the final rule finalizes the term *identifiable form* as proposed, OMB is of the view that addressing the scope of obligation regarding protecting against reidentification may be better aligned with other regulatory actions related to the Evidence Act and will take this comment under advisement for future rulemaking.

“Error”. One commenter stated that the proposed rule and preamble use the term “error” often in a statistical sense

and suggested instead using the term “statistical error” and explaining the difference between a statistical error and a mistake in order to improve clarity for those not trained in statistics. The term “error” is used in the context of § 1321.6(a)(2)(iii) of this final rule and the related preamble discussion. OMB is of the view that the preamble discussion of the term “error” provides the right amount of context for readers to understand the intent and therefore is not including a new definition for the term in this final rule.

Statistical Laws. OMB received a comment on the definition for *statistical laws*. The proposed rule defines *statistical laws* to mean “44 U.S.C. chapter 35, subchapter III and other laws pertaining to the protection of information collected for statistical purposes as designated by the Director of the Office of Management and Budget,” as the term is defined in 44 U.S.C. 3502. One commenter suggested adding language to reflect that OMB should document which laws are *statistical laws*. OMB has already documented some of the laws that are covered by the term *statistical laws* in OMB M–19–23³³ and agrees generally with the idea of documenting the *statistical laws* designated by the Director of OMB. However, the definition of *statistical laws* does not need to be updated to accomplish this proposal. OMB will consider ways to further document the *statistical laws* designated by the Director of OMB following finalization of this rule.

Statistical Products. OMB received a comment on the term *statistical products*, which the proposed rule defined to mean

information dissemination products that are published or otherwise made available for public use that describe, estimate, forecast, or analyze the characteristics of groups, customarily without identifying the persons, organizations, or individual data observations that comprise such groups. Statistical products include general purpose tabulations, analyses, projections, forecasts, or other statistical reports. Statistical products include products of any form, including both printed and electronic forms.

This definition is consistent with Statistical Policy Directive No. 4.³⁴

The commenter suggested revising definition of the term *statistical products* to refer to “any information

³² The term evidence as used here has the meaning given in Appendix A of OMB M–19–23, which includes activities that extend beyond statistical activities, such as policy analysis and performance measurement. See Off. of Mgmt. & Budget, Exec. Off. of the President, M–19–23, Phase 1 Implementation of the Foundations for Evidence-Based Policymaking Act of 2018: Learning Agendas, Personnel, and Planning Guidance app. A (July 10, 2019), available at <https://www.whitehouse.gov/wp-content/uploads/2019/07/M-19-23.pdf>.

³³ *Id.* at 24–25.

³⁴ Off. of Mgmt. & Budget, Exec. Off. of the President, Statistical Policy Directive No. 4: Release and Dissemination of Statistical Products Produced by Federal Statistical Agencies, 73 FR 12,622, 12,625 (Mar. 7, 2008), available at <https://www.govinfo.gov/content/pkg/FR-2008-03-07/pdf/E8-4570.pdf>.

dissemination products, including public-use microdata files, that are published or otherwise made available for public use that describe, estimate, forecast, or analyze the characteristics of groups, customarily without identifying the persons, organizations, or individual data observations that comprise such groups. Statistical products include (but are not limited to) general purpose tabulations, analyses, projections, forecasts, or other statistical reports whether published by the RSAU or through some other mechanism. Statistical products include products of any form, including both printed and electronic forms.” OMB appreciates this comment but believes that it is not necessary to add an “including” statement, and the “or through some other mechanism” language would unnecessarily broaden the definition and may lead to further confusion. The final rule therefore defines *statistical products* as proposed.

Recognized Statistical Agency or Unit. In the proposed rule, the term *Recognized Statistical Agency or Unit* was defined as “an agency or organizational unit of the executive branch whose activities are predominantly the creation or collection, processing, dissemination, use, storage, and disposition of data for statistical purposes, as designated by the Director of the Office of Management and Budget under 44 U.S.C. 3562.” In keeping with the intent to align definitions with statute, where possible, the final rule modifies the definition of the term *Recognized Statistical Agency or Unit*, to align with the definition of “statistical agency or unit” in 44 U.S.C. 3561, which is “an agency or organizational unit of the executive branch whose activities are predominately the collection, compilation, processing, or analysis of information for statistical purposes, as designated by the Director of the Office of Management and Budget under [44 U.S.C. 3562].”

Definitions for Organizational Units. To provide greater clarity about which parts of an agency are given responsibilities under this rule, the final rule adds definitions for *component*, *core component*, and *parent agency head* and adjusts the definition of *parent agency*. The final rule also replaces the term *support function* with *support component*.

Federal agencies consist of many different components including sub-agencies, offices, bureaus and units that support the mission of the agency. Some components, such as RSAUs, perform programmatic functions to achieve the agency’s mission. Other components

provide support to programmatic components by providing services and resources such as legal, human resources, communications, legislative affairs, budget, information technology (IT), or procurement. Further, other components provide non-programmatic agency-wide functions by advising and collaborating with other components to achieve the agency’s mission, such as the Offices of the Chief Data Officer, the Evaluation Officer, the Senior Agency Official for Privacy, the Chief Information Officer, and the Chief Freedom of Information Act (FOIA) Officer.

The final rule adds the term *component* to mean a sub-agency, office, unit, bureau, or other distinct entity when that entity is within an agency that contains an RSAU. OMB notes that an RSAU may be organizationally positioned within a component, such as a sub-agency that may contain additional components.

The proposed rule included a definition for the term *support function* to mean “a core function of an agency that supports the programmatic functions in achieving the agency’s mission, including legal, human resources, communications, legislative affairs, budget, information technology (IT), or procurement functions.” In the final rule, the term *support function* is replaced with the term *support component* and is defined as “a component that supports the programmatic functions in achieving the agency’s mission, including legal, human resources, communications, legislative affairs, budget, information technology (IT), or procurement functions, but excludes any component within an RSAU that provides these functions.”

A sub-agency component containing an RSAU may also contain additional components, including components that provide support such as legal, human resources, communications, legislative affairs, budget, information technology (IT), or procurement services to the RSAU and other components within the same sub-agency component. The change to the definition of *support component* clarifies that the requirements in this final rule are applicable regardless of where such component is positioned within an agency, except for when these functions are performed within the RSAU itself. The final rule definition for *support component* also removes the term “core function,” from the definition, which is separately defined in the newly defined term *core component* in the final rule.

For clarity, the final rule adds a definition for the term *core component*,

which means “any support component [as defined above] and any component that performs any agency-wide function, such as the office of the Chief Data Officer, the Evaluation Officer, the Senior Agency Official for Privacy, the Chief Information Officer, the Chief FOIA Officer, and similar functions.”

The proposed rule included the definition of *parent agency* to mean “each agency and every organizational level within the agency, including sub-agencies, offices, components, or units within the agency, as well as the highest organizational level of such agency and excluding the Recognized Statistical Agency or Unit in any agency with more than one Recognized Statistical Agency or Unit, each Recognized Statistical Agency or Unit is considered a parent agency to any other Recognized Statistical Agency or Unit. This term is meant to apply to the full organizational structure.” Some commenters supported this proposed definition while other commenters recommended revisions. Commenters supporting the proposed definition noted its broad scope, which includes all levels of the organization including the highest level. Another commenter stated that the proposed definition of *parent agency* should be kept because the RSAU must have support from all components of the *parent agency*, including the head of the agency, regardless of where the RSAU sits in the *parent agency* or its direct line of reporting, to ensure that the RSAU has the appropriate authorities and resources to conduct its fundamental responsibilities.

In contrast, other commenters stated that the proposed definition for *parent agency* was confusing, a deterrent to the stated objectives, and that it should be redefined. Commenters who did not support the proposed definition interpreted the definition for *parent agency*, as proposed, more narrowly, describing it as only including the organization where the RSAU is immediately located within the agency’s organizational structure and offered several reasons to provide a broader definition; such as the RSAU’s duty to serve the data needs of the entire agency. These commenters noted that the lack of congruent priorities between the RSAU and the office, unit, or sub-agency in which it is positioned often leads to budget and staffing issues which in turn significantly hurt the ability of the RSAU to collect and disseminate needed and timely data for the agency.

OMB agrees with commenters both in support and not in support of the proposed definition that the definition of *parent agency* should be broad

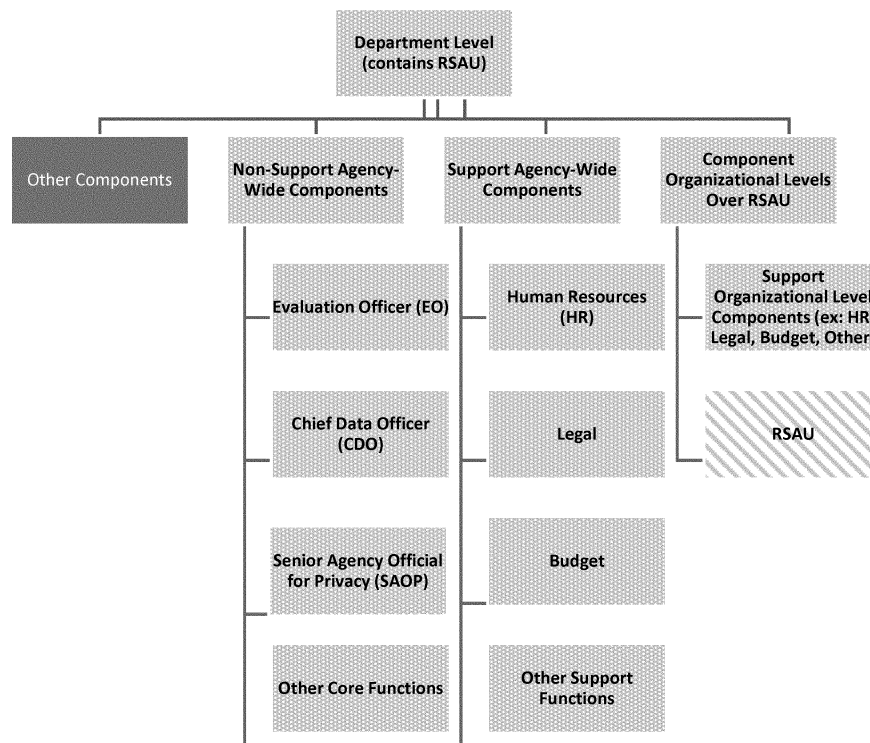
enough to not only include the component of the agency (such as an office, unit, or sub-agency) under which the RSAU is immediately positioned, but also the highest organizational level of the organization, as well as any component in between. OMB also believes it is important to include any office that has a direct and recurring relationship with the RSAU such as an office that provides a service or other support for the RSAU or any agency-wide office. However, OMB also believes it is important for clarity that the definition of *parent agency* does not extend to agencies or components that do not have similar direct and recurring relationships with an RSAU. Therefore, to provide clarity, the final rule revises the definition of *parent agency* to mean the following components in an agency that contains a Recognized Statistical

Agency or Unit: the parent agency head, each organizational level within the agency under which the RSAU is positioned, and each core component.

Notably, there are some components in agencies that contain RSAUs that may have a direct working relationship with the RSAU but are not included in the definition of parent agency. For example, the Bureau of Labor Statistics (BLS) has a direct working relationship with units within the Employment and Training Administration and the Occupational Safety and Health Administration in the Department of Labor (DOL). While not explicitly within the parent agency definition, these DOL units or components with a direct working relationship with BLS are still required to comply with this regulation within the context of that relationship. As discussed further

below, the final rule adds § 1321.3(e), which requires that any other agency or component not within the definition of parent agency that has a direct working relationship with a RSAU must uphold the same responsibilities as a parent agency to the extent that a responsibility applies. In this example, this means that the DOL units with direct working relationships with BLS are effectively parent agencies to the extent that any parent agency responsibility applies in the context of that relationship.

Image 1 is a diagram of a possible structure to show the RSAU, parent agency, and component relationships. The RSAU is green (pattern with diagonal stripes), the parent agency is orange (pattern with dots), and components that are not an RSAU or within the definition of parent agency are blue (solid).



Chief Statistician of the United States. The proposed rule used different terms to refer to the Chief Statistician of the United States, including in some places including text to specify that it referred to the Chief Statistician of the United States “appointed under 44 U.S.C. 3504(e)(7)” and in some places leaving this out. To promote clarity and consistency in the final rule, the final rule adds a definition of *Chief Statistician of the United States*, which is defined as the Chief Statistician appointed under 44 U.S.C. 3504(e)(7). OMB uses this defined term throughout

the final rule and has therefore removed the reference to “appointed under 44 U.S.C. 3504(e)(7)” elsewhere in the regulatory text.

OMB finalizes all other definitions in § 1321.2 as they were proposed.

C. § 1321.3—General Provisions

This section describes the scope of the rule; the impact on existing OMB guidance and policies, including that this rule supersedes any provisions within Statistical Policy Directives that conflict; and the parties responsible for carrying out this rule. OMB received

one comment related to § 1321.3(d) of the proposed rule which directs a parent agency and RSAU to discuss and determine how to address deviations from the standard parent agency-level process to ensure compliance with 5 CFR part 1321 and other applicable laws and rules when appropriate or necessary. The commenter suggested that the final rule include language to clarify how such determinations will be resolved when the parent agency and RSAU disagree or cannot reach an agreement and suggest that in such cases the Chief Statistician of the United

States be the mediator and be empowered to make the final determination. OMB appreciates this comment, but does not believe it is necessary to establish such a requirement as a general provision at this time. OMB will monitor these situations and consider future rulemaking if necessary. OMB expects the parent agency and RSAU will resolve any areas of disagreement within the hierarchy of the parent agency, in consultation with OMB on interpretation of the requirements in this rule, as needed, and further expects the head of the parent agency to retain responsibility for final determinations, when appropriate.

The final rule adds new § 1321.3(e) to ensure all agencies are fulfilling their statutory responsibilities, which is necessary because of the revision to the *parent agency* definition. In the proposed rule, *parent agency* was defined more broadly than the final rule to cover all agencies regardless of whether the agency has a direct relationship with the RSAU. As revised, *parent agency* extends to certain parts of agencies that contain an RSAU, detailed above, and as such, to ensure that all agencies continue to be required to uphold their responsibility to enable, support, and facilitate RSAUs in upholding their fundamental responsibilities, OMB added this provision. The provision at § 1321.3(e) clarifies and reinforces that all agencies, if engaged with RSAUs, must uphold any applicable responsibilities of a parent agency. The final rule states that when an agency or component has a direct working relationship with an RSAU, the agency or component must uphold the responsibilities of a parent agency under this part to the extent that a responsibility applies. For example, when another agency or component is working with an RSAU to access confidential statistical data or to produce a new statistical product, that agency or component is responsible for complying with confidentiality requirements in § 1321.8 and deferring to or delegating responsibility to the RSAU with regard to decisions about statistical methodology and quality standards.

The final rule includes new § 1321.3(f) that provides that RSAUs should consult with the Office of the Chief Statistician of the United States on any implementation challenge that may arise under this rule or other statistical laws. OMB has added this provision to clarify the working relationship between RSAUs and the Office of the Chief Statistician of the United States.

OMB finalizes all other provisions of § 1321.3 as they were proposed.

D. § 1321.4—Supporting the Four Fundamental Responsibilities

This final rule defines the fundamental responsibilities of RSAUs at § 1321.4 as they are codified in 44 U.S.C. 3563(a)(1). As discussed elsewhere in this preamble, these fundamental responsibilities are

- (1) produce and disseminate relevant and timely statistical information;
- (2) conduct credible and accurate statistical activities;
- (3) conduct objective statistical activities; and
- (4) protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their responses.

OMB proposed requirements at § 1321.4 to bolster RSAUs' ability to fulfill their fundamental responsibilities in order to protect and enhance public trust in RSAUs, and enhance public trust in their statistical products.

In general, OMB made several revisions to § 1321.4 to streamline and reorganize provisions to improve clarity and readability and address public comments. OMB finalizes the rule with an updated title for § 1321.4 to more accurately reflect the provisions within the section. OMB removed "bear the responsibilities" language from two provisions for clarity and readability.

OMB received overall support for § 1321.4 of the proposed rule. One commenter emphasized how this section of the proposed rule was fundamental to the rule itself and critically important, as it makes explicit the fact that RSAUs carry the responsibility of fulfilling the fundamental responsibilities, whereas parent agencies play a key role in supporting the ability of the RSAU to meet their responsibilities.

OMB also received specific comments on certain provisions in this section of the proposed rule. Two commenters noted that better education, communication, and collaboration requirements between RSAUs and parent agencies would promote better outcomes. One commenter noted that awareness of RSAU responsibilities and structures would complement the rule's emphasis on increased communication between RSAUs and their parent agencies. This commenter noted that communications conducted under the umbrella of the proposed rule have the potential to improve the utility of collected statistics and avoid the collection of irrelevant statistical data. The other commenter noted in particular the need to collaborate and

coordinate with key evidence and data officials to preserve the vision of the Evidence Act. In response to this comment, OMB is adding a new provision to the final rule at § 1321.4(b) which requires the heads of RSAUs and parent agencies to engage in regular communication and seek to educate each other. This communication should be targeted toward improving collaboration between the units in support of better meeting the responsibilities outlined in this part.

Two commenters noted the need to promote sustainability and innovation within the Federal statistical system through requirements on RSAUs to seek improvements to their collections and methods. In response to these public comments, the final rule also adds a new provision at § 1321.4(d) related to innovation and burden reduction. Section 1321.4(d)(1) requires each RSAU to continually seek to improve their statistical products and methods and engage in research to support innovation in data collection, analysis, and dissemination, among other statistical activities. In addition, another commenter suggested adding a requirement on RSAUs to minimize burden. In response, OMB finalizes at § 1321.4(d)(2) a requirement that each RSAU maximize the utility and minimize duplication of statistical products, as well as minimize the burden on their respondents, including by engaging with each other to identify opportunities to better meet these goals. The PRA requires all Federal agencies to maximize utility, minimize duplication, and minimize burden. This rule builds on this requirement and requires further engagement and consultation across RSAUs to better identify where duplication is occurring and to address it where found.

Several commenters strongly supported the requirements that were proposed at § 1321.4(b) related to websites and branding. Several commenters emphasized the importance of RSAU branding so that users know they are using trusted data provided and protected by strict legal protections of the Federal statistical system. One commenter expressed the importance of RSAUs to maintain independently branded websites as proposed at § 1321.4(b), in order to emphasize independence and engender public trust in that independence. This commenter cited the Bureau for Labor Statistics and Bureau of Economic Analysis for being forerunners in this regard. Other commenters expressed the value of branding as it will allow for the identification of the responsible agency, and precludes the possibility that

questions about a given statistic or statistical method would go to an entity that does not have professional knowledge and understanding of said statistic or method. These commenters and several others suggested that the requirement related to branding apply beyond websites and include all reports and products produced by the RSAU. OMB agrees and accepts these comments. OMB has revised the final rule at § 1321.4(e)(3) to require RSAUs to include clear branding with the name of the RSAU on all websites, statistical products, and press releases.

Several commenters suggested that RSAU branding as well as the development and maintenance of RSAU websites that was proposed at § 1321.4(b) be coordinated through the Office of the Chief Statistician of the United States. One commenter provided several examples of ways OMB, through the Office of the Chief Statistician of the United States, could support such efforts, such as a feeder or indexing website for all statistical agencies, by coordinating website design choices across agencies to make the system easier to use, or establishing interoperability standards or a single format for scientific citations. The commenter cited reduced costs and more coordination to show relationships between statistical agencies as reasons for implementing such efforts. Several commenters also identified a value in coordinated branding across RSAUs. One commenter stated that coordinated branding could strengthen the shared independence of RSAUs and therefore engender more public trust.

OMB generally agrees the Office of the Chief Statistician of the United States has an important coordination role across the Federal statistical system. Indeed, in early 2023, *StatsPolicy.gov* was launched to provide a centralized location for finding information about Federal statistical system. However, at this time, OMB is of the view that RSAUs should maintain their own websites rather than having a centralized one that is managed by OMB because each RSAU has different policies, rules, and statutes to adhere to. Therefore, the final rule at § 1321.4(e)(2) continues to require that the RSAU maintain a website clearly branded with the name of the RSAU to provide information to providers, data users, and the general public. However, OMB does agree with commenters regarding the benefit in coordinated branding across the Federal statistical system and therefore the final rule at § 1321.6(e)(1) requires RSAUs to participate in the development of coordinated and complementary system-wide branding

in collaboration with the Chief Statistician of the United States. This branding does not supplant the individual branding for each RSAU. This branding will complement individual branding to promote a more cohesive, seamless statistical system, in support of achieving the ICSP's vision to operate more seamlessly as a system. This branding should appear on relevant websites and products, including on *StatsPolicy.gov*.

The proposed rule at § 1321.4(b) required that each RSAU “maintain” a website. One commenter suggested the use of “have control of” rather than the word “maintain.” OMB appreciates this comment but does not think that it is necessary to make this change. The proposed rule at § 1321.4(b)(1)(i) through (iii) and this rule as finalized at § 1321.4(f)(1) through (3), provides detailed requirements to parent agencies that are intended to ensure that RSAUs maintain control of their websites. More specifically, as finalized at § 1321.4(f)(1) through (3), parent agencies are required to ensure that each RSAU has (1) sufficient resources to develop and maintain its website; (2) the necessary authority and autonomy to determine the content, functionality, appearance, and layout of its website; and (3) the capacity to directly update the content, functionality, appearance, and layout of the website without reliance on any parent agency official unless the official is directly assigned to the RSAU. OMB believes that this detail provides the adequate direction to both RSAUs and parent agencies regarding the RSAU's responsibilities and authorities regarding its website.

As discussed elsewhere in this rule, several non-substantive changes were made to this section of the rule to improve clarity and readability. The requirements of proposed § 1321.4(b) are reorganized into § 1321.4(e) and (f) to clarify the responsibilities for RSAUs and those of parent agencies regarding websites and branding.

At § 1321.4(c), the proposed rule outlined requirements related to the appropriate resources the heads of RSAUs should have with respect to their statistical products and statistical information. The final rule separates these requirements into two parts: (1) requirements related to budget formulation, which are finalized at § 1321.4(g) and (2) requirements related to RSAU capacity to carry out their fundamental responsibilities, which are finalized at § 1321.4(h). Both paragraphs include non-substantive changes for clarity and readability. The final rule streamlines language at § 1321.4(g) to clarify the importance of each RSAU

having the appropriate resources to carry out the fundamental responsibilities. The provisions that were proposed at § 1321.4(c)(1) through (3) are being finalized at § 1321.4(g) and (h)(1) through (3) with changes described in this preamble to emphasize the role of the parent agency in the budget formulation process and to further encourage collaboration and communication between the RSAU and the parent agency.

OMB received several comments regarding proposed § 1321.4(c)(1) through (3). With regard to these provisions, one commenter supported RSAUs having their own budgets within their parent agency, and encouraged OMB also to require cross-cut budgets that demonstrate how statistical agencies work together and a Statistical Programs Budget to help communicate needed increases in the Chief Statistician's budget. Another commenter cautioned that the provision to require separate RSAU budgets may have an adverse effect by presenting unintended limitations on an RSAU's ability to leverage budget authorities effectively, which may limit the Federal statistical system's ability to grow and innovate and prevent smaller units from seeking recognition as a statistical agency or unit if they are unable to bear the additional administrative burden. Another commenter suggested promoting transparency and completeness in budget requests by requiring RSAUs to include funding sources such as set-asides in their budget requests and suggested further that if any agency's staffing level is determined through a separate agency account, the staffing levels and the requested changes for the RSAU be included as part of the budget request.

OMB appreciates these comments and has made changes to the final rule to clarify the requirements as follows: OMB finalizes § 1321.4(c)(1) of the proposed rule at § 1321.4(g)(1)–(2) of the final rule. Paragraph (g)(1) clarifies that, within the parent agency's budget submission, the RSAU's budget request should be presented separately. The RSAUs' budget requests should clearly present requests that would support cross-agency statistical priorities and investments, such as for implementation of the Standard Application Process required under 44 U.S.C. 3583 and related guidance. In the cases where RSAUs also receive funds through other sources, such as set-asides, such funds and their sources should be clearly stated with the budget request. Further, if an agency's staffing level is determined through a separate agency account, the staffing levels and the

requested changes for the RSAU should be included as part of the budget request. In paragraph (g)(2), OMB clarifies the requirement for RSAUs to have an opportunity to participate in budget discussions with OMB by requiring the parent agency to provide the opportunity to the RSAU when such discussions specifically pertain to the RSAU's budget.

In the proposed rule, § 1321.4(c)(2) contained two provisions. The first required the parent agency, to the extent practicable, to make necessary resources available to the RSAU if the parent agency or the RSAU determines that the RSAU lacks sufficient resources. The second required the parent agency and the RSAU to notify OMB if the necessary resources could not be made available. One commenter cautioned that the responsibility of the parent agency to provide resources to RSAUs could impact the relationship between the parent agency and the RSAU. Another commenter suggested that objective criteria be developed to evaluate whether an agency has sufficient resources to carry out its fundamental responsibilities because the parent agency and the RSAU may have different views of what constitutes necessary resources. This commenter also stated that an RSAU should have a role in identifying if resources are sufficient.

OMB appreciates these comments and will consider working with RSAUs to understand whether objective criteria would be useful and effective. Further, OMB will monitor and assess whether any of the requirements of this rule impede agencies or units from seeking recognition as an RSAU. As discussed in the preamble to the proposed rule, parent agencies must also allow sufficient autonomy and authority to the RSAU to determine how their positions are allocated among job series, how their staff are selected and trained, and how their budgets are deployed to ensure their ability to meet their four fundamental responsibilities.

In the final rule, to better clarify the process and to provide a better distinction between general discussions of capacity and specific discussions of budget formulation, § 1321.4(c)(2) of the proposed rule is finalized in the final rule at § 1321.4(g)(3) and (h)(1) and (2). Section 1321.4(g)(3) of the final rule requires the parent agency, in the annual budget formulation process, to provide a written explanation to OMB as part of the parent agency's budget submission when the budget request lacks sufficient resources for the RSAU to carry out its responsibilities under this final rule. In this written

explanation, the parent agency must explain the programmatic implications of the requested funding levels and what tradeoffs would be necessary within the parent agency to make necessary resources available to the RSAU.

New paragraph (h)(1) finalizes the first sentence of § 1321.4(c)(2) of the proposed rule with changes to clarify that ensuring the RSAU has capacity to carry out this final rule is a joint responsibility of RSAUs and parent agencies and should be done in a collaborative manner. Therefore § 1321.4(h)(1) of the final rule states that if the parent agency and the RSAU identify a lack of capacity to meet the fundamental responsibilities (e.g., through the agency Capacity Assessment required by Title I of the Evidence Act or other means), the parent agency and the RSAU should jointly develop options to address capacity needs and, to the extent practicable, make the necessary resources available. Efforts should include exploring all possible funding options and alternative solutions that could achieve these goals. The final rule at § 1321.4(h)(2) requires that if the RSAU finds, after all efforts with the parent agency are exhausted, that it still does not have the necessary capacity to carry out its responsibilities under this final rule, the head of the RSAU should submit to the Chief Statistician of the United States and the relevant Resource Management Office in OMB a written explanation of the expected capacity deficit, including an estimate of the amount of resources, labor, or other support needed to address the capacity deficit and a detailed description of the anticipated impact of the current capacity.

The proposed rule at § 1321.4(c)(3) is finalized largely as proposed in the final rule at § 1321.4(h)(3), with updates to the last sentence of paragraph (h)(3)(v) to reflect the updated language in § 1321.4(g) of the final rule.

The proposed rule at § 1321.4(c)(4) presented two options to promote collaboration between RSAUs and parent agencies to establish joint requirements for services to be shared across RSAUs and other agencies (whether within the same organization or across organizations), hereinafter referred to as "shared services." As discussed in the proposed rule, OMB recognizes the value of shared services and the efficiencies and cost savings they can generate. The proposed rule requested comments on two methods of achieving this collaboration between RSAUs and parent agencies. Under Option A in the proposed rule, each

parent agency would be required to enter into a written agreement with an RSAU when providing any service to the RSAU. Under Option B, parent agency officials are required to consult the RSAU prior to making or renewing an award for services or software that would directly affect the RSAU and are only required to enter into a written agreement if requested by the head of the RSAU or the head of the support component.

The majority of commenters supported option B, which this final rule adopts at § 1321.4(h)(4). Commenters stated that they preferred option B because it would clarify the role of the parent agency in providing sufficient resources or services and because of the strength it provides to the heads of RSAUs, which is critical to promoting trust in the agency. One commenter recommended that the agreements between RSAUs and parent agencies be reviewed and re-signed on a regular basis, such as every five years, to ensure necessary updated and continues compliance with such agreements. For the reasons outlined in the preamble to the proposed rule, OMB is finalizing option B. The provisions proposed at § 1321.4(d) are being finalized at § 1321.4(i) as proposed. One commenter provided suggested revisions to three aspects of this language. In particular, the commenter suggested changing "may" to "shall" in proposed § 1321.4(d)(1), adding "and the Chief Statistician of the United States" to the end of proposed § 1321.4(d)(3), and removing "may" from proposed § 1321.4(d)(4)(ii). OMB appreciates these suggestions but does not accept them. OMB does not believe it is appropriate to require delegation in every instance but does believe it is important that the option for delegation exist. In addition, the Chief Statistician of the United States does not need to know every delegation determination made by the RSAU or be consulted in every instance. The final rule requires that RSAUs have the appropriate decision-making authority within their agencies for the specified activities. (Appropriate is described further in the relevant key provisions above for the RSAU.) One of the most challenging institutional factors affecting the fundamental responsibilities are overlapping or unclear lines of authority between the heads of RSAUs and other parent agency officials with authorities that directly affect the fundamental responsibilities, such as Chief Data Officers, Evaluation Officers, Chief Information Officers, Senior Agency Officials for Privacy, and others.

Similarly, statistical activities can at times directly affect the responsibilities of these other senior officials. Often these overlapping authorities originate in statute and adjudicating them can be challenging. This rule identifies the decisions and authorities that are key to the ability of an RSAU to uphold its fundamental responsibilities and requires either delegation to or consultation with the head of the RSAU.

The final rule finalizes at § 1321.4(c) the provisions regarding the development and revision of policies that were proposed at § 1321.4(e) in the proposed rule. OMB proposed that the revision of policies happen within 1 year of the effective date of the rule and offered 2 years as a regulatory alternative. OMB did not receive comments on the effective date for the revision of policies, and as such, maintains the 1-year timeline. OMB did not receive any comments on this section of the rule. OMB added text to clarify that where the rule requires that the parent agency revise existing rules, policies, procedures, and organizational structures that impede an RSAU's ability to comply with this regulation, the parent agency must also undertake the actions necessary to be able to comply with the rule. This is especially important where this rule includes a mandate that is required unless otherwise prohibited by statute, such as in §§ 1321.4(i), 1321.6(b)(1), 1321.7(b)(2), and 1321.8(b)(1), where the agency may need to take steps to comply with any Administrative Procedure Act requirements in carrying out the requirements under this rule.

Proposed § 1321.4(e) directs parent agencies to review their rules, policies, and practices, and revise any that impede an RSAU's ability to meet its statutory responsibilities because agency rules, policies, and practices are so central to accomplishing the purpose of 44 U.S.C. 3563(b). The existing rules, policies, and practices of the parent agency can affect an RSAU's ability to meet its fundamental responsibilities in several ways. Rules, policies, and practices that require review and approval from officials external to the RSAU for their statistical products, statistical press releases, website appearance and content, and other communications to external stakeholders such as the press and the Congress specifically addressing statistical products or statistical press releases can create perceived and actual risk of interference with the RSAU. Actual or perceived undue influence harms the RSAU and the parent agency, undermining trust and support for both. Parent agencies must assess their rules,

policies, and practices and revise any that do not enable, support, and facilitate the ability of their RSAU to meet their fundamental responsibilities. If disagreements arise between RSAU and the parent agency as to the revision of any parent agency rule, policy, or practice, the head of the RSAU and the relevant officials at the parent agency may contact OMB through the Administrator of OIRA to discuss and resolve.

OMB is finalizing at § 1321.4(j) in the final rule the provisions related to the delegation of duties that were proposed at § 1321.4(f) in the proposed rule, with some non-substantive changes for clarity and consistency with existing statutory authority. Commenters were in strong support of the provisions which require OMB to conduct its coordination of Federal information policy in a manner consistent with the Evidence Act and this rule and to delegate the management of OMB's statistical functions to the Chief Statistician. The policy embodied in the Evidence Act's requirement under 44 U.S.C. 3563(b) for the head of each agency to enable, support, and facilitate RSAUs in carrying out their fundamental responsibilities extends to OMB. Notably, OMB has a variety of authorities that directly affect the ability of RSAUs to meet their responsibilities. OMB will exercise those authorities in a manner consistent with the Evidence Act requirements and this final rule.

The proposed rule at § 1321.4(f)(2) required OMB to delegate the authority to perform the functions described in 44 U.S.C. 3504(e). The purpose of that provision was to ensure that the Chief Statistician of the United States, a position that was created to coordinate and oversee the Federal statistical system, had the authority to ensure the efficiency and effectiveness of the Federal statistical system and to ensure OMB policies supported the objectivity and accuracy of statistical products generated by RSAUs. OMB is finalizing the rule with a change to this provision to clarify and reaffirm the existing authority of the Chief Statistician of the United States to perform the statistical policy coordination under section 3504(e).

Section 3504(e)(7) specifies that the Chief Statistician of the United States must be "a trained and experienced professional statistician" and confers on the Chief Statistician the authority "to carry out the functions described in" section 3504(e), including the development and implementation of governmentwide policies, principles, standards, and guidelines concerning statistical collection procedures and

methods, statistical data classification, statistical information presentation and dissemination, timely release of statistical data, and such statistical data sources as may be required for the administration of Federal programs. Section 3504(e)(7) ensures that the Chief Statistician of the United States has the necessary authority within OMB to carry out these functions in an objective, impartial, and timely manner that only takes into account statistical considerations, and without interference. As such, the Chief Statistician of the United States already has the authority the proposed rule was requiring OMB to delegate and the delegation in the proposed rule was unnecessary and would not have provided any additional authority.

As finalized, § 1321.4(j) does not diminish OMB's coordination and oversight authorities, rather it ensures that the specified authorities are exercised without regard to any particular political or program impacts, as the Chief Statistician of the United States is statutorily required to ensure objectivity and impartiality of information collected for statistical purposes. OMB's role is also important to promote comparability of statistics across the Federal Government, as well as to promote high quality statistics in support of informed decision making by both public and private statistical data users. The final rule supports that role by retaining the requirement for the responsibilities pertaining to the approval of information collections submitted by RSAUs be delegated to the Chief Statistician of the United States. In recognition of the existing statutory delegation of such responsibility to the Administrator of OIRA, the final rule requires that the Administrator delegate the responsibilities pertaining to the approval of information collections, rather than the Director of OMB. The final rule also retains the requirement for the Director of OMB to delegate the authority to carry out the responsibilities under subchapter III of chapter 35 of Title 44 of the U.S. Code to the Chief Statistician of the United States. The proposed rule also required the Director of OMB to delegate responsibilities under 44 U.S.C. 3562. However, section 3562 is part of subchapter III of chapter 35 of Title 44 of the U.S. Code, which means the separate delegation of authority is unnecessary. That provision has therefore been removed only to improve the clarity of the final rule and not as a substantive change from the proposed rule.

E. § 1321.5—Relevance and Timeliness

The first fundamental responsibility of RSAUs is to produce and disseminate relevant and timely statistical information. This responsibility recognizes the high value of some statistical products. The Evidence Act entrusts RSAUs with the responsibility of making judgments about balancing the value of their statistical products against their costs, burden, and risk, which can change over time. Congress maintained the high expectations about RSAUs' expertise in and commitment to producing the most relevant statistics by placing this responsibility on RSAUs.

One commenter suggested changes to proposed § 1321.5(a) to "strengthen the position of the RSAUs to meet their responsibilities without interference" and suggested modifying the language in § 1321.5(a) to speak to the responsibilities of the parent agency. OMB agrees that RSAUs must be able to determine what statistical products to disseminate without interference from parent agencies. OMB believes this is addressed by § 1321.5(b)(1) in the final rule, which speaks to the responsibilities of parent agencies with regard to the review of statistical products prior to release. In addition, OMB notes that OMB Statistical Policy Directive Nos. 3 and 4 remain in place and provide guidance on such policies.³⁵ Thus, the final rule does not include any changes in response to this comment.

Multiple commenters noted support for § 1321.5(b)(1)(i), which requires consultation with parent agency officials to assess and seek improvements to the relevance of statistical products, and suggested that the consultation expand beyond the parent agency to include Congress, other parts of the Executive Branch, and the Judicial branch. One commenter suggested that each agency establish a Federal Advisory Committee. OMB agrees broader consultation would be beneficial but believes only the parent agency consultation should be required under all circumstances. OMB believes that other entities, such as State, local, territorial, and Tribal governments should also be consulted, as deemed necessary by the head of the RSAU. OMB does not agree with prescribing the approach for such consultation, for example through a Federal Advisory

Committee. As such, OMB has revised § 1321.5(b)(1)(ii) to require consultation, as the head of the RSAU determines is appropriate, with other data users, including Congress, State, local, territorial, or Tribal governments, and other parts of the Executive Branch without explicitly prescribing the approach for such consultation. OMB does not enumerate all of the possible entities with which RSAUs could consult and expects that RSAUs will include other entities in consultation as appropriate for their needs.

Multiple comments discussed the publication schedule and its importance for transparency. One commenter suggested adding a provision for the parent agency not to interfere with the release dates or the content of those releases. Another commenter suggested that, after the schedule has been published, any change to the schedule should be communicated to the Chief Statistician of the United States and publicly announced and be accompanied by a detailed explanation for such change. OMB appreciates this input and has added a requirement at § 1321.5(d)(1)(v) to notify the Chief Statistician of the United States of any changes to the schedule for any regular and recurring statistical products. OMB believes that this final rule, in conjunction with existing OMB Statistical Policy Directive Nos. 3 and 4, sufficiently addresses the other concerns raised by commenters.

OMB also made other edits to this provision in the final rule for clarity and streamlining. In particular, OMB revised proposed § 1321.5(d)(1)(i) to combine the provision from proposed § 1321.5(d)(1)(ii) into § 1321.5(d)(1)(i). In addition, OMB added "on the schedule required under paragraph (d)(1)(i)" to proposed § 1321.5(d)(1)(ii) to clarify specifically where RSAUs publish the release dates and finalized this at § 1321.5(d)(1)(ii). Finally, OMB revised proposed § 1321.5(d)(1)(iv) to replace "office" with "point of contact" to account for smaller agencies and finalized this provision at § 1321.5(d)(1)(iii).

Other comments addressed the alignment of the provisions related to relevance and timeliness in this rule with other data-related policies, including customer experience policies, learning agendas, and user experience testing policy, which are outside the scope of the fundamental responsibilities. OMB reminds agencies that they must ensure proper adherence to all relevant statutes, rules, policies, and guidance and encourages agencies to review all relevant requirements in conjunction with this final rule to

ensure alignment, as applicable. OMB did not incorporate any requirements in this rule that were not directly tied to the fundamental responsibilities of RSAUs. As such, OMB has not made modifications to the rule based on this set of comments.

Finally, one comment addressed the accessibility of data and recommended that OMB ensure "inclusivity for diverse abilities." OMB believes it is important to ensure data are accessible to all, with appropriate safeguards to maintain protection of confidential statistical data and adherence to relevant statutes, rules, policies, and guidance. For example, it is important to ensure that any means of accessing statistical data, such as through systems, platforms, software, or other means, comply with requirements for data protection and security to prevent inappropriate or inadvertent access to confidential statistical data. OMB has not modified any provisions in response to this comment, but continues to encourage agencies to work with stakeholders to understand their needs for access and address them to the extent practicable.

OMB finalizes all other provisions of § 1321.5 as they were proposed.

F. § 1321.6—Credibility and Accuracy

The second fundamental responsibility of RSAUs is to conduct credible and accurate statistical activities. Establishing credibility about the accuracy of the products produced and the scientifically rigorous processes employed to create them is fundamental to the role of a trusted provider of evidence. The more accurate evidence is, the greater value it has to the decision maker who uses it.

Any statistical product may contain some level of inaccuracy, and statistics always measure underlying concepts or conditions with varying levels of uncertainty. To confidently act on the evidence, data users need to trust that the accuracy of the statistical products is communicated in a forthright, explicit, and transparent manner. In addition, providing public documentation about the methodologies and processes used by the RSAU in developing the statistical product promotes credibility in its methods and processes. Section 1321.6 describes several actions that RSAUs must take to build and protect their credibility so that they can fill this role effectively.

OMB modified some provisions in § 1321.6 in response to public comments. One comment stated general support for this section, specifically highlighting the inclusion of proposed § 1321.6(b)(1) and suggested that

³⁵ *Id.*; Off. of Mgmt. & Budget, Exec. Off. of the President, Update of Statistical Policy Directive No. 3: Compilation, Release, and Evaluation of Principal Federal Economic Indicators—Changing Timing of Public Comments by Employees of the Executive Branch, 89 FR 11873, 11877–78 (Feb. 15, 2024), available at <https://www.govinfo.gov/content/pkg/FR-2024-02-15/pdf/2024-02972.pdf>.

additional guidance “would help clarify these responsibilities and address them from the vantage of trust.” OMB appreciates the comment and will consider it in the context of developing future policies.

One comment provided specific edits to proposed provisions § 1321.6(b)(3) and (4) to “strengthen the position of the RSAUs to meet their responsibilities without interference.” Specifically, this commenter suggested that OMB revise § 1321.6(b)(3) to read as follows:

[Permit] Delegate to Recognized Statistical Agencies and Units the responsibility to determine [if] whether statistical disseminations, including related statistical press releases or publicity materials not containing policy pronouncements, [are to] should be disseminated by or through a parent agency and, if so, ensure that statistical information attributable to the Recognized Statistical Agency or Unit disseminated by or through a parent agency is not altered in any way not authorized by the head of such Recognized Statistical Agency or Unit.

OMB accepts some of the editorial updates suggested but does not accept the proposed update from “permit” to “delegate” as suggested because OMB does not believe delegation is appropriate or necessary in this situation.

The commenter further suggested the following revision to § 1321.6(b)(4):

Allow Recognized Statistical Agencies and Units to submit articles that do not address policy, management, or budget issues to refereed journals, present at professional conferences, and engage in peer review activities without requiring review or approval from outside of the Recognized Statistical Agency or Unit, unless such approval is required by law;

OMB does not accept the proposed addition of “review or” before “approval from outside of the Recognized Statistical Agency or Unit” in proposed § 1321.6(b)(4) because there are times when it is appropriate for a review to occur, such as reviews that are required by law or to verify non-statistical issues are not present in the materials.

Another comment suggested clarifying what “appropriate behavior would be to more clearly denote what is acceptable and unacceptable behavior” in the context of a “potential for discrimination against staff whose professional interests may not align with that of those of their respective agencies.” Based on this comment, OMB added a new provision § 1321.6(a)(5) to the final rule to indicate that RSAUs should determine the appropriateness of affording their staff professional autonomy and how this will be

achieved, while adhering to the requirements of any applicable statutes. This provision seeks to incorporate more clearly the need for staff at RSAUs to be able to engage in professional activities, while making sure there is still accountability for staff time and resources.

In addition to modifications in response to comment discussed above, OMB made a clarifying edit to § 1321.6(a)(1)(iii) to specify that the RSAU must assess the data quality for the statistical purposes of the RSAU and not for other purposes for which the data may be used by other components. This provision requires that the RSAU work with the CDO and Evaluation Officer to develop policies for such assessment of data that originates from outside of the RSAU to ensure the RSAU is properly assessing the data quality for the RSAU’s statistical purposes. Also, OMB revised the list of terms in § 1321.6(a)(2)(i) to align more closely with the terms outlined in Statistical Policy Directive No. 1 for clarity. In addition, OMB revised § 1321.6(b)(4) to add “and that do not contain legally privileged information” for clarity. OMB also revised proposed § 1321.6(b)(4)(i) introductory text and (b)(4)(i)(A) and (B) into final § 1321.6(b)(4)(i) and (ii) for clarity and streamlining while covering the same concepts. Finally, OMB moved proposed § 1321.6(b)(4)(ii) to § 1321.6(a)(5)(ii) in the final rule to appropriately align the requirement with the other RSAU requirements in § 1321.6(a).

OMB finalizes all other provisions of § 1321.6 as they were proposed.

G. § 1321.7—Objectivity

The third fundamental responsibility of RSAU is to conduct objective and impartial statistical activities. Impartial statistics are core to the concept of evidence-based policymaking, which is based on the fundamental practice of using facts to guide policies. To support rigorous decision-making actions, data users need to be able trust that statistical outputs are transparent and policy-neutral; therefore, this final rule includes requirements to bolster an RSAU’s ability to be an impartial source of information. OMB proposed to establish responsibilities regarding objectivity for RSAUs at § 1321.7(a) and for parent agencies at § 1321.7(b). The proposed rule adopted several provisions related to objectivity that RSAUs and parent agencies are already following through their adherence to Statistical Policy Directive No. 1. After considering the public comments, OMB

is finalizing § 1321.7 largely as proposed.

OMB made some general revisions to this section to streamline provisions to improve clarity and readability and also made some targeted revisions to address public comments. OMB revised § 1321.7(a)(4) to move the last phrase of the provision “in accordance with this section and applicable law and policy” to the beginning of the provision for clarity. OMB also added “legally privileged information” to the list of nonstatistical matters in § 1321.7(b)(1) that a reviewer outside RSAU may review and added to the end of the provision “or matters affecting current or future litigation” for clarity. OMB made changes to § 1321.7(b)(4) to remove the requirements related to the RSAU having the necessary resources because this requirement is addressed in section § 1321.4 of this final rule. Changes were also made to clarify that the resources of the RSAU are managed by the RSAU in accordance with their fundamental responsibilities as described in this final rule. OMB identified that § 1321.7(b)(4)(ii) included some text on content, functionality, appearance, and layout of the RSAU website duplicative of § 1321.4 and revised § 1321.7(b)(4)(ii) to remove the duplicative text while retaining the remainder of the provision.

OMB received a few comments regarding this section of the proposed rule. One commenter suggested adding “including to the Parent Agency” after “data users” in proposed § 1321.7(a)(2)(ii). OMB believes this call out is unnecessary and did not change the provision in the final rule. One commenter suggested several line edits to different provisions in this section. One edit suggested that § 1321.7(b)(1) add “review or” in front of “clearance.” OMB did not accept this suggestion because some level of review may be necessary to verify the statistical products do not contain nonstatistical aspects such as policy, budget, or management. Another commenter suggested adding “and for reporting on the results of those activities” to the end of the first sentence of proposed § 1321.7(b)(2). OMB accepted this suggestion in the final rule, but updated the language to use defined terms from this rule, so the addition is “and for disseminating statistical products.” Another comment suggested adding “, including its archiving” to the end of proposed § 1321.7(b)(5)(i). OMB accepted this addition in the final rule with a minor modification to read, “The governance of its data, including the archiving of its data.” One commenter suggested that RSAUs make their

statistical data available on an equitable basis and that they commit to making data as accessible as possible to members of historically underserved communities. OMB acknowledges that it is important for RSAUs to continue working toward improving equitable data access but has not made any changes to the rule based on this comment because OMB believes the concepts are covered under other provisions of this rule.

Two other commenters noted their support for this section and one of those strongly encouraged retaining the language in § 1321.7(b) in particular. OMB appreciates these comments.

OMB finalizes all other provisions of § 1321.7 as they were proposed.

H. § 1321.8—Confidentiality

The fourth fundamental responsibility of RSAUs is to protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of their data. Data providers rely upon RSAUs to honor their commitments and statutory requirements to protect the confidentiality of data providers' information and to ensure that the confidential statistical data are used exclusively for statistical purposes.

The Federal statistical system is largely dependent on the willingness of individuals; businesses; and Federal, State, local, territorial, and Tribal governments to provide and allow their data to be used for statistical purposes. For example, even the perception that agencies responsible for regulating industries have unauthorized access to data provided to RSAUs may have a significant impact on survey response rates or on the willingness of a private sector entity (such as a private data warehouse) to enter into a contract to provide data in bulk to an RSAU and thereby possibly degrade data quality for those RSAUs and trust from the public. Statistical Policy Directive No. 1 highlights the importance of protecting the confidentiality of responses because it “reduces public confusion, uncertainty, and concern about the treatment and use of reported information” and articulates the importance of the “organizational climate” in which RSAUs do their work, which builds and sustains the trust of the data providers.³⁶

In addition to giving data providers confidence that their confidential statistical data will be protected, these protections also give the general public confidence that RSAUs will be responsible stewards of the large amounts of sensitive information with which they are entrusted. RSAUs must have the authority to determine the tools, practices, and procedures employed to ensure the effective security, including physical and logical security, of confidential statistical data, as well as to determine how best to protect the confidentiality of, and provide appropriate access to, that data. Such determinations include whether personnel such as economists, statisticians, data scientists, IT specialists, and subject matter experts who access confidential statistical data must be directly assigned to the RSAU that controls the data.

OMB finalizes § 1321.8 with revisions to use defined terms for clarity. OMB streamlined provisions in § 1321.8(a)(1) and (2) and (c) to remove duplication and for clarity. OMB finalizes § 1321.8(a)(4)(i), which requires notifying respondents of the intended use, potential future use, relevance, and confidentiality protections of a collection of information by an RSAU, with clarifying language about the collections referenced being sponsored by RSAUs and not by other parts of the agency, as well as to conform to requirements for references from the Office of the Federal Register. OMB notes that the notification required under § 1321.8(a)(4)(i) may overlap with other notification requirements and RSAUs may consolidate this notification with any other notification to the extent that the combined notification is clear and easy to understand by the average respondent. OMB notes that in § 1321.8(b)(3), which establishes requirements for a parent agency's Senior Agency Official for Privacy in relation to an RSAU, the term *breaches* refers to breaches of personally identifiable information and should be read as consistent with the definition of breach in OMB M–17–12 or subsequent OMB guidance.³⁷ OMB added a new provision at § 1321.8(b)(4) to ensure that the agency Chief FOIA Officer coordinates with the RSAU to ensure appropriate application of exemptions in response to Freedom of Information Act requests pertaining to RSAU records. This was added to parallel the

requirement of RSAUs in § 1321.8(a)(2)(i).

OMB also revised § 1321.8(c) to include “and exclusive statistical use” in two places for greater consistency with CIPSEA 2018. OMB revised § 1321.8(c)(3) to use the defined term “parent agency” and clarify that “anyone else” is included in the provision to clarify that no one other than the RSAU head would have the authority to grant access to confidential statistical data.

In addition, OMB considered the comments received on § 1321.8. One commenter suggested adding language to encourage collaboration among RSAUs so that confidentiality requirements would not be such a high barrier for purposes of improving statistics. OMB appreciates this input and is not making any changes to the final rule but will consider this in the context of forthcoming rules. Another commenter suggested specifying that the RSAU will independently (not in collaboration with the parent agency) assure confidentiality protection. OMB agrees and believes the proposed rule provides for such autonomy in this work and has not made any updates to this final rule in response. Another suggestion was to delete the phrase “in collaboration with the relevant parent agency” from proposed § 1321.8(a)(2)(iv). OMB agrees that the authority and determination of agent status should be left solely to the RSAU head. As part of streamlining to remove duplication across § 1321.8, OMB removed proposed § 1321.8(a)(2)(iv) and keeps provisions in § 1321.8(c) that speak to the determination of agency status.

Another commenter urged that language from § 1321.8(b)(1), “which establishes that statistical agencies have the sole authority to provide access to confidential statistical data,” and § 1321.8(c), “which provides a process for the head of a statistical agency to protect confidential statistical data,” be retained as proposed. This commenter also noted that language in § 1321.8(c)(4) “will be helpful in clarifying that the role that statistical agencies have to analyze disclosure risk in response to requests for statistical data for purposes of evidence-based policymaking in education.” This commenter stated that these provisions would be helpful in maintaining and even expanding access to restricted data for research and research-based policy purposes by data users. OMB appreciates this input and has retained the substance of the proposed provisions with some revisions for clarity and reorganization. Another

³⁶ Off. of Mgmt. & Budget, Exec. Off. of the President, Statistical Policy Directive No. 1: Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units, 79 FR 71610 (Dec. 2, 2014), available at <https://www.govinfo.gov/content/pkg/FR-2014-12-02/pdf/2014-28326.pdf>.

³⁷ Off. of Mgmt. & Budget, Exec. Off. of the President, M–17–12, Preparing for and Responding to a Breach of Personally Identifiable Information 9 (Jan. 3, 2017), available at https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2017/m-17-12_0.pdf.

commenter had two suggestions for this section. One suggestion was to add a new provision that would address the idea of a risk-utility framework for confidentiality protection. OMB agrees this is an important issue and will consider this in the context of forthcoming rules.

OMB finalizes all other provisions of § 1321.8 as they were proposed.

I. § 1321.9—Compliance Review

This final rule seeks to ensure the efficiency and effectiveness of RSAUs, as well as the integrity, objectivity, impartiality, utility, and confidentiality of information collected for statistical purposes. History has shown that the ability of Federal agencies to meet the requirements and responsibilities described in the previous sections will depend on the creation of institutional processes that result in meaningful incentives for compliance. Accordingly, the proposed rule requested comments on three options to address the need for a review of agency compliance with this rule:

Option A: ICSP Review. This option would direct the ICSP to form a Peer Review Committee, which would assess each RSAU and its parent agency for compliance with this rule.

Option B: Council of the Inspectors General on Integrity and Efficiency (CIGIE) Review. This option would direct CIGIE to form a statistical audit committee, which would designate certain Inspectors General (IGs) as statistical auditors and provide those statistical auditors with support, education, and resources. Each RSAU and its parent agency would be audited for compliance with this rule.

Option C: Inspector General Review. This option would direct each IG of a parent agency containing an RSAU to conduct audits for compliance with this rule.

Nine commenters provided feedback on this section establishing a compliance review process. Some commenters disfavored option A, raising concerns about a potential bias or lack of independence if the ICSP were to conduct the compliance review. Other commenters disfavored option C, expressing concern about the potential for IGs to be inconsistent across the agencies or that some IGs may lack familiarity with the laws and practices of the statistical agencies.

The majority of commenters recommended option B, which would require CIGIE to establish a statistical audit committee to conduct the review. Others expressed a preference for option A, which required the ICSP to conduct the review. Of those supporting option

A, some commenters recommended that the ICSP be given authority to select an outside entity to alleviate the concern of potential bias. Other commenters encouraged OMB to consider another entity entirely, such as the Government Accountability Office or the National Academies of Sciences, Engineering, and Medicine, or for OMB to conduct the reviews.

Considering these comments and available resources, and after consultation with CIGIE, OMB is finalizing a version that combines options B and C. Since 1978, IGs have been conducting audits and reviews of agencies to promote the efficiency and effectiveness of Federal programs. IGs are uniquely situated to provide an objective and independent review of agency operations. Under § 1321.9(a) of this final rule, each IG of a parent agency must conduct a review to determine whether the parent agency and the RSAU are in compliance with this rule and whether the RSAU has sufficient resources to carry out the fundamental responsibilities.

Importantly, the IG compliance review required under this final rule should be conducted in compliance with and in the spirit of this final rule. This final rule is intended to ensure the autonomy of RSAUs and ensure sufficient functional separation. As such, where this final rule requires RSAUs to make decisions or requires the parent agency to delegate or ensure the RSAU has sufficient authority to make decisions, for the RSAU and parent agency to be in compliance with this rule, the RSAU would need the authority to make the relevant decisions. The compliance review required in this final rule would not cover evaluating the decision itself, as the purpose of the policy is to give the RSAU autonomy in those decisions specified in this rule.

For example, under § 1321.6 of this final rule, an RSAU is required to determine appropriate methods for its statistical activities, and the parent agency is responsible both for ensuring the RSAU has autonomy to maintain its own quality standards and for delegating the responsibility to make determinations about quality to the RSAU. This will help to ensure that the RSAU has autonomy to determine the methods for conducting statistical activities and the quality of its statistical products. The compliance review required to be conducted by IGs under this final rule would not extend to review of the quality of the RSAU's statistical products or methodology. However, IGs should be reviewing publicly provided documentation of

statistical products or methodology to determine whether the RSAU is adequately meeting the requirements for public documentation in § 1321.6(a)(2).

Similarly, this rule ensures that an RSAU has the sole authority to provide access to its confidential statistical data, so that the RSAU can protect the confidentiality and ensure the exclusive statistical use of its confidential statistical data. Section 1321.8(c) provides a detailed policy regarding how a parent agency or other component may request access to confidential statistical data from the RSAU. Because each of the IGs conducting a compliance review under this rule is a component of an agency that contains an RSAU, the IGs are also responsible for complying with the requirements for components under § 1321.8(c) when accessing confidential statistical data.

Consistent with existing law and this final rule, IGs are not authorized to access confidential statistical data or related information systems unless such access is in compliance with this final rule, relevant statistical laws, and any other applicable statutes. IGs have existing statutory authority to access all necessary information and materials in a timely manner to perform their duties. However, to gain access to confidential statistical data, IGs must follow the requirements of § 1321.8(c) to ensure the proper use and protection of confidential statistical data. OMB expects that both the IGs and the RSAUs will comply with the relevant legal requirements of both the Inspectors General Act³⁸ and CIPSEA 2018. OMB expects the IGs to comply with § 1321.8(c) in a timely manner and for the RSAUs to provide the necessary information in a timely manner. Further, OMB expects the IGs, RSAUs, and parent agencies to consult with the Chief Statistician of the United States as necessary, and as authorized by this rule, to ensure adequate, timely, and secure access to information necessary for IGs to conduct compliance reviews or to meet any other requirements under this regulation. However, given the scope of the compliance review under this rule, OMB does not anticipate that the compliance reviews will require that IGs have regular access to confidential statistical data.

OMB agrees with commenters who emphasized the importance of consistency in compliance reviews across agencies. To further consistency and statistical expertise among IGs, the final rule at § 1321.9(e) requires CIGIE to promulgate guidance for the IGs, to

³⁸ 5 U.S.C. 406.

promote consistent reviews and consistent formatting.³⁹ CIGIE must also establish a working group for the relevant IGs to develop expertise in statistical laws and processes necessary to ensure the integrity of statistical agencies. Given the unique nature of statistical laws and processes, the working group and individual IGs must regularly consult with the Chief Statistician of the United States on the appropriate interpretation and application of statistical laws and practices.

Under the proposed rule, the compliance review would occur not less frequently than once every three years. One commenter noted that compliance with this rule may take some effort and suggested giving a five-year grace period before starting the compliance review. OMB agrees that the compliance review should start after the agencies have had an opportunity to come into compliance with this rule but does not believe that all agencies need five years to come into compliance. The final rule at § 1321.9(b)(1) requires each parent agency and RSAU to undergo a review of compliance with this final rule by the agency's IG at least once every three years, beginning no sooner than two years after issuance of this final rule. Under this framework, every agency gets at least a two-year grace period before the IG conducts the first compliance review. OMB notes that some agencies may have as much as five years before the first compliance review, depending on how the IG schedules this work. This two-year grace period also affords the IG community time to acquaint themselves better with the statistical community and statistical laws, as well as to work on a consistent framework by which to do the compliance review.

As described in the proposed rule, the final rule at § 1321.9(b)(2) establishes a process for an off-schedule compliance review. Under the final rule, the ICSP may request an off-schedule review of an RSAU and parent agency if the ICSP has reason to believe there is a substantial change in circumstances regarding compliance with this part. The ICSP must submit a written request for a compliance review with a detailed explanation to the IG of the parent agency for which the review is requested. The IG must review any requests from the ICSP, determine whether a review is appropriate, and provide a written response to the ICSP within 30 days of receiving such request.

Under this final rule at § 1321.9(c), OMB is finalizing the proposed requirement that the IG must provide a compliance report on the determinations made under this section to the head of the agency, the head of the RSAU, the Chief Statistician of the United States, and relevant congressional committees. For purposes of this review, the head of the RSAU is considered the responsible official for purposes of the compliance review and must be given the opportunity to review and respond to the review's results.

Further, OMB is finalizing parts of the proposed rule that establish a role for the Chief Statistician of the United States related to compliance reviews. Under this final rule at § 1321.9(d), the Chief Statistician of the United States will engage with each RSAU and parent agency to address deficiencies identified in a compliance report; include a list of findings or recommendations and the status of the RSAU and parent agency in addressing each finding or recommendation on StatsPolicy.gov; make available to CIGIE appropriate educational materials, training, or other relevant resources regarding statistical laws and practices; and include standards for remedial actions for an RSAU for persistent failures to comply with this final rule in the guidance to implement the RSAU designation process required under 44 U.S.C. 3562(a).

OMB finalizes all other provisions of § 1321.9 as they were proposed.

The final rule establishes a robust role for CIGIE and the Chief Statistician of the United States to provide education to IGs on the Federal statistical system and statistical laws, to provide guidance to enable consistency across IGs in conducting compliance reviews, and to support the development of the community of IGs responsible for evaluating compliance with this rule and statistical laws. This approach will help ensure compliance reviews are conducted by an independent and unbiased entity, the agency's IG, while also addressing the concern about any potential lack of IG experience with the statistical community and statistical laws.

III. Expected Impact of This Rule

This final rule applies to Federal agencies, and does not impose requirements on individuals, businesses, associations, organizations, or other private sector entities. The purpose of this final rule is largely to conform existing rules, policies, and practices to the requirements in the Evidence Act, in particular the codification of the requirement for

RSAUs to meet the fundamental responsibilities described herein and for all agencies to enable, support, and facilitate RSAUs in meeting their fundamental responsibilities. OMB is exercising some discretion in promulgating this final rule, but any regulatory decisions will have a marginal impact on transfers, costs, and benefits, and this final rule includes only such provisions as OMB deems necessary to implement the statutory requirements of the Evidence Act. This rule furthers OMB's compliance with its obligations under the Evidence Act to promulgate rules implementing new statutory provisions and guides Federal agencies in effectuating their own obligations under the Evidence Act.

OMB did not receive comments on the estimated costs of this rule, but did receive comments on the benefits of this rule. OMB has updated the estimated costs of this rule to reflect the updates made to the definition of parent agency, as well as to adjust costs for review to reflect new calendar year pay and to adjust the review and revision hours for parent agencies to more accurately reflect the duration of time to do the work. The benefits section of this rule provides more information on the comments received for that section.

Affected Agencies and Current Landscape

This final rule has specific requirements for RSAUs, parent agencies, and core components, as defined in this final rule.

* *Agencies*: Federal agencies vary widely in size and organizational structure.⁴⁰

* *Recognized Statistical Agencies and Units*: As of the time of the publication of this final rule, there are 16 RSAUs which vary in size from around 10 full time employees to around 7,000 full time employees.⁴¹ Recognized Statistical Agencies and Units also vary

⁴⁰ For example, the Department of Education has approximately 3,900 full time employees and the Department of Veterans Affairs has approximately 342,000 full time employees. Also, there are parent agencies that are smaller than the Department of Education. See Off. of Pers. Mgmt., *Sizing Up the Executive Branch*, Fiscal Year 2017 (Feb. 2018), available at <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/federal-employment-reports/reports-publications/sizing-up-the-executive-branch-2016.pdf>.

⁴¹ Off. of Mgmt. & Budget, Exec Off. of the President, *Statistical Programs of the United States Government: Fiscal Years 2021/2022 (2024)*, available at <https://www.whitehouse.gov/wp-content/uploads/2024/02/statistical-programs-20212022.pdf>. In addition, OMB notes that the Microeconomic Surveys Unit at the Federal Reserve Board has approximately 10 staff. It is not listed in the most recently published *Statistical Programs of the United States Government*.

³⁹ See, e.g., 31 U.S.C. 3353(a)(3)(A) (requiring that IGs use consistent formatting for certain reports).

in position within their organizational units and reporting structure.

** Parent agency:* For this final rule, the term parent agency means, for an agency that contains an RSAU, the head of the agency, each organizational level within the agency under which the RSAU is positioned, and each core component of the agency.

** Core component:* For this final rule, the term core component means any support component and any component that performs an agency-wide function. A *support component* means a component of an agency that contains an RSAU that supports programmatic functions in achieving the agency's mission, including legal, human resources, communications, legislative affairs, budget, information technology (IT), or procurement functions, but excludes any component of an RSAU. Components that perform agency-wide functions include the offices of the Chief Data Officer, the Evaluation Officer, Senior Agency Official for Privacy, Chief Information Officer, the Chief FOIA Officer, and similar functions.

OMB uses the following counts of entities with requirements from this final rule:

- 12 agencies that contain at least one RSAU⁴² and therefore, 12 heads of those agencies
- 32 organizational levels within agencies that are in the direct reporting structure for an RSAU,⁴³
- 120 core components⁴⁴

OMB expects that the 16 RSAUs are generally already implementing most requirements of this final rule in compliance with OMB's Statistical Policy Directive No. 1. However, OMB expects that the current landscape across agencies varies widely. OMB expects that for some parent agencies implementation of this final rule will be resource intensive; however, OMB also expects that some parent agencies already have rules, policies, and practices that align with a substantial number of the requirements in this final rule. Given the current landscape, OMB

is uncertain about the exact number of agency rules, policies, and practices that will require revision based on this final rule.

For the calculations of the estimated costs throughout this section, OMB rounds up the estimates to the nearest thousand dollars. Rounding to the nearest thousand dollars removes the appearance of precision in the estimates where precision may not be known, and rounding up, instead of down, means that the estimates will not represent underestimates of the costs based on the assumptions OMB has made. For the following calculations in this section, OMB uses a general formula of number of entities multiplied by the number of hours to perform the task multiplied by labor cost per hour to get the total cost across the type of entity. OMB rounds this total cost by type of entity up to the nearest thousand. Then, OMB sums the rounded total costs across all types of entities to get the final estimated total cost to the Federal Government. OMB outlines the assumptions for the calculations and the total costs by type of entity in narrative form below. OMB also provides a table for each step of the process to summarize the assumptions and total costs.

Estimated Cost of Agencies Reviewing This Rule

This final rule will require RSAUs and parent agencies to first review this rule. This step includes reading the full rule and taking brief notes on possible intersections with agency rules, policies, and practices.

It is likely that this review will be performed by GS-14 Step 5 or equivalent staff within RSAUs and parent agencies, as this review will require a deep understanding of the parent agency's rules, policies, and practices to understand how the agency's rules, policies, and practices intersect with this final rule. This initial review of this final rule will inform the next steps of reviewing and making revisions to any relevant agency rules, policies, and practices. It is also likely

that the staff will be based in the Washington, DC pay region, as many of the staff are likely to work for the headquarters locations. The hourly rate for a GS-14 Step 5 employee in the Washington, DC region per the Office of Personnel Management for calendar year 2024 is \$75.70. OMB assumes that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in a value of \$151.40 per hour.

OMB expects that, for the parent agencies, a central office would do the first review for all of its units, except RSAUs, to identify which parts of the rule would apply to the different units. OMB expects this to be resource intensive for the central office, but OMB expects review of the rule by units will be less intensive because of the work done by the central office to target the units' review.

Because of this tiered review process, review of this rule is expected to take different lengths of time for different agencies. For each of the 16 RSAUs, OMB expects this review to take on average 16 hours. This means it would cost approximately \$39,000 across all 16 RSAUs.

OMB expects it will take the central office for the 12 parent agencies on average 80 hours to do this review and identify relevant parts of the rule for its units. This means it would cost approximately \$146,000 across the 12 agencies that contain an RSAU.

Following the central office review, OMB expects review for the 32 organization levels in direct reporting structure and 120 core components to take on average 24 hours for each. This means it would cost approximately \$554,000 across both of these types of entities.

OMB does not expect agencies without an RSAU to review this rule. Therefore, across all RSAUs and parent agencies, the Governmentwide cost for reviewing this rule would be approximately \$739,000.

COST TO REVIEW THE RULE

Type of entity	Number of entities	Hours to review the rule	Cost per hour	Total cost
RSAU	16	16	\$151.40	\$39,000
Agencies that Contain an RSAU	12	80	151.40	146,000

⁴² The Departments of Commerce, Agriculture, and Health and Human Services all contain more than one RSAU, and as such, there are 12 unique agencies under which RSAUs sit.

⁴³ Reporting structures across the Government vary widely. As such, some RSAUs report directly

to their agency's front office, while others report to one or more interim agencies. For the 16 RSAUs, OMB assumes that on average there are 2 agencies in the reporting structure, which means there are 32 organizational levels in the direct reporting

structure. This number excludes the head of the agency level.

⁴⁴ This counts an estimated 10 entities per agency that contains a RSAU. Thus, OMB estimates there are 120 such entities across the 12 agencies that contain RSAUs.

COST TO REVIEW THE RULE—Continued

Type of entity	Number of entities	Hours to review the rule	Cost per hour	Total cost
Organizational levels in direct reporting structure	32	24	151.40	117,000
Core components	120	24	151.40	437,000
Totals	180	.....	.....	739,000

Estimated Costs of Parent Agencies Reviewing Their Own Rules, Policies, and Practices To Determine Necessary Action

After review of this rule, parent agencies will then review their own rules, policies, and practices to determine necessary action. This rule does not require RSAUs or agencies that do not fall within the definition of a parent agency to take this step. This step may require engagement across the agency, including with staff of any RSAUs in the organization.

Review of the rules, policies, and practices will vary across parent agencies, depending on the number of rules, policies, and practices issued by the agency.

OMB expects parent agencies may have different costs for reviewing their rules, policies, and practices. OMB is estimating the review time on a per rule, policy, or practice basis. Similar to the prior step of reviewing the final rule, this step to review the parent agency's own rules, policies, and practices includes reading of the full rule, policy,

or practice and taking brief notes on possible intersections with this final rule. It is likely that this review will be performed by GS-14 Step 5 or equivalent staff within the agencies, as this review will require a deep understanding of the parent agency's own rules, policies, and practices to understand the intersections with this final rule to inform the next step of making revisions to those rules, policies, and practices. It is also likely that the staff will be based in the Washington, DC pay region, as many of the staff are likely to work for the agency headquarters locations. The hourly rate for a GS-14 Step 5 employee in the Washington, DC region per the Office of Personnel Management for calendar year 2024 is \$75.70. OMB assumes that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in a value of \$151.40 per hour.

For the parent agencies, OMB estimates it will take on average 16 hours to review each rule, policy, or

practice and determine necessary action. OMB expects it to take this much time for the parent agencies because they are likely to have rules, policies, and practices that intersect with this rule. OMB expects on average that the 12 central offices of parent agencies will have 5 items to review, the 32 organizational levels in direct reporting structure will have 20 items to review, and the 120 core components will have 5 items to review. Therefore, OMB estimates that across all central offices of parent agencies, it will cost approximately \$146,000 for those entities to review their rules, policies, and practices and determine necessary action. OMB estimates that it will cost approximately \$1,551,000 across all 32 organizational levels in the direct reporting structure and that it will cost \$1,454,000 across all 120 core components to review their rules, policies, and practices and determine necessary action. Across all entities, OMB estimates it will cost approximately \$3,151,000.

COST TO REVIEW AGENCY RULES, POLICIES, AND PRACTICES

Type of entity	Number of entities	Hours to review per policy	Number of policies to review	Cost per hour	Total cost
Agencies that Contain an RSAU	12	16	5	\$151.40	\$146,000
Organizational levels in direct reporting structure	32	16	20	151.40	1,551,000
Core components	120	16	5	151.40	1,454,000
Totals	164	.....	.....	.....	3,151,000

Note: Number of hours to perform the task is calculated for this part of the process by multiplying the hours to review per policy by the number of policies to review.

Estimated Costs of Parent Agencies Revising Their Own Rules, Policies, and Practices Where Needed

Where determined necessary after review of this rule and the agencies own rules, policies, and practices, parent agencies will need to revise rules, policies, and practices because of this rule. This rule does not require RSAUs or agencies that do not fall within the definition of a parent agency agencies to take this step. OMB expects that revisions will range from relatively small and technical to substantive and

resource intensive, which means that the time required to draft the revisions and execute the revisions to issue a final update will vary.

The following provides the analysis for expected costs for the drafting of the revisions to rules, policies, and practices. For this analysis, OMB assumes the drafting of revised rules, policies, and practices will be performed by GS-14 Step 5 or equivalent staff within the agencies, as this drafting will require a deep understanding of the agencies' own

rules, policies, and practices and their intersections with this final rule to appropriately revise those rules, policies, and practices. It is also likely that the staff will be based in the Washington, DC pay region, as many of the staff are likely to work for the agency headquarters locations. The hourly rate for a GS-14 Step 5 employee in the Washington, DC region per the Office of Personnel Management for calendar year 2024 is \$75.70. OMB assumes that the total dollar value of labor, which includes wages, benefits,

and overhead, is equal to 200 percent of the wage rate, resulting in a value of \$151.40 per hour. In addition, OMB expects that the time to draft revisions to rules, policies, and practices is consistent across parent agencies and estimates that on average the time to draft revisions would be 120 hours per rule, policy, or practice.

For each of the 12 central offices of parent agencies and each of the 120 core components, OMB estimates on average that 3 rules, policies, or practices will require revision, whereas OMB estimates that for each of the 32 organizational levels in direct reporting structure, 15 rules, policies, or practices will require revision. Thus, the estimated cost to draft revisions to rules,

policies, and practices is approximately \$655,000 across all of the central offices of parent agencies and approximately \$6,541,000 across all of the core components. Across all of the organizational levels in the direct reporting structure, OMB estimates the cost to be approximately \$8,721,000. In sum, OMB estimates this cost approximately \$15,917,000.

COST TO DRAFT OR REVISE RULES, POLICIES, OR PRACTICES

Type of entity	Number of entities	Hours to draft revisions per policy	Number of policies to revise	Cost per hour	Total cost
Agencies that Contain an RSAU	12	120	3	\$151.40	\$655,000
Organizational levels in direct reporting structure	32	120	15	151.40	8,721,000
Core components	120	120	3	151.40	6,541,000
Totals	164				15,917,000

Note: Number of hours to perform the task is calculated for this part of the process by multiplying the hours to draft revisions per policy by the number of policies to revise.

Next, the parent agencies will need to implement the draft revisions, which includes steps such as gaining approval from the appropriate authorities within the parent agencies and issuing, if relevant, publicly available updates of the affected rules, policies, and practices. OMB expects the majority of revisions (~90 percent) to be to policies and practices and for it to be rare that a rule require revision (~10 percent). OMB also expects that finalizing revised policies and practices requires far less time (~80 hours per) than finalizing rules (~220 hours per). Taken together, OMB estimates on average that finalizing the revisions will take 100 hours per rule, policy, or practice. For

this analysis, OMB assumes the same amount of time for all agencies because procedures to finalize revisions to rules, policies, and practices should be relatively consistent across parent agencies. To account for the differing levels of engagement within parent agencies to approve the final revisions to rules, policies, and practices, OMB is using an average hourly rate equivalent for a Senior Executive Service Level IV employee based in Washington, DC which is \$92.26 for 2024. OMB assumes that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in a value of \$184.52 per hour. Using the number of

rules, policies, and practices that require revision from the previous analysis, the costs are as follows:

Across all of the 12 central offices of parent agencies, OMB estimates the costs to be approximately \$665,000. Across all of the 32 organizational levels within the agency that are in the direct reporting structure for the RSAU, OMB estimates the costs approximately \$8,857,000.

Across all of the 120 core components, OMB expects the costs to be approximately \$6,643,000. In sum, OMB expects these costs to total approximately \$16,165,000.

Type of entity	Number of entities	Hours to finalize and issue revisions per policy	Number of policies to finalize and issue revisions per entity	Cost per hour	Total cost
Agencies that Contain an RSAU	12	100	3	\$184.52	\$665,000
Organizational levels in direct reporting structure	32	100	15	184.52	8,857,000
Core components	120	100	3	184.52	6,643,000
Totals	164				16,165,000

Note: Number of hours to perform the task is calculated for this part of the process by multiplying the hours to finalize and issue revisions per policy by the number of policies to finalize and issue revisions.

Therefore, across the Federal Government, to review this rule and review and revise rules, policies, and practices as needed to meet the requirements of this rule, the estimated costs total approximately \$35,972,000.

Estimated Costs of the Options Proposed for the Compliance Review

The proposed rule included three options under consideration for ensuring compliance with the final rule. Here OMB estimates the costs for the option selected in this final rule, which combines parts of two of the options from the proposed rule.

OMB expects that CIGIE will develop procedures and reference materials for the Inspectors General to use to provide consistency across their reviews. This final rule does not specify the structure of such work, so it may be implemented in a different format; however, OMB approximates the costs based on a committee structure. To develop estimated costs, OMB assumes that the

Committee would include representatives from 8 agencies. For this analysis, OMB is using an average hourly rate equivalent for a Senior Executive Service Level IV employee based in Washington, DC which is

\$92.26 for 2024. OMB assumes that the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in a value of \$184.52 per hour. OMB estimates that each member would

spend on average about 48 hours per year dedicated to this work. Therefore, OMB estimates that this step will cost approximately \$71,000 across all 8 agencies engaged in developing the procedures and materials.

ANNUAL COST FOR CIGIE TO DEVELOP PROCEDURES AND RELEVANT MATERIALS

Number of agencies	Hours per agency	Cost per hour	Total cost
8	48	\$184.52	\$71,000

Then, OMB estimates costs by activity for each of the reviews across the 3-year timeframe. Over the 3-year timeframe, OMB expects all 16 RSAUs to have an IG review and that the average time spent by each RSAU participating in this review would be 640 hours. OMB expects the participation to involve generally employees at a GS–14 Step 5 in the Washington, DC region, which results in a cost of \$151.40 per hour. This results in an expected cost across all RSAUs of approximately \$1,551,000.

In addition, OMB expects the 32 organizational levels in the reporting structure for RSAUs to participate in the reviews. Over the 3-year timeframe, OMB expects each of the 32 organizational levels in the reporting structure for RSAUs to spend 320 hours on average participating in the reviews.

OMB expects this participation to be done on average by employees at a GS–14 Step 5 in the Washington, DC region, which results in a cost of \$151.40 per hour. This results in an expected cost across all organizational levels of approximately \$1,551,000. Then, OMB expects all 16 RSAUs to publish a summary of findings on their website and estimates on average that publication to take 4 hours of time by an employee with a cost of \$151.40 per hour. This results in expected costs of approximately \$10,000 across all RSAUs. For the next two activities, OMB is using an average hourly rate equivalent for a Senior Executive Service Level IV employee based in the Washington, DC region, which results in a cost of \$184.52. For the Chief Statistician Engagement activity, over

the 3-year timeframe it is expected that all 16 RSAUs will need to participate and that on average each agency’s engagement would require 8 hours of the time of the head of the RSAU and 8 hours of the time of the Chief Statistician of the United States for a total of 16 hours per agency. This engagement would only occur once per agency over the 3-year timeframe and would cost approximately \$48,000 across all RSAU agencies. Finally, OMB expects inspectors general (IGs) to incur time and costs engaging in these reviews. OMB estimates that over the 3-year timeframe all 16 separate reviews will need to occur and for each, each IG will spend on average 648 hours across the 3 years. Thus, OMB expects the cost for this activity across all IGs to be approximately \$1,914,000.

THREE-YEAR COST FOR ACTIVITIES RELATED TO IG REVIEW

Activity	Number of agencies	Hours across 3 years per agency	Cost per hour	Total cost of across all agencies
RSAUs Participating in Review	16	640	\$151.40	\$1,551,000
Organizational levels in direct reporting structure Participating in Review	32	320	151.40	1,551,000
Publish Summary of Findings	16	4	151.40	10,000
Chief Statistician Engagement in Deficiencies	16	16	184.52	48,000
IG Engagement	16	648	184.52	1,914,000
Total .....	.....	.....	.....	5,074,000

In sum, over a 3-year timeframe OMB expects this process to cost approximately \$5,074,000. This results in a cost of approximately \$1,692,000 per year. Adding this cost with the cost for CIGIE to develop guidance, the annual cost is approximately \$1,763,000 for the compliance review.

Regulatory Alternatives

OMB considered some regulatory alternatives, as noted below. More information on the reasons OMB finalized the rule as it did is available above in the preamble.

Handling compliance review. OMB detailed three options for proposed compliance review requirements, and

OMB finalizes the rule by combining Options B and C from the proposed rule.

Changing timeline for agencies to revise rules, policies, and practices. OMB did not receive any comments on this timeline, and OMB finalizes the rule such that these revisions must occur within 1 year of the effective date of this rule.

Benefits

This final rule promotes trust in the work of RSAUs, which ultimately promotes trust in the data used by policymakers to inform their decisions. Any loss of trust in the accuracy, objectivity, or integrity of the Federal statistical system and its statistical

products has the potential to cause uncertainty about the validity of measures the Nation uses to monitor and assess its performance, progress, and needs, as well as undermine the public’s confidence in the information released by the Government. In addition, this final rule provides transparency and clarity to parent agencies and the public alike about how best a parent agency can enable, support, and facilitate the work of RSAUs.

Commenters noted in particular that maintaining trust in RSAUs has the benefits of helping to “maintain global

competitiveness,”⁴⁵ as well as supporting the functioning of capital markets and serving as key inputs to family, business, and public policy decisions.⁴⁶ To realize these continued benefits from Federal statistics and in particular RSAUs, one commenter noted that certain provisions are especially helpful, such as the requirements on budget transparency and autonomy over the website.⁴⁷ Another commenter also cited the following uses of Federal statistics from RSAUs as general benefits to the public from this rule:⁴⁸

- “The Federal Reserve relies on the statistical agencies’ estimates of output, employment, and inflation to set interest rates, which in turn affect everything from households’ grocery bills to new housing starts.”
- “Businesses use federal statistics in deciding where and when to expand and innovate.”
- “Investors use industry-specific statistics to identify rapidly growing sectors with profitable investment opportunities.”
- “The federal government uses federal statistics to set spending levels—as when, for example, BLS’s Consumer Price Index is used to set cost-of-living adjustments for 65+ million Social Security beneficiaries, and the Census Bureau’s annual American Community Survey is used to allocate \$400+ billion in funding to state and local areas each year.”
- “State and local governments rely on federal statistics for their geographic areas to set economic development strategies.”
- “Researchers use federal data collections to build evidence on the effectiveness of workforce, trade, education, housing, financial, and other types of policies.”
- “Implemented effectively, the provisions of the proposed rule should go a long way towards maintaining the multifaceted streams of public benefits from federal statistics.”
- “Well-maintained, public-facing websites can help maximize the value of federal statistics to households,

businesses, communities, policy makers, and capital markets, as the value of federally supported data collections depends on the public’s ability to find, interpret, and use the system’s output.”

- “Provisions ensuring that statistics are released on schedule builds trust in the agencies’ ability to use public funds effectively to produce high-quality data products.”
- “Securing parent agencies’ commitment to the agencies’ access to productive resources—trained and skilled staff and 21st century hardware and software—will help avoid fluctuations in the quality, accuracy, and timeliness of data releases, which undercut confidence in the system’s effectiveness.”
- “Reinforcing the federal statistical system’s reputation for objectivity and independence—with rock-solid ability to protect private data against disclosure risk—will help offset households’ and businesses’ decreasing willingness to respond to federal data collections.”

The compliance review is a tool to ensure all agencies are accountable to the provisions of this final rule. To improve consistency in the compliance reviews across agencies, the Inspectors General will lead the compliance reviews and the Council of Inspectors General for Integrity and Efficiency will develop guidance for the compliance reviews. The compliance reviews will enhance the benefits of the rest of the rule.

G. Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review,” Executive Order 13563, “Improving Rule and Regulatory Review,” and Executive Order 14094, “Modernizing Regulatory Review”

This final rule is a significant regulatory action under E.O. 12866, as amended by Executive Order 14094. Executive Order 12866 was reaffirmed by Executive Order 13563 and reaffirmed and amended by Executive Order 14094. Consistent with Executive Order 14094, OMB solicited and considered input from interested parties through a variety of means.

“Unfunded Mandates Reform Act” (2 U.S.C. 1501–1571)

This final rule is not subject to the Unfunded Mandates Reform Act because it does not contain a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year.

“Regulatory Flexibility Act” (5 U.S.C. 601–612)

The Director of the Office of Management and Budget has certified that this final rule is not subject to the Regulatory Flexibility Act because it does not have a significant economic impact on a substantial number of small entities. The final rule implements the fundamental responsibilities for statistical agencies and units and requires other Federal agencies to support, enable, and facilitate statistical agencies and units in meeting their fundamental responsibilities. Thus, the final rule would have no direct effect on non-governmental entities, including small businesses.

“Paperwork Reduction Act” (44 U.S.C. 3501–3520)

This final rule does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (PRA). However, if in accordance with any of the requirements finalized in this rule an agency were to determine a need to implement a reporting or recordkeeping requirement subject to the PRA, the agency should comply with the requirements of the PRA.

Executive Order 13132, “Federalism”

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts state law, or otherwise has federalism implications. This final rule will not impose substantial direct compliance costs on State or local governments, or otherwise have federalism implications.

List of Subjects in 5 CFR Part 1321

Statistics.

■ For the reasons stated in the preamble, the Office of Management and Budget amends 5 CFR chapter III, subchapter B, by adding part 1321 to read as follows:

PART 1321—RESPONSIBILITIES OF RECOGNIZED STATISTICAL AGENCIES AND UNITS

Sec.

- 1321.1 Purpose.
- 1321.2 Definitions.
- 1321.3 General provisions.
- 1321.4 Supporting the four fundamental responsibilities.
- 1321.5 Relevance and timeliness.
- 1321.6 Credibility and accuracy.
- 1321.7 Objectivity.
- 1321.8 Confidentiality.
- 1321.9 Compliance review.

Authority: 44 U.S.C. 3563; 44 U.S.C. 3504(e); 31 U.S.C. 1104(d).

⁴⁵ Comment submitted by Elizabeth Mannshardt (Oct. 02, 2023), available at <https://www.regulations.gov/comment/OMB-2023-0015-0019>.

⁴⁶ Comment submitted by American Economics Association (Oct. 02, 2023), available at <https://www.regulations.gov/comment/OMB-2023-0015-0022>.

⁴⁷ Comment submitted by Elizabeth Mannshardt (Oct. 02, 2023), available at <https://www.regulations.gov/comment/OMB-2023-0015-0019>.

⁴⁸ Comment submitted by American Economics Association (Oct. 02, 2023), available at <https://www.regulations.gov/comment/OMB-2023-0015-0022>.

§ 1321.1 Purpose.

This part is issued under the authority of the Budget and Accounting Procedures Act of 1950; the Paperwork Reduction Act of 1995; the Information Quality Act; title III of the Foundations for Evidence-Based Policymaking Act of 2018 (Evidence Act), also known as the Confidential Information Protection and Statistical Efficiency Act of 2018 (CIPSEA 2018); and other provisions of the Evidence Act. The Office of Management and Budget (OMB), in its role as coordinator of the Federal statistical system under the Paperwork Reduction Act, is required to ensure the efficiency and effectiveness of the system, as well as the integrity, objectivity, impartiality, utility, and confidentiality of information collected or used for statistical purposes. This part is issued to meet the requirements under 44 U.S.C. 3563(c) and to strengthen and support the quality of Federal statistical information.

§ 1321.2 Definitions.

The following terms, as used in this part, are defined as follows:

Accurate, when used with respect to statistical activities, means statistics are correct and consistently match the events and trends being measured.

Agency means any entity that falls within the definition of the term *executive agency*, as defined in 31 U.S.C. 102, or *agency*, as defined in 44 U.S.C. 3502.

Chief Statistician of the United States means the Chief Statistician appointed under 44 U.S.C. 3504(e)(7).

Component means a sub-agency, office, unit, bureau, or other distinct entity when that entity is within an agency that contains a Recognized Statistical Agency or Unit.

Confidential statistical data means any information that is acquired for exclusively statistical purposes and under an obligation not to disclose the information to an unauthorized party.

Confidentiality means a quality or condition accorded to information as an obligation not to disclose that information to an unauthorized party.

Core component means any support component and any component that performs any agency-wide function, such as the offices of Chief Data Officer, Evaluation Officer, Senior Agency Official for Privacy, Chief Information Officer, Chief FOIA Officer, and similar functions.

Data users means individuals or groups of individuals who use Federal statistical information.

Dissemination means the government-initiated distribution of information to a nongovernment entity, including the

public. The term dissemination does not include distribution limited to Federal Government employees, intra-agency or interagency use or sharing of Federal information, or responses to requests for agency records under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a).

Equitable access means that statistical products are disseminated in a manner that does not privilege any one person or group over another, with exceptions only as provided in statutes, rules, or Office of Management and Budget-promulgated policies or guidance.

Fundamental responsibilities means the responsibilities of Recognized Statistical Agencies and Units listed in 44 U.S.C. 3563(a)(1).

Identifiable form means any representation of information that permits the identity of the individual or entity to whom the information applies to be reasonably inferred by either direct or indirect means.

Information means any communication or representation of knowledge such as facts or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual forms. This definition includes information that an agency disseminates from a web page, but does not include the provision of hyperlinks to information that others disseminate. This definition does not include opinions, where the agency's presentation makes it clear that what is being offered is someone's opinion rather than fact or the agency's views.

Information provider denotes members of the public; other agencies of the Federal Government; and organizations outside of the Federal Government, such as State, local, territorial, and Tribal governments, businesses, and other organizations or entities, that provide information to a Recognized Statistical Agency or Unit.

Information system means a discrete set of information resources organized for the collection, processing, maintenance, use, sharing, dissemination, or disposition of information.

Integrity, when used with respect to statistical information, refers to the quality of information that is protected against improper modification or destruction, and includes ensuring information nonrepudiation and authenticity.

Nonstatistical purpose—

(1) Means the use of data in identifiable form for any purpose that is not a statistical purpose, including any administrative, regulatory, law enforcement, adjudicatory, or other purpose that affects the rights,

privileges, or benefits of a particular identifiable respondent; and

(2) Includes the disclosure under 5 U.S.C. 552 of data that are acquired for exclusively statistical purposes under an obligation of confidentiality.

Objective, when used with respect to statistical activities, means accurate, clear, complete, and unbiased.

Parent agency means the following components in an agency that contains a Recognized Statistical Agency or Unit: the parent agency head, each organizational level within the agency under which the Recognized Statistical Agency or Unit is positioned, and each core component.

Parent agency head means the head of the highest organizational level of an agency that contains a Recognized Statistical Agency or Unit.

Recognized Statistical Agency or Unit means an agency or organizational unit of the executive branch whose activities are predominantly the collection, compilation, processing, or analysis of information for statistical purposes, as designated by the Director of the Office of Management and Budget under 44 U.S.C. 3562.

Reference date is the time period to which data refer.

Relevant, when used with respect to statistical information, means processes, activities, and other such matters likely to be useful to policymakers and public and private sector data users.

Respondent means a person who, or organization that, is requested or required to supply information to an agency, is the subject of information requested or required to be supplied to an agency or provides that information to an agency.

Statistical activities means the collection, compilation, processing, or analysis of data for the purpose of describing or making estimates concerning the whole of, or relevant groups or components within, the economy, society, or the natural environment and includes the development of methods or resources that support those activities, such as measurement methods, models, statistical classifications, or sampling frames.

Statistical information means information produced from statistical activities.

Statistical laws means 44 U.S.C. chapter 35, subchapter III, and other laws pertaining to the protection of information collected for statistical purposes as designated by the Director of the Office of Management and Budget.

Statistical press release is an announcement to media of a statistical

product release that contains the title, subject matter, release date, internet address of, and other available information about the statistical product, as well as the name of the Recognized Statistical Agency or Unit issuing the product and may include any executive summary information or key findings section as shown in the statistical product. A statistical press release is one that provides a policy neutral description of the data and does not include policy pronouncements.

Statistical products means information dissemination products that are published or otherwise made available for public use that describe, estimate, forecast, or analyze the characteristics of groups, customarily without identifying the persons or organizations that comprise such groups or individual data observations with respect to those persons or organizations. Statistical products include general-purpose tabulations, analyses, projections, forecasts, or other statistical reports. Statistical products include products of any form, including both printed and electronic forms.

Statistical purpose—

(1) Means the description, estimation, or analysis of the characteristics of groups, without identifying the individuals or organizations that comprise such groups; and

(2) Includes the development, implementation, or maintenance of methods, technical or administrative procedures, or information resources that support the purposes described in paragraph (1) of this definition.

Support component means a component that supports the programmatic functions in achieving the agency's mission, including legal, human resources, communications, legislative affairs, budget, information technology (IT), or procurement functions, but excludes any component of a Recognized Statistical Agency or Unit.

Timeliness or *timely* refers to the dissemination of statistical products and information at their scheduled release time or, in instances where there is no scheduled release time, the dissemination of statistical products or information as close to the event being measured as possible.

Transparent means characterized by providing as much information about the quality of and methods used to produce statistical products as practicable without compromising confidentiality.

§ 1321.3 General provisions.

(a) *Complementary application*. This part should be read as complementary

to existing Office of Management and Budget guidance or Statistical Policy Directives to the extent they are consistent. Effective December 10, 2024, this part supersedes any guidance or Statistical Policy Directives to the extent that they conflict.

(b) *Responsibility of Recognized Statistical Agency or Unit*.

Responsibilities assigned to a Recognized Statistical Agency or Unit under this part are ultimately the responsibility of the head of the Recognized Statistical Agency or Unit, or their designee, unless otherwise specified in this part.

(c) *Responsibility of parent agency*.

Responsibilities assigned to a parent agency under this part are ultimately the responsibility of parent agency head, or their designee, unless otherwise specified in this part.

(d) *Deviations*. To the extent that a parent agency or Recognized Statistical Agency or Unit determines that it is either appropriate or necessary to deviate from a standard parent agency-level process to ensure compliance with this part, the parent agency and the Recognized Statistical Agency or Unit must discuss and determine how to address such deviation, including determining where responsibility lies for compliance with other applicable laws and rules.

(e) *Direct working relationships*.

When an agency or component has a direct working relationship with a Recognized Statistical Agency or Unit, the agency or component must uphold the responsibilities of a parent agency under this part, to the extent that a responsibility applies.

(f) *Consultation*. In implementing statistical laws, this part, or other related statistical policies, the head of a Recognized Statistical Agency or Unit should consult with the Chief Statistician of the United States as necessary.

§ 1321.4 Supporting the four fundamental responsibilities.

(a) *In general*. Each Recognized Statistical Agency or Unit is charged with the fundamental responsibilities. Each agency is directed to enable, support, and facilitate Recognized Statistical Agencies and Units in carrying out these fundamental responsibilities.

(b) *Communication*. The heads of Recognized Statistical Agencies and Units and parent agencies must engage in regular communication with and seek to educate each other.

(c) *Development and revision of policies*. In consultation with the

Recognized Statistical Agency or Unit, each parent agency must:

(1) Not later than December 10, 2026, and consistent with statutory obligations, revise any rules, policies, practices, or organizational structures that impede the Recognized Statistical Agency or Unit's ability to meet its fundamental responsibilities or impede the parent agency's ability to enable, support, and facilitate the Recognized Statistical Agency or Unit in carrying out its fundamental responsibilities, including the parent agency's ability to delegate responsibilities under this part;

(2) Consider the fundamental responsibilities when new rules, policies, practices, organizational structures, or budgets are developed; and

(3) Ensure that its rules, policies, practices, and agreements support the ability of Recognized Statistical Agencies and Units to:

(i) Present and maintain accurate information; and

(ii) Make timely corrections or updates to its statistical products or data when the Recognized Statistical Agency or Unit determines such updates are needed; and

(iii) Meet its responsibility for producing relevant and timely statistical products.

(d) *Innovation and burden reduction*. Each Recognized Statistical Agency or Unit must:

(1) Seek to continually improve its statistical products and methods and engage in research to support innovation in data collection, analysis, and dissemination, among other statistical activities;

(2) Maximize the utility and minimize duplication of its statistical products; and

(3) Minimize the burden on its respondents, including by engaging with other Recognized Statistical Agencies and Units to identify opportunities to better meet these goals.

(e) *Websites and branding*. Each Recognized Statistical Agency or Unit must:

(1) Participate in the development of coordinated and complementary system-wide branding in collaboration with the Chief Statistician of the United States;

(2) Maintain a website clearly branded with the name of the Recognized Statistical Agency or Unit to provide information to information providers, data users, and the general public;

(3) Include clear branding with the name of the Recognized Statistical Agency or Unit on all websites, statistical products, and statistical press releases; and

(4) Make available to the public on the website required under this paragraph (e):

(i) A mission statement that clearly describes the purpose of the Recognized Statistical Agency or Unit's statistical programs and its commitment to each of the fundamental responsibilities;

(ii) A strategic plan that is consistent with the requirements in 5 U.S.C. 306, which describes the Recognized Statistical Agency or Unit's goals and provides specific, measurable objectives and performance metrics and is assessed no less than every four years alongside and in alignment with the parent agency's strategic plans;

(iii) A list of relevant legislation, rules, and policies or management orders, including those defining organizational placement, that govern the Recognized Statistical Agency or Unit's ability to maintain its commitment to these four fundamental responsibilities;

(iv) Each policy or standard required under this part; and

(v) Any other information as determined by the head of the Recognized Statistical Agency or Unit.

(f) *Websites and branding support.* Each parent agency head must ensure its Recognized Statistical Agency or Unit has:

(1) Sufficient resources to develop and maintain its website required under paragraph (e) of this section;

(2) The necessary authority and autonomy to determine the content, functionality, appearance, and layout of its website required under paragraph (e) of this section; and

(3) The capacity to directly update the content, functionality, appearance, and layout of the website required under paragraph (e) of this section without reliance on any parent agency official unless the official is directly assigned to the Recognized Statistical Agency or Unit.

(g) *Budget formulation.* It is important that each Recognized Statistical Agency or Unit have the appropriate resources to carry out the fundamental responsibilities set forth in this part.

(1) Each parent agency, in coordination with the Recognized Statistical Agency or Unit, must produce a budget request specific to the Recognized Statistical Agency or Unit that is fully compliant with the requirements of Office of Management and Budget Circular No. A-11 and is presented separately (*i.e.*, clearly presented as the request for the Recognized Statistical Agency or Unit with figures and justification specific to the Recognized Statistical Agency or Unit) as part of the parent agency's

annual budget submission to the Office of Management and Budget.

(2) Each parent agency must provide to the head of each Recognized Statistical Agency or Unit an opportunity to participate with the parent agency in discussions or engagements with the Office of Management and Budget specific to the Recognized Statistical Agency or Unit's budget request submitted in compliance with paragraph (g)(1) of this section.

(3) If a parent agency and a Recognized Statistical Agency or Unit determine that the annual budget submission to the Office of Management and Budget lacks sufficient resources for the Recognized Statistical Agency or Unit to carry out the responsibilities set forth in this part, the parent agency, in coordination with the Recognized Statistical Agency or Unit, must include in the budget submission to the Office of Management and Budget a written explanation of this determination, the programmatic implications, and the tradeoffs that would be necessary to provide the necessary resources to the Recognized Statistical Agency or Unit under the parent agency budget submission.

(h) *Capacity.* It is important that each Recognized Statistical Agency or Unit have the capacity to carry out the fundamental responsibilities set forth in this part.

(1) If a parent agency and a Recognized Statistical Agency or Unit determine (*e.g.*, through the agency capacity assessment or other means) that the Recognized Statistical Agency or Unit does not have the capacity to carry out the fundamental responsibilities set forth in this part, the parent agency and the Recognized Statistical Agency or Unit should jointly develop options for addressing capacity needs and, to the extent practicable, make the necessary resources available.

(2) If the Recognized Statistical Agency or Unit determines it does not have the capacity to carry out the fundamental responsibilities set forth in this part, the head of the Recognized Statistical Agency or Unit should submit to the Chief Statistician of the United States and the relevant Resource Management Office in the Office of Management and Budget a written explanation of the capacity deficit, including an estimate of the amount of resources, labor, or other support needed to address the capacity deficit and a detailed description of the anticipated impact of the current capacity.

(3) When a Recognized Statistical Agency or Unit relies on a support component from a parent agency:

(i) The Recognized Statistical Agency or Unit must, to the greatest extent possible, allocate labor resources to ensure that one or more employees, depending on the size of the Recognized Statistical Agency or Unit, are knowledgeable of the support component, its policies and processes, and best practices for interacting with the support component.

(ii) The parent agency must designate at least one employee of each support component to serve as a liaison for the Recognized Statistical Agency and Unit and ensure each designated employee is knowledgeable of the Recognized Statistical Agency or Unit and its fundamental responsibilities and is capable of effective intra-agency communication.

(iii) The support component and the Recognized Statistical Agency or Unit must work collaboratively to ensure the support component meets the relevant needs of the Recognized Statistical Agency or Unit in a manner that complies with this part and all applicable laws.

(4) When a Recognized Statistical Agency or Unit relies on services or software from a support component:

(i) Prior to making or renewing an award for services or software that will directly affect a Recognized Statistical Agency or Unit's ability to meet the fundamental responsibilities, the relevant support component official must coordinate with the head of the Recognized Statistical Agency or Unit to avoid binding actions and decisions that would conflict with the Recognized Statistical Agency or Unit's ability to carry out its fundamental responsibilities.

(ii) The relevant support component official must ensure that the service or software is sufficient for the Recognized Statistical Agency or Unit to meet its obligation to carry out its fundamental responsibilities. The head of the Recognized Statistical Agency or Unit must clearly communicate the needs of the Recognized Statistical Agency or Unit to meet its obligation to carry out its fundamental responsibilities. If requested by the relevant support component official, the head of the Recognized Statistical Agency or Unit must provide a written list explicitly defining the requirements needed of the service or software to meet its obligation to carry out its fundamental responsibilities.

(iii) If requested by the head of the Recognized Statistical Agency or Unit, the head of the Recognized Statistical Agency or Unit and the head of the support component must enter into a written agreement, and the support

component must provide the service or software in accordance with such agreement.

(iv) The Recognized Statistical Agency or Unit may obtain the service or software separately from the parent agency or support component if they are unable to reach an agreement or, at any point in time, the service or software is not able to be supplied in accordance with the agreement.

(v) If the Recognized Statistical Agency or Unit determines it is necessary to obtain services or software separately from the parent agency, the Recognized Statistical Agency or Unit, in coordination with relevant core component officials, must notify the parent agency head. This notification must include an explanation of why it is necessary to obtain services or software separately and an attestation that the Recognized Statistical Agency or Unit remains in compliance with relevant law and policy. If the parent agency is unable to provide the separate service or software, the parent agency, in coordination with the Recognized Statistical Agency or Unit, must notify the Office of Management and Budget in the written explanation required under paragraph (g)(3) of this section.

(i) *Decision-making authority.* The heads of Recognized Statistical Agencies and Units must have the appropriate decision-making authority with respect to their statistical products, statistical information, and statistical activities. Unless otherwise prohibited by statute, when a statute, rule, or policy authorizes any other agency official to make determinations directly affecting the ability of a Recognized Statistical Agency or Unit to carry out the fundamental responsibilities, the authorized official may delegate that responsibility in writing to the head of the Recognized Statistical Agency or Unit in accordance with paragraphs (i)(1) through (3) of this section.

(1) If the Recognized Statistical Agency or Unit determines that delegation is necessary to carry out its fundamental responsibilities, the Recognized Statistical Agency or Unit must notify the parent agency head.

(2) In making a determination regarding delegation under this paragraph (i), the parent agency head must:

(i) Consider the needs of the Recognized Statistical Agency or Unit and ensure it has all necessary and appropriate authority to carry out its fundamental responsibilities; and

(ii) Ensure the decision is consistent with the government-wide application and interpretation of statistical laws,

consulting with the Chief Statistician of the United States as appropriate.

(3) To the extent permissible under law, the individual to whom a responsibility has been delegated under this paragraph (i) must consult with the delegating official in carrying out such responsibility.

(j) *Delegation of duties.* The Office of Management and Budget must implement its authorities and responsibilities in a manner that enables, supports, and facilitates Recognized Statistical Agencies and Units in carrying out their fundamental responsibilities in a manner consistent with this part. The Chief Statistician of the United States is authorized by statute to carry out the statistical functions set out in 44 U.S.C. 3504(e) on behalf of the Director of the Office of Management and Budget. In furtherance of that authority, the Director must delegate to the Chief Statistician of the United States the authority to carry out any of the functions or responsibilities under 44 U.S.C. chapter 35, subchapter III. The Administrator of the Office of Information and Regulatory Affairs must delegate to the Chief Statistician of the United States the review and approval of proposed collections of information submitted to the Office of Management and Budget by Recognized Statistical Agencies and Units.

§ 1321.5 Relevance and timeliness.

(a) *Responsibilities.* Each Recognized Statistical Agency or Unit must uphold the responsibility to produce and disseminate relevant and timely statistical information by carrying out its requirements under this section. Each parent agency must enable, support, and facilitate the Recognized Statistical Agency or Unit in carrying out its responsibility to produce and disseminate relevant and timely statistical information. Recognized Statistical Agencies and Units must determine:

(1) What statistical products to disseminate, including in the context of the Standard Application Process required under 44 U.S.C. 3583;

(2) The content of its statistical products; and

(3) The timing of disseminations.

(b) *Relevance consultations.* Each Recognized Statistical Agency or Unit must continually seek to understand the diverse interests and needs of policymakers, current and future data users, and the public to ensure statistical products are relevant.

(1) Each Recognized Statistical Agency and Unit must:

(i) Consult with parent agency officials to assess and seek

improvements to the relevance of its statistical products to users' needs and to inform what statistical products to produce and disseminate;

(ii) Consult, as the head of the Recognized Statistical Agency or Unit determines is appropriate, with other data users, including Congress, other agencies, and State, local, territorial, or Tribal governments, to assess and seek improvements to the relevance of its statistical products to users' needs and to inform what statistical products to produce and disseminate;

(iii) Be knowledgeable about programs and policies relating to its subject domains;

(iv) Coordinate and communicate across agencies when planning information collections and dissemination activities; and

(v) Keep abreast of interests and analytical goals of data users.

(2) Each parent agency must:

(i) Share relevant policy and program needs with sufficient detail to allow the Recognized Statistical Agency or Unit to be responsive to those needs;

(ii) Consult with the Recognized Statistical Agency or Unit as part of the stakeholder engagement process when developing the agency evidence-building plan (learning agenda) required under 5 U.S.C. 312, in alignment with Office of Management and Budget guidance; and

(iii) Allow the Recognized Statistical Agency or Unit to establish, determine the membership of, and manage advisory groups or other means of systematic stakeholder engagement, in accordance with applicable law.

(c) *Maximizing timeliness.* (1) Each Recognized Statistical Agency or Unit must maximize the timeliness of statistical products by minimizing the time interval between the release of statistical products and the reference date to the extent practicable, considering available resources and the effects on the other quality dimensions of the information products, and consult with the parent agency regarding the availability of relevant support components required to support the release of statistical products.

(2) Each parent agency must support efforts to maximize timeliness of statistical products by ensuring the Recognized Statistical Agency or Unit is aware of any emerging needs and providing necessary resources to respond to such emerging need.

(3) In any instance where a parent agency observes that a Recognized Statistical Agency or Unit is not upholding the timeliness of statistical products, consistent with paragraph (c)(1) of this section, the parent agency,

after consultation with the head of the Recognized Agency or Unit, head must notify the Chief Statistician of the United States.

(d) *Schedule of release dates.* Each Recognized Statistical Agency or Unit must publicly announce and adhere to a schedule for the release of statistical products.

(1) Each Recognized Statistical Agency or Unit must:

(i) On the website required under § 1321.4, publish a schedule containing the date of release of its regular and recurring statistical products for the next calendar year prior to the beginning of that calendar year;

(ii) Publish the date for release of non-regular or non-recurring statistical products on the schedule required under paragraph (d)(1)(i) of this section as soon as the date is established;

(iii) Designate a point of contact responsible for information about the release schedule and make its contact information readily available to the public on the website required under § 1321.4;

(iv) Minimize changes to the release schedule after it has been published to accommodate only special, unforeseen circumstances; and

(v) If the release date of a statistical product is changed after the schedule has been published, publicly announce the change to the schedule as soon as possible, provide a detailed explanation for such change and, for regular and recurring statistical products, notify the Chief Statistician of the United States.

(2) Each parent agency must support adherence to the published schedule by:

(i) Communicating any parent agency activities or processes that could impact the timing of dissemination activities to the Recognized Statistical Agency or Unit before the schedule is published; and

(ii) If involved in dissemination activities, preparing for dissemination of statistical products in accordance with the published schedule.

§ 1321.6 Credibility and accuracy.

(a) *Responsibilities of each Recognized Statistical Agency or Unit.* Each Recognized Statistical Agency or Unit must uphold the responsibility to conduct credible and accurate statistical activities by carrying out its duties under this paragraph (a). The Recognized Statistical Agency or Unit must determine the appropriate methods, processes, policies, and general conduct of its statistical activities. Each Recognized Statistical Agency or Unit must:

(1) Maintain publicly available policies and standards on the quality of

the information used by the Recognized Statistical Agency or Unit and the statistical products it disseminates, by:

(i) Developing and making available to the public policies and standards to ensure the credibility and accuracy of all statistical products and data disseminated by the Recognized Statistical Agency or Unit;

(ii) Regularly reviewing, maintaining, and improving the policies in paragraph (a)(1)(i) of this section and the methods used to implement them to ensure they are current and effective; and

(iii) Establishing policies and procedures, in consultation with the parent agency's Chief Data Officer and Evaluation Officer, for assessing the quality of data that is used by the Recognized Statistical Agency or Unit but does not originate from the Recognized Statistical Agency or Unit;

(2) Publicly provide documentation for its statistical products, including:

(i) Descriptions of methods and procedures used in designing, collecting, processing, editing, compiling, storing, analyzing, and disseminating information to users, as applicable;

(ii) Indicators of data quality sufficient to allow data users to assess the fitness of the data for their own purposes;

(iii) Descriptions of known limitations or sources of error in the data;

(iv) Citation to source materials where feasible; and

(v) Identification of errors in the statistical products discovered after their release;

(3) Ensure that the Recognized Statistical Agency or Unit lifecycle data management practices adhere to all applicable statutes and standards and guidance issued by the Office of Management and Budget;

(4) Adhere to all applicable statutes and current Office of Management and Budget peer review policies when submitting articles to refereed journals, presenting at professional conferences, and engaging in peer review activities, including OMB M-05-03, *Final Information Quality Bulletin for Peer Review*, and any successor policies; and

(5)(i) Determine the appropriateness of and process for providing professional autonomy to employees of the Recognized Statistical Agency or Unit, including allowing employee engagement in professional development activities such as participating in peer review, publication, or professional associations, and attending and presenting at professional conferences without review or approval from the

parent agency, subject to applicable statutes.

(ii) When implementing paragraph (a)(5)(i) of this section, ensure all statutory requirements, such as ethics, are met.

(b) *Responsibilities of each parent agency.* Each parent agency must enable, support, and facilitate the Recognized Statistical Agency and Unit in carrying out its responsibility to conduct credible and accurate statistical activities. Each parent agency must:

(1) Ensure the Recognized Statistical Agency or Unit has sufficient autonomy to maintain its own standards for the quality of the data used and the statistical information it produces and to determine whether its statistical products are of sufficient quality for dissemination. Unless otherwise prohibited by statute, when a statute, rule, or policy authorizes any other agency official to make such determinations, that responsibility must be delegated to the head of the Recognized Statistical Agency or Unit;

(2) Prohibit its employees, contractors, and agents, other than those designated by the releasing Recognized Statistical Agency or Unit head, from publicly commenting on any data released by the Recognized Statistical Agency or Unit until after the official release of the data;

(3) Permit the Recognized Statistical Agency or Unit to determine whether statistical disseminations, including related statistical press releases or publicity materials not containing policy pronouncements, should be disseminated by or through the parent agency and, if so, ensure that statistical information attributable to the Recognized Statistical Agency or Unit disseminated by or through the parent agency is not altered in any way not authorized by the head of such Recognized Statistical Agency or Unit; and

(4) Allow the head of the Recognized Statistical Agency or Unit to determine the appropriateness of and process for providing professional autonomy to employees of the Recognized Statistical Agency or Unit to submit articles that do not address policy, management, or budget issues, and that do not contain legally privileged information or information legally prohibited from disclosure, to refereed journals; present at professional conferences; and engage in peer review activities without requiring approval from outside of the Recognized Statistical Agency or Unit, unless such approval is required by law. When approval outside of the Recognized Statistical Agency or Unit is

required, such as ethics approval, the parent agency must either:

(i) Assign the support component employee that will conduct these reviews to report to the head of the Recognized Statistical Agency or Unit; or

(ii) Ensure that the support component employee conducting the review, in coordination with the liaison designated in § 1321.4, provides sufficient information and advice, including a recommendation if appropriate, to the head of the Recognized Statistical Agency or Unit so that such head may make an informed decision regarding approval.

§ 1321.7 Objectivity.

(a) *Responsibilities of each Recognized Statistical Agency and Unit.* Each Recognized Statistical Agency and Unit must uphold the responsibility to conduct objective statistical activities by carrying out its duties under this paragraph (a). The Recognized Statistical Agency or Unit must determine the policies and practices that ensure objectivity of its statistical activities, including ensuring equitable access to the statistical products it disseminates. Each Recognized Statistical Agency or Unit must:

(1) Produce statistical products that are impartial and free from undue influence and the appearance of undue influence by:

(i) Employing transparent and reproducible methods and processes in producing statistical products, to the extent feasible and consistent with the protection of confidential statistical data;

(ii) Disseminating impartial statistical products in a clear and complete manner, without limitation or selection to promote a particular policy position or group interest; and

(iii) Announcing dissemination activities, such as through statistical press releases or on the Recognized Statistical Agency or Unit's website, in a manner designed to be factual, comprehensive, accurate, easily understood by the public, and without favor to a particular policy position or group interest;

(2) Ensure data users have equitable access to its statistical products by:

(i) Making public releases available to all data users at the same time, with limited exceptions as allowable in OMB Statistical Policy Directives, in accordance with the scheduled release date;

(ii) Disseminating and making available to the public free of charge any statistical product deemed suitable for

public dissemination that has been provided to any other data user; and

(iii) For confidential statistical data that are not deemed suitable for public dissemination, ensuring policies and procedures for granting access are applied consistently, in accordance with statute, rules and guidance issued by the Office of Management and Budget to implement 44 U.S.C. 3582 and 3583, and other applicable authorities that govern access to confidential statistical data;

(3) Determine the necessary qualifications for and allocate available labor resources among different job positions supporting the Recognized Statistical Agency or Unit's lifecycle data management (e.g., economists, statisticians, data scientists, information technology (IT) specialists, and other subject matter experts) and evaluate candidates based on assessments of scientific and technical knowledge, credentials, and experience; and

(4) Consistent with applicable law and policy, maintain functional separation from any administrative, regulatory, law enforcement, and policymaking functions at any parent agency or at the Recognized Statistical Agency or Unit by maintaining exclusive authority within the Recognized Statistical Agency or Unit for granting access to its confidential statistical data and the information systems that hold confidential statistical data.

(b) *Responsibilities of each parent agency.* Each parent agency must enable, support, and facilitate the Recognized Statistical Agency and Unit in carrying out its responsibility to conduct objective statistical activities. Each parent agency must—

(1) Allow the publication of statistical products without requiring clearance of the content from offices or officials outside of the Recognized Statistical Agency or Unit, and allow the Recognized Statistical Agency and Unit to respond to inquiries from external interested communities and stakeholders, including the media, the Congress, and others, about its statistical products in a manner that ensures appropriate consultation with the parent agency without the parent agency requiring review, approval, or edits to the response, unless responses to those inquiries include matters related to policy, budget, or management issues; legally privileged information; or matters affecting current or future litigation;

(2) Support the impartiality of the Recognized Statistical Agency and Unit in its production and dissemination of statistical products by ensuring it is

permitted to determine the methods for conducting statistical activities for statistical purposes and for disseminating statistical products. Unless otherwise prohibited by statute, when a statute, rule, or policy authorizes any other agency official to make such determinations, that responsibility must be delegated to the head of the Recognized Statistical Agency or Unit, as described in § 1321.4(b);

(3) Ensure compliance with 44 U.S.C. 3520(d);

(4) Ensure that the resources of the Recognized Statistical Agency or Unit are managed by the Recognized Statistical Agency or Unit in accordance with the fundamental responsibilities described in this part by allowing the Recognized Statistical Agency or Unit to:

(i) Maintain and determine the functional requirements, specifications, and performance capabilities of the information technology it uses to conduct statistical activities and disseminate statistical products;

(ii) Determine the presentation of statistical information and the timing of when statistical information is disseminated;

(iii) Allocate its labor resources among different job positions;

(iv) Develop, explain, and respond directly to queries about resource needs through congressional and executive branch budget processes, as those processes are established through OMB Circular A–11; and

(5) Support the autonomy of the Recognized Statistical Agency or Unit to manage and control its data by ensuring that the Recognized Statistical Agency and Unit has the authority to make all determinations regarding:

(i) The governance of its data, including the archiving of its data;

(ii) Access to its confidential statistical data and the information systems that hold confidential statistical data; and

(iii) The approval, direction, and management of the use of its confidential statistical data by external parties for purposes of developing evidence, as defined in the 44 U.S.C. 3561 and relevant Office of Management and Budget policies, including the authority for ensuring compliance with the Standard Application Process required under 44 U.S.C. 3583 and related guidance.

§ 1321.8 Confidentiality.

(a) *Responsibilities of each Recognized Statistical Agency and Unit.* Each Recognized Statistical Agency and Unit must uphold the responsibility to

protect the trust of information providers by ensuring the confidentiality and exclusive statistical use of confidential statistical data by carrying out its duties under this paragraph (a). The Recognized Statistical Agency or Unit must determine whether the tools, practices, and procedures employed to ensure the effective security of the confidential statistical data it holds comply with this part and with statistical laws. Each Recognized Statistical Agency or Unit must:

(1) Secure all confidential statistical data against unauthorized access. This includes:

(i) Ensuring that any information systems containing confidential statistical data employ effective barriers to restrict access such that only employees of the Recognized Statistical Agency or Unit or its authorized agents have access to such data. This must be done in accordance with the requirements of the Confidential Information Protection and Statistical Efficiency Act of 2018, codified as amended at 44 U.S.C. 3561–3576; other applicable statistical laws; and policies and guidance issued by the Office of Management and Budget, while also ensuring compliance with the Federal Information Security Modernization Act of 2014, codified as amended at 44 U.S.C. 3551–3558, and other applicable laws and policies;

(ii) Ensuring required security policies, configurations, and controls placed on information technology assets are appropriate to protect the confidentiality of confidential statistical data throughout the data lifecycle;

(iii) Controlling logical access to data storage assets containing confidential statistical data and restricting access to authorized personnel; and

(iv) Complying with paragraph (c) of this section;

(2) Ensure that confidential statistical data are not used for any nonstatistical purposes. This includes:

(i) Coordinating with the agency Chief Freedom of Information Act Officer to ensure appropriate application of exemptions pertaining to confidential statistical data in response to Freedom of Information Act requests;

(ii) Employing current best practices, including statistical disclosure avoidance methods and procedures, to minimize the risk of disclosing confidential statistical data; and

(iii) Complying with paragraph (c) of this section;

(3) Provide information to the public about the integrity, confidentiality, and impartiality of all confidential statistical data acquired and maintained under its

authority, so that it retains the trust of its information providers and data users, by:

(i) Making readily accessible, for example, through its website, information about its policies on confidentiality and information security;

(ii) Developing and maintaining a comprehensive data inventory as required under 44 U.S.C. 3511 and related guidance; and

(iii) Complying with the Standard Application Process required under 44 U.S.C. 3583 and related guidance;

(4) Provide sufficient information to respondents to enable them to make an informed decision about whether to provide the requested information by:

(i) Providing notification statements to respondents to collections of information sponsored by the Recognized Statistical Agency or Unit consistent with this section, including the intended uses of the information being collected, potential future uses, their relevance for public purposes, and the extent of confidentiality protection that will be provided; and

(ii) When acquiring data from another agency, ensuring that any agreement with the providing agency addresses any legal requirements for notice and consent consistent with applicable law and applicable rules implementing 44 U.S.C. 3581;

(5) Maintain and develop professional staff, or identify appropriate ways to access professional staff, that are trained in statistical disclosure limitation and restricted access mechanisms to maximize the protection of the confidential statistical data throughout the data lifecycle, including creation or collection, processing, dissemination, use, storage, and disposition; and

(6) Inform employees, contractors, and other approved agents of the Recognized Statistical Agency or Unit of their responsibility not to willfully disclose confidential statistical data in an identifiable form, and of the legal consequences of such disclosure, such as the penalty in 44 U.S.C. 3572(f) that provides that any officer, employee, or approved agent of the Recognized Statistical Agency or Unit who willfully discloses such information is subject to fines and penalties, to include being guilty of a class E felony and imprisoned for not more than 5 years, or fined not more than \$250,000, or both.

(b) *Responsibilities of each parent agency.* Each parent agency must enable, support, and facilitate the Recognized Statistical Agency or Unit in carrying out its responsibility to protect the trust of information providers by ensuring the confidentiality and

exclusive statistical use of its information. Each parent agency must:

(1) Ensure that the Recognized Statistical Agency or Unit has the sole authority to provide access to its confidential statistical data. Unless otherwise prohibited by statute, when a statute, rule, or policy authorizes any other official to control access to such data, that responsibility must be delegated to the head of the Recognized Statistical Agency or Unit.

(2) Ensure that implementation of the Federal Information Technology Acquisition Reform Act, 40 U.S.C. 11319, is consistent with the Recognized Statistical Agency or Unit's responsibility to protect confidential statistical data from unauthorized use or disclosure, by:

(i) Ensuring that information technology policies appropriately safeguard and protect the integrity, confidentiality, and availability of confidential statistical data; and

(ii) Ensuring that confidential statistical data are protected by any effective security standards established in writing by the Recognized Statistical Agency or Unit.

(3) Ensure that the Senior Agency Official for Privacy consults with the Recognized Statistical Agency or Unit when the Senior Agency Official for Privacy performs duties related to the Recognized Statistical Agency or Unit's statistical activities, including under the Privacy Act of 1974, codified as amended at 5 U.S.C. 552a; the E-Government Act of 2002, codified at 44 U.S.C. 3501 note; and other applicable statutory requirements, including:

(i) Conducting Privacy Impact Assessments on information technology systems that store and process confidential statistical data, as required by law and Office of Management and Budget guidance;

(ii) Responding to Privacy Act requests to access or amend confidential statistical data maintained by the Recognized Statistical Agency or Unit; and

(iii) Responding to breaches of confidential statistical data containing personally identifiable information in a way that complies with law and policy and is sensitive to the Recognized Statistical Agency or Unit's need to maintain the public trust.

(4) Ensure that the agency Chief Freedom of Information Act Officer coordinates with the Recognized Statistical Agency or Unit to ensure appropriate application of exemptions pertaining to confidential statistical data in response to Freedom of Information Act requests.

(c) *Responsibilities to protect confidential statistical data.* Each Recognized Statistical Agency or Unit is responsible for protecting the confidentiality and exclusive statistical use of confidential statistical data by carrying out its duties under this paragraph (c). Each parent agency must enable, support, and facilitate the Recognized Statistical Agency or Unit in carrying out its responsibility to protect the confidentiality and exclusive statistical use of confidential statistical data.

(1) The head of each Recognized Statistical Agency or Unit must:

(i) Determine who is authorized to access confidential statistical data;

(ii) Ensure that access to confidential statistical data is limited to officers and employees of such Recognized Statistical Agency or Unit and its designated agents; and

(iii) Establish written standards and processes by which the head of such Recognized Statistical Agency or Unit designates a person as an agent, which must:

(A) Comply with 44 U.S.C. 3572 and other applicable statistical law;

(B) Ensure designated agents are fully informed of, and have agreed to comply with, all legal requirements to access confidential statistical data; and

(C) Define the scope of such agent's authorization to access confidential statistical data.

(2) The parent agency head must:

(i) Ensure confidential statistical data are secure from access by any individual unless such individual has been authorized to access such confidential statistical data by the head of the Recognized Statistical Agency or Unit in accordance with paragraph (c)(1) of this section;

(ii) Prohibit agency officers or employees from accessing confidential statistical data unless they have been authorized to access such confidential statistical data by the head of the Recognized Statistical Agency or Unit in accordance with paragraph (c)(1) of this section; and

(iii) Ensure the Recognized Statistical Agency or Unit has the resources necessary to ensure confidential statistical data are secure from unauthorized access.

(3) Nothing in this part authorizes the parent agency head, or anyone else, to access confidential statistical data, unless the head of the Recognized Statistical Agency or Unit has designated such individual as an agent.

(4) When a component needs access to confidential statistical data, the head of the component must:

(i) Establish policies to prohibit access to confidential statistical data by any individual unless such individual has been authorized by the head of the Recognized Statistical Agency or Unit in accordance with paragraph (c)(1) of this section;

(ii) Ensure that any officer or employee that needs to access confidential statistical data meets the written requirements issued by the Recognized Statistical Agency or Unit;

(iii) To the greatest extent possible, limit the scope and number of its requests for access to confidential statistical data;

(iv) Coordinate with the Recognized Statistical Agency or Unit to determine the number of persons needing access to confidential statistical data; and

(v) Provide the Recognized Statistical Agency or Unit with any information necessary for the Recognized Statistical Agency or Unit to make a determination regarding access to confidential statistical data.

(5) The head of the Recognized Statistical Agency or Unit must coordinate with the head of the parent agency or any component requesting access to confidential statistical data as described in paragraphs (c)(2) and (4) of this section to identify and designate necessary agents to fulfill the component's responsibilities.

(6) If the parent agency head finds that the Recognized Statistical Agency or Unit is unable to designate a sufficient number of agents for the parent agency to fulfill its responsibilities, the parent agency head must consult with the head of the Recognized Statistical Agency or Unit and the Chief Statistician of the United States to resolve the issue.

(7) Each Recognized Statistical Agency or Unit must track access to its information systems that contain confidential statistical data and maintain sufficient access logs that detail the individual accessing such data and the time of access. Each Recognized Statistical Agency or Unit must ensure that confidential statistical data hosted outside of its information systems is maintained in a manner such that the host can track access to the confidential statistical data in a way sufficient to detail the individual accessing the data and the time of access and that the Recognized Statistical Agency or Unit is notified in a timely manner of any unauthorized access. The parent agency must ensure the Recognized Statistical Agency or Unit has sufficient technology resources to ensure all access to confidential statistical data is tracked.

(i) The Recognized Statistical Agency or Unit must monitor the access log to ensure only authorized persons have accessed confidential statistical data.

(ii) If any unauthorized person has accessed confidential statistical data, the Recognized Statistical Agency or Unit must notify the parent agency head and the Chief Statistician of the United States, and the parent agency head and the head of the Recognized Statistical Agency or Unit must:

(A) Address any deficiencies that led to such unauthorized access to ensure unauthorized access does not occur in the future; and

(B) Provide a written report to the Chief Statistician of the United States within 30 days detailing the remediation efforts.

§ 1321.9 Compliance review.

(a) *Compliance review.* In accordance with guidance promulgated under paragraph (e)(1) of this section, the Inspector General of each parent agency must conduct a review to determine whether the Recognized Statistical Agency or Unit and parent agency are in compliance with this part and whether the Recognized Statistical Agency or Unit has sufficient resources to carry out the fundamental responsibilities. To ensure consistent interpretation and application of statistical laws, the Inspector General must consult with the Chief Statistician of the United States.

(b) *Frequency of compliance review.* (1) The Inspector General must conduct a compliance review of each Recognized Statistical Agency or Unit, in accordance with paragraph (a) of this section, no earlier December 10, 2026, and not less frequently than once every three years thereafter.

(2) The Interagency Council on Statistical Policy (ICSP) may request a compliance review of a Recognized Statistical Agency or Unit and parent agency at any time if the ICSP has reason to believe there is a substantial change in circumstances regarding compliance with this part.

(i) The ICSP must submit a written request for a compliance review with a detailed explanation of the reasons there may be a substantial change in compliance with this section to the Inspector General of the parent agency to be reviewed.

(ii) The Inspector General must review any request from the ICSP, determine whether a review is appropriate, and provide a written response to the ICSP within 30 days of receiving such request.

(c) *Compliance review report.* The Inspector General must submit a report on the results of the review made under

this section to the parent agency head, the head of the Recognized Statistical Agency or Unit, the Chief Statistician of the United States, and relevant congressional committees. For purposes of this review, the head of the Recognized Statistical Agency or Unit is considered a responsible official. The Inspector General shall include in the report a summary of major findings and, if deficiencies are identified during the review, a set of recommendations for improving compliance with this part.

(d) *Role of the Chief Statistician of the United States.* The Chief Statistician of the United States will:

(1) Engage with each Recognized Statistical Agency and Unit and parent agency to address any deficiencies identified in the report;

(2) Publicly post a list of recommendations appropriate for public dissemination made to each agency and the status of the agency in addressing each recommendation on <https://www.StatsPolicy.gov> or any successor website;

(3) Make available appropriate materials, training, and other relevant resources to the Council for Inspector General Integrity and Efficiency regarding statistical laws and practices; and

(4) Include standards for remedial actions for a Recognized Statistical Agency or Unit for persistent failures to comply with this part in the guidance to implement the Recognized Statistical Agency or Unit designation process required under 44 U.S.C. 3562(a).

(e) *Council of the Inspectors General on Integrity and Efficiency.* Not later than December 10, 2026, the Council of the Inspectors General on Integrity and Efficiency, in consultation with the Chief Statistician of the United States and with consideration given to the available resources and independence of individual Offices of Inspectors General, must:

(1) Develop and promulgate guidance that specifies procedures for the compliance review, and compliance determinations required under paragraph (a) of this section and a standardized format for reports required under paragraph (c) of this section to ensure consistency across agencies;

(2) Establish a working group for Inspectors General responsible for conducting reviews under this section to assist the Inspectors General in developing the expertise in statistical laws and processes necessary to ensure the integrity of statistical agencies; and

(3) Regularly consult with the Chief Statistician of the United States on the appropriate interpretation and

application of statistical laws and practices.

Shalanda D. Young,

Director, Office of Management and Budget.

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Parts 1775

[Docket Number: RUS–24–WATER–0031]

Technical Assistance Grants

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Services (RUS or Agency), an agency in the United States Department of Agriculture (USDA) Rural Development (RD) Mission area, is issuing a final rule to update the Water and Environmental Programs' (WEP) Technical Assistance Grants regulation by updating the audit and financial statement language to align with the Office of Management and Budgets (OMB) 2024 revisions.

DATES: *Effective date:* October 11, 2024.

FOR FURTHER INFORMATION CONTACT:

Michele Brooks, Assistant Administrator, Water and Environmental Programs, United States Department of Agriculture, 1400 Independence Avenue SW, Stop 1548, Room 4121-South Building, Washington, DC 20250–1548. Telephone: (202) 692–0308. Email: michele.brooks@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

RD is a mission area within USDA comprised of the RUS, the Rural Business-Cooperative Service and Rural Housing Service that strives to increase economic opportunity and improve the quality of life for all rural Americans. RD invests in rural America with loan, grant, and loan guarantee programs to help drive economic security and prosperity.

Rural communities obtain the technical assistance and financing necessary to develop drinking water and waste disposal systems through RUS WEP. Safe drinking water and sanitary waste disposal systems are vital not only to public health, but also to the economic vitality of rural America. RD is a leader in helping rural America improve the quality of life and increase the economic opportunities for rural people.

OMB revised several parts of OMB Guidance for Grants and Agreements which is now called OMB Guidance for Federal Financial Assistance and is located in title 2 of the Code of Federal Regulations. The revisions were published in the **Federal Register** on April 22, 2024, at 89 FR 30046. The revisions must be implemented by October 1, 2024, but can be implemented any time after June 21, 2024. This final rule is being published as a technical/administrative correction to ensure the Agency's audit and financial statement requirements align with the OMB revisions made to 2 CFR part 200.

II. Summary of Changes

Section 1775.21(a) and (b) were updated to remove the \$750,000 monetary amount in order to reference the current Single Audit threshold and to amend the audit submission deadline. The audit submission requirement was updated to be thirty (30) calendar days after the auditee receives the auditor's report or nine (9) months after the end of the grantee's fiscal year, whichever is earlier. These changes were made to align with the updates to 2 CFR part 200.

III. Executive Orders

Executive Order 12866—Classification

This final rule is exempt from OMB review for purposes of Executive Order 12866 and, therefore, has not been reviewed by OMB.

Congressional Review Act

This rule is not subject to the Congressional Review Act ("CRA") (5 U.S.C. 801 *et seq.*), as the CRA provides an exemption for any rule relating to agency management or personnel and for rules relating to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties.

Assistance Listing Number (Formally Known as the Catalog of Federal Domestic Assistance)

The Assistance Listing Numbers assigned to the programs affected by this final rule are 10.761—Technical Assistance and Training Grants and 10.762—Solid Waste Management Systems Grants. The Assistance Listings are available at SAM.gov.

Executive Order 12372—Intergovernmental Consultation

The Assistance Listing Numbers are 10.761 and 10.762 for these programs and are subject to the provisions of Executive Order 12372 which requires

intergovernmental consultation with State and local officials

Paperwork Reduction Act

This final rule contains no reporting or recordkeeping provisions under OMB Control Number 0572–0112 requiring OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

National Environmental Policy Act

In accordance with the National Environmental Policy Act of 1969, Public Law 91–190, this final rule has been reviewed in accordance with 7 CFR part 1970 (“Environmental Policies and Procedures”). The Agency has determined that: (i) This action meets the criteria established in 7 CFR 1970.53(f); (ii) No extraordinary circumstances exist; and (iii) The action is not “connected” to other actions with potentially significant impacts, is not considered a “cumulative action” and is not precluded by 40 CFR 1506.1. Therefore, the Agency has determined that the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

Regulatory Flexibility Act Certification

RUS certifies that this rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS Water and Waste loan and grant programs provide loans to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Administrative Pay-As-You-Go-Act of 2023

Section 270 of the Administrative Pay-As-You-Go-Act of 2023 (Pub. L. 118–5, div. B, title III, 137 Stat 31) amended 5 U.S.C. 801(a)(2)(A) to require U.S. Government Accountability Office (GAO) to assess agency compliance with the Act, which establishes requirements for administrative actions that affect direct spending, in GAO’s major rule reports. The Act does not apply to this rule because it does not increase direct spending.

Executive Order 12988—Civil Justice Reform

This rule has been reviewed under Executive Order 12988. In accordance with this rule: (1) unless otherwise specifically provided, all State and local laws that conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit in court that challenges action taken under this rule.

Unfunded Mandates Reform Act

This final rule contains no Federal Mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25) for State, local, and Tribal governments, or the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Executive Order 13132—Federalism

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This Executive order imposes requirements on RUS in the development of regulatory policies that have Tribal implications or preempt Tribal laws. The Agency has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If Tribal leaders are interested in consulting with the Agencies on this final rule, they are encouraged to contact USDA’s Office of Tribal Relations or RD’s Native American Coordinator at: AIAN@usda.gov to request such a consultation.

E-Government Act Compliance

RD is committed to the E-Government Act, which requires Government

agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible and 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.

Civil Rights Impact Analysis

RD has reviewed this final rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis, to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex, disability, marital or familial status. Based on the review and analysis of the rule and all available data, issuance of this final rule is not likely to negatively impact low and moderate-income populations, minority populations, women, Indian tribes or persons with disability, by virtue of their age, race, color, national origin, sex, disability, or marital or familial status. No major civil rights impact is likely to result from this final rule.

USDA Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.*, Braille, large print, audiotope, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at www.usda.gov/sites/default/files/

documents/ad-3027.pdf, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410; or

(2) *Fax*: (833) 256-1665 or (202) 690-7442; or

(3) *Email*: Program.Intake@usda.gov.

List of Subjects in 7 CFR Part 1775

Business and industry, Community development, Community facilities, Grant programs—housing and community development, Reporting and recordkeeping requirements, Rural areas, Waste treatment and disposal, Water supply, Watersheds.

Accordingly, for the reasons set forth in the preamble, the Agency amends 7 CFR part 1775 as follows:

PART 1775—TECHNICAL ASSISTANCE GRANTS

■ 1. The authority citation for part 1775 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart B—Grant Application Processing

■ 2. Amend § 1775.21 by revising paragraphs (a) and (b) to read as follows:

§ 1775.21 Audit or financial statements.

* * * * *

(a) In accordance with subpart F of 2 CFR part 200, as adopted by USDA through 2 CFR part 400, grantees expending Federal funds each fiscal year equal to or greater than the current Single Audit threshold will submit an audit. The audit will be submitted within 30 calendar days after the auditee receives the auditor's report or 9 months after the end of the grantee's fiscal year, whichever is earlier.

(b) Grantees expending less than the current Single Audit dollar threshold will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense, and balance sheet signed by an authorized official of the organization. Financial statements will

be submitted within 90 days after the grantee's fiscal year end.

Andrew Berke,

Administrator, Rural Utilities Service, Rural Development.

[FR Doc. 2024-23512 Filed 10-10-24; 8:45 am]

BILLING CODE 3410-15-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Parts 3550 and 3555

[Docket No. RHS-24-SFH-0031]

Single Family Housing Section 502 Direct and Guaranteed Manufactured Housing Pilots

AGENCY: Rural Housing Service, USDA.

ACTION: Notification of extension of waivers.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development agency of the United States Department of Agriculture (USDA), is issuing this notification to extend the period to waive two regulatory requirements for the Section 502 Direct and Guaranteed Manufactured Housing program, while the Agency completes the rulemaking to remove regulatory barriers to assist eligible applicants by improving the ease of the pilot program (pilot) use for very low to moderate-income homeowners that seek to purchase more affordable housing. This continues to support the current Administration's Housing Supply Action Plan which seeks to boost new financing mechanisms to build and supply quality affordable housing units. This document briefly discusses the waivers the Agency intends to continue and provides contact information for additional details about the pilot.

DATES: The effective date of the two regulatory waivers is November 4, 2024. The duration of the pilot is anticipated to continue until May 1, 2025, or the date the Updating Manufactured Housing Provisions Final Rule is published and effective, whichever comes first. Additionally, the RHS may extend the pilot (with or without modifications) or terminate it depending on the workload and resources (*i.e.*, budget and other considerations) required to administer the program, feedback from the public, and the effectiveness of the program. If the pilot is extended or terminated, the RHS will notify the public through a document published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Stephanie Freeman, Finance and Loan Analyst, Policy, Analysis, and Communications Branch, Single Family Housing Guaranteed Loan Division, Rural Development, U.S. Department of Agriculture, Email: stephanie.freeman@usda.gov; Phone: (314) 457-6413 and Jeremy Anderson, Finance and Loan Analyst, Single Family Housing Direct Loan Division, Rural Development, U.S. Department of Agriculture, Email: jeremy.anderson@usda.gov; Phone: (202) 690-3971.

SUPPLEMENTARY INFORMATION:

Authority: Title V, Section 502 of the Housing Act of 1949, as amended; 42 U.S.C. 1472.

Background

The RHS is committed to helping improve the economy and quality of life in rural areas by offering a variety of programs. The Agency offers loans, grants, and loan guarantees to help create jobs, expand economic development, and provide critical infrastructure investments. RHS also provides technical assistance loans and grants by partnering with agricultural producers, cooperatives, Indian tribes, non-profits, and other local, State, and Federal agencies.

Affordable housing is essential to the vitality of communities in rural America. Rural Development's Single Family Housing Programs give families and individuals the opportunity to purchase, build, repair their existing home, or to refinance their current mortgage under certain criteria. Eligibility for these loans, loan guarantees, or grants is based on income which varies according to the average median income for each eligible rural area.

The objective of the Section 502 Direct Loan Program under 7 CFR part 3550 is to assist very low and low-income applicants to own adequate but modest, decent, safe, and sanitary housing in eligible rural areas by providing payment assistance to increase an applicant's repayment ability. The payment assistance is a type of subsidy that reduces the mortgage payment for a short time and is determined by the adjusted family income. There are a number of different factors that determine the applicant's eligibility for this program but at minimum they must have the adjusted income that is at or below the applicable low-income limit for the area where they wish to purchase a home and they must demonstrate a willingness and have the ability to repay the debt.

The Section 502 Guaranteed Loan Program, under 7 CFR part 3555,

provides a 90% loan note guarantee to approved lenders to assist low- and moderate-income households the opportunity to own decent, safe, and sanitary dwellings as their primary residence in eligible rural areas. Eligible applicants may purchase, build, rehabilitate, improve, or relocate a dwelling in an eligible rural area. Applicant eligibility for this program is determined by the lender.

RHS may authorize limited demonstration programs to test new approaches to offering housing under the statutory authority granted to the Secretary, as set forth in 7 CFR 3550.7 and 3555.2(b). Such demonstration programs may not be consistent with some of the provisions contained in this part. However, any program requirements that are statutory will remain in effect.

In 2022, the Agency extended the existing pilot in order to continue assessing the pilots' impact. The first pilot involves financing existing manufactured homes; the second pilot involves the ownership requirement for new energy-efficient manufactured and modular homes in land-lease communities operating on a nonprofit basis. These allowances remain unchanged from any previous extensions of this pilot. While the number of participating states remain restricted, the pilot ensures adequate regional representation.

Existing Manufactured Home Pilot

The Agency is continuing with the existing pilot, which was initially implemented on August 12, 2016, and continued via a document published in the **Federal Register** (at 87 FR 66075 on November 2, 2022), which expires on November 4, 2024. In the November 22, 2022, document, the Agency waived the regulatory restrictions in 7 CFR parts 3550 and 3555 and permitted the financing of existing manufactured homes in the pilot states even when the home was not currently financed by the Agency. Under the current regulations, new manufactured homes are eligible for financing through the Section 502 Single Family Housing (SFH) Direct and Guaranteed Loan Programs. Existing manufactured homes are not eligible unless the home is already financed through Rural Development (RD) (7 CFR 3550.52(e)(1); 3550.73(b); 3555.208(b)(3)). The Agency anticipates the completion of rulemaking in the near future that will codify the waivers into 7 CFR parts 3550 and 3555, and which will be applied program wide.

Eligibility Requirements

Approved lenders in the SFH Guaranteed Loan Program do not require additional approval to participate provided the home is in a pilot state. The loan request must be from an eligible applicant, all the pilot conditions listed in this section must be met, and all other program requirements that have not been waived must also be met.

The following States are included in this pilot:

Colorado, Iowa, Louisiana, Michigan, Mississippi, Montana, Nevada, New Hampshire, New York, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

The following unit requirements below must be met:

The unit must have been constructed on or after January 1, 2006, in conformance with the Federal Manufactured Home Construction and Safety Standards (FMHCSS), as evidenced by an affixed Housing and Urban Development (HUD) Certification Label, and the unit must not have been previously installed on a different homesite, or had any structural alterations to it since construction in the factory, except for porches, decks, or other structures which were built to engineered designs or were approved and inspected by local code officials.

The unit inspection is required using one of two methods:

Option 1—Form HUD-309, "HUD Manufactured Home Installation Certification and Verification Report" completed in accordance with 24 CFR 3286.511 by a qualified party as follows: A manufactured home or residential building inspector employed by the local authority having jurisdiction over the site of the home, provided that the jurisdiction has a residential code enforcement program; a professional engineer, registered architect a HUD-accepted Production Inspection Primary Inspection Agency (IPIA) or a Design Approval Primary Inspection Agency (DAPIA), or an International Code Council (ICC) certified inspector;

Or

Option 2—Obtain a certification that the foundation design meets the requirements of either HUD Handbook 4930.3G or HUD Publication 7584, which updated and revised the pre-1996 version of HUD Handbook 4930.3G, "Permanent Foundations Guide for Manufactured Housing (PFGMH)." Certifications referencing either Publication 7584 or Handbook 4930.3G are acceptable. The foundation

certification must be from a licensed professional engineer or registered architect who is licensed/registered in the state where the manufactured home is located and must attest to current guidelines of the PFGMH. The certification must be site specific and contain the engineer's or registered architect's signature, seal, and/or state license/certification number. This certification can take the place of Form HUD 309.

Guaranteed loan applications submitted under this pilot must be manually submitted and underwritten; however, the documents may be submitted through GUS. A job aid for this type of submission is available in the USDA LINC Training and Resource Library in the "Loan Origination" tab or directly here: https://www.rd.usda.gov/sites/default/files/linc_manual_submission_job_aid.pdf. Agency staff will need to select "MANUFACTURED (PILOT)" for "Construction Type" in the Property Information section in GLS. This will allow for the proper identification of pilot loans for tracking and monitoring purposes.

Direct loan applications submitted under the pilot are submitted directly to the local RD office. Agency staff will need to select Program Type Code 1014 (very low income) or 1015 (low income) unless the property is located in a persistent poverty county, in which case Program Type Code 1114 (very low income) or 1115 (low income) will be used. In addition, Agency staff will need to select a Construction Type of "Manuf/Home" and a Dwelling Type of "Purchase Old, Refinance, Purchase Old/Repair, or Refinance/Repair" in UniFi. This will allow for the proper identification of pilot loans for tracking and monitoring purposes.

The applicant and property must meet all other criteria set forth in 7 CFR part 3550 and HB-1-3550 for Direct loans or 7 CFR part 3555 and HB-1-3555 for Guaranteed loans, as applicable. These criteria include, but are not limited to, the following: The unit must have a floor area of not less than 400 square feet; the unit must meet the Comfort Heating and Cooling Certificate Uo Value Zone for the location; the towing hitch and running gear must have been removed; the manufactured home must be classified and taxed as real estate; the remaining economic life of the property must meet or exceed the 30 year term of the proposed loan; and the unit replacement cost coverage must be equal to the insured value of the improvements or the unpaid principal balance with deductible(s) of up to but not exceeding the greater of \$1,000 or one percent (1%) of the policy. For

Guaranteed Loans, the unit should have replacement cost coverage in an amount that is at least equal to the guaranteed value of the improvements or the unpaid principal balance, with the deductible not exceeding five percent (5%) of the total coverage amount.

Ownership Requirement Pilot for Energy Efficient Manufactured and Modular Home Financing in Land-Lease Communities Operating on a Nonprofit Basis

The Agency is continuing with the existing pilot that involves the ownership requirement for new energy-efficient manufactured and modular homes in land-lease communities operating on a nonprofit basis. According to 7 CFR 3550.58(b), a leasehold interest must have an unexpired term that is at least 150 percent of the term of the mortgage for Direct loans. According to 7 CFR 3555.203(b)(3), a leasehold interest must have an unexpired term of at least 45 years from the date of loan closing for a Guaranteed loan.

Eligibility Requirements

Under this pilot, RD will accept a lease with an unexpired term that is at least two years beyond the term of the promissory note in the pilot states.

The following States are included in this pilot: California, Michigan, Minnesota, New Hampshire, Oregon, Pennsylvania, Vermont, and Wisconsin.

The loan request must be from an eligible applicant, all the pilot conditions must be met, and new manufactured and modular homes must meet the following pilot conditions:

At a minimum, new manufactured and modular homes must be Energy Star compliant. Additionally, the unexpired term of the lease must be at least two years longer than the mortgage term. While the lease terms in 7 CFR 3550.58(b) and 3555.203(b)(3) offer borrowers some protections, many states have statutes that promulgate fair lease terms and safeguard residents of land-lease communities.

For the *SFH Guaranteed Loan Program*, pilot states should consider following the recommendations in HUD's interim guidance related to 24 CFR 3285.312 on the use of frost-free foundations or frost protected shallow foundations.

For the *SFH Direct Loan Program*, pilot states may use the recommendations from HUD's interim guidance on frost-free or frost-protected shallow foundations in lieu of RD Instruction 1924-A, Exhibit J. Under the HUD interim guidance recommendations, the installer should

install all footings and piers below the frost line depth, or for Frost Free Foundations, have a site investigation performed by a soil engineer or geotechnical engineer to verify if the soil condition at each home site is of a non-frost susceptible classification and is well drained. In lieu of a site soil investigation, a layer of washed gravel, or crushed stone, or course or dense sand may be provided to the frost line depth. For either of these alternatives, subsurface drains need to be provided; or use a Frost Protected Shallow Foundation system that utilizes below ground insulation to protect the soil from freezing with subsurface drains provided at each site.

The applicant and property must meet all other criteria set forth in 7 CFR part 3550 and HB-1-3550 for Direct loans or 7 CFR part 3555 and HB-1-3555 for Guaranteed loans, as applicable for application guidance. Program Directors should use the tracking tool under the "Energy Efficient Housing" link on the SFH SharePoint tracking site to report loans made under this pilot.

Paperwork Reduction Act

The regulatory waivers for this pilot contains no new reporting or recordkeeping burdens under OMB control number 0575-0179 that would require approval under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Federal Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at U.S. Department of Agriculture USDA Program Discrimination Complaint from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

(1) *Mail*: U.S. Department of Agriculture Office of the Assistant Secretary for Civil Rights 1400 Independence Avenue, Washington, DC 20250-9410; or (2) *Fax*: (833) 256-1665 or (202) 690-7442; or (3) *Email*: Program.Intake@usda.gov.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024-23506 Filed 10-10-24; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. **FAA-2024-1882**; Project Identifier **AD-2024-00227-T**; Amendment **39-22843**; **AD 2024-19-01**]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SP, and 747SR series airplanes. This AD was prompted by a report indicating cracks at eight fastener hole locations in the fuselage skin lap splice between certain stations (STAs) at certain stringers. This AD requires repetitive inspections of the upper fastener row of the fuselage skin lap splice in a certain area for any crack, and applicable on-condition actions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective November 15, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 15, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1882; 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 Boeing material 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.

- 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 at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-1882.

FOR FURTHER INFORMATION CONTACT:

Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206-231-3964; email: Stefanie.N.Roesli@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 747-100, 747-100B, 747-100B SUD, 747-200B, 747-200C, 747-200F, 747-300, 747-400, 747-400D, 747-400F, 747SP, and 747SR series airplanes. The NPRM published in the **Federal Register** on July 3, 2024 (89 FR 55128). The NPRM was prompted a report indicating cracks at eight fastener hole locations in the fuselage skin lap splice between STAs 1450 and 1470 at stringers S-23L and S-23R.

In the NPRM, the FAA proposed to require repetitive inspections of the upper fastener row of the fuselage skin lap splice in a certain area for any crack, and applicable on-condition actions. The FAA is issuing this AD to detect and correct cracking of the upper fastener row of the fuselage skin lap splice between STAs 1350 and 1480 at stringers S-23L and S-23R. The unsafe condition, if not addressed, could result in an in-flight rapid decompression and a loss of structural integrity of the fuselage.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from Boeing who supported the NPRM without change.

Conclusion

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

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747-53A2912 RB, dated April 5, 2024. This material specifies procedures for repetitive external surface high frequency eddy current inspections of the upper fastener row of the fuselage skin lap splice between STAs 1350 and 1480 at stringers S-23L and S-23R for any crack, and applicable on-condition actions. On-condition actions include obtaining and following repair instructions.

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

Costs of Compliance

The FAA estimates that this AD affects 170 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
Inspections	8 work-hours × \$85 per hour = \$680 per inspection cycle.	\$0	\$680 per inspection cycle	\$115,600 per inspection cycle.

The FAA has received no definitive data on which to base the cost estimates for the 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:

2024–19–01 The Boeing Company:
Amendment 39–22843; Docket No. FAA–2024–1882; Project Identifier AD–2024–00227–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 15, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SP, and 747SR series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report indicating cracks at eight fastener hole locations in the fuselage skin lap splice between stations (STAs) 1450 and 1470 at stringers S–23L and S–23R. The FAA is issuing this AD to detect and correct cracking of the upper fastener row of the fuselage skin lap splice between STAs 1350 and 1480 at stringers S–23L and S–23R. The unsafe condition, if not addressed, could result in an in-flight rapid decompression and a loss of structural integrity of the fuselage.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024, do all applicable actions identified in, and in accordance with, the

Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2912, dated April 5, 2024, which is referred to in Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024.

(h) Exceptions to Requirements Bulletin Specifications

(1) Where the Condition and Boeing Recommended Compliance Time columns of the tables in the “Compliance” paragraph of Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024, refer to “the Original Issue date of the Requirements Bulletin 747–53A2912 RB,” this AD requires using the effective date of this AD.

(2) Where Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(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: AMOC@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) Related Information

(1) For more information about this AD, contact Stefanie Roesli, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: Stefanie.N.Roesli@faa.gov.

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (k)(3) this AD.

(k) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 747–53A2912 RB, dated April 5, 2024.

(ii) [Reserved]

(3) For Boeing material 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.

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

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on September 9, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–23537 Filed 10–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1693; Project Identifier AD–2023–01229–T; Amendment 39–22842; AD 2024–18–08]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain The Boeing Company Model 737–300, –400, and –800 series airplanes. This AD was prompted by a report that the protective spiral wrap used on certain galley wire bundles does not have the correct flammability properties. This AD requires inspecting certain galleys to determine part numbers, inspecting for an existing galley modification placard and marking on galleys with affected part numbers, and replacing wire bundle spiral wrap sleeving as applicable. 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 November 15, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 15, 2024.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–1693; 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 Boeing material 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*.
- 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 at *regulations.gov* under Docket No. FAA–2024–1693.

FOR FURTHER INFORMATION CONTACT: Julie Linn, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3584; email: *julie.linn@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain The Boeing Company Model 737–300, –400, and –800 series airplanes. The NPRM published in the **Federal Register** on June 24, 2024 (89

FR 52408). The NPRM was prompted by a report that the protective spiral wrap used on certain galley wire bundles does not have the correct flammability properties and may not self-extinguish. In the NPRM, the FAA proposed to require inspecting certain galleys to determine part numbers, inspecting for an existing galley modification placard and marking on galleys with affected part numbers, and replacing wire bundle spiral wrap sleeving as applicable; and to prohibit the installation of affected parts. The FAA is issuing this AD to address the incorrect flammability properties, which, if not addressed, could result in electrical arcing or sparking, ignition of the spiral wire wrapping, and smoke and/or fire in the flight compartment, leading to loss of continued safe flight and landing.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from the Air Line Pilots Association, who supported the NPRM without change. The FAA received additional comments from Aviation Partners Boeing. 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 and STC ST01219SE does not affect the accomplishment of the manufacturer’s service instructions. The FAA agrees with the commenter that STC ST00830SE and STC ST01219SE do not affect the accomplishment of the manufacturer’s service instructions. Therefore, the installation of STC ST00830SE and STC ST01219SE does not affect the ability to accomplish the actions required by this

AD. The FAA has not changed this AD in this regard.

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, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–25A1873 RB, dated August 25, 2023; and Boeing Alert Requirements Bulletin 737–25A1876 RB, dated September 1, 2023. This material specifies procedures for an inspection or records check to determine the part number of certain galleys; and for any galley with an affected part number found, an inspection for an existing galley modification placard and any marking indicating the galley was modified using certain service information; and, if applicable, replacement of wire bundle polyethylene protective spiral wrap protective sleeving with Boeing Material Specification (BMS) 13–81 wire protective sleeving. These documents are distinct since they apply to different airplane models.

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 4 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
Inspection for galley part number	1 work-hour × \$85 per hour = \$85	\$0	\$85	\$340

The FAA estimates the following costs to do any necessary inspections or replacements 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 or replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection for modification placard	1 work-hour × \$85 per hour = \$85	\$0	\$85.

ON-CONDITION COSTS—Continued

Action	Labor cost	Parts cost	Cost per product
Replacement	Up to 218 work-hours × \$85 per hour = \$18,530.	Up to \$1,185	Up to \$19,715.

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:

2024–18–08 The Boeing Company:
Amendment 39–22842; Docket No. FAA–2024–1693; Project Identifier AD–2023–01229–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 15, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 737–300, –400, and –800 series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 737–25A1873 RB, dated August 25, 2023; or Boeing Alert Requirements Bulletin 737–25A1876 RB, dated September 1, 2023; as applicable.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by a report that the protective spiral wrap used on certain galley wire bundles does not have the correct flammability properties and may not self-extinguish. The unsafe condition, if not addressed, could result in electrical arcing or sparking, ignition of the spiral wire wrapping, and smoke and/or fire in the flight compartment, leading to loss of continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

(1) For Model 737–300 and –400 series airplanes: Except as specified by paragraph (h)(1) of this AD, at the applicable times specified in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 737–25A1873 RB, dated August 25, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–25A1873 RB, dated August 25, 2023.

Note 1 to paragraph (g)(1): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–25A1873, dated August 25, 2023, which is referred to in Boeing Alert Requirements Bulletin 737–25A1873 RB, dated August 25, 2023.

(2) For Model 737–800 series airplanes: Except as specified by paragraph (h)(2) of this AD, at the applicable times specified in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 737–25A1876 RB, dated September 1, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–25A1876 RB, dated September 1, 2023.

Note 2 to paragraph (g)(2): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–25A1876, dated September 1, 2023, which is referred to in Boeing Alert Requirements Bulletin 737–25A1876 RB, dated September 1, 2023.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 737–25A1873 RB, dated August 25, 2023, refer to the original issue date of Requirements Bulletin 737–25A1873 RB, this AD requires using the effective date of this AD.

(2) Where the Compliance Time columns of the tables in the "Compliance" paragraph of Boeing Alert Requirements Bulletin 737–25A1876 RB, dated September 1, 2023, refer to the original issue date of Requirements Bulletin 737–25A1876 RB, this AD requires using the effective date of this AD.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install a galley wire bundle spiral wrap made of polyethylene with self-wrapping sleeve on any airplane.

(j) 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 (k)(1) of this AD. Information may be emailed to: AMOC@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.

(k) Related Information

(1) For more information about this AD, contact Julie Linn, Aviation Safety Engineer, FAA, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3584; email: julie.linn@faa.gov.

(2) Service information identified in this AD that is not incorporated by reference is available at the address specified in paragraph (l)(3) of this AD.

(l) Material Incorporated by Reference

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

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

(i) Boeing Alert Requirements Bulletin 737-25A1873 RB, dated August 25, 2023.

(ii) Boeing Alert Requirements Bulletin 737-25A1876 RB, dated September 1, 2023.

(3) For Boeing material 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.

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

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on September 6, 2024.

Peter A. White,

Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024-23541 Filed 10-10-24; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2024-1482; Project Identifier MCAI-2024-00135-T; Amendment 39-22844; AD 2024-19-02]

RIN 2120-AA64

Airworthiness Directives; ATR—GIE Avions de Transport Régional Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2023-02-08, which applied to certain ATR—GIE Avions de Transport Régional Model ATR42-500 airplanes. AD 2023-02-08 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 certain actions in AD 2023-02-08, and requires revising the existing maintenance or inspection program, as applicable, to incorporate 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 November 15, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 15, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of March 14, 2023 (88 FR 7867, February 7, 2023).

ADDRESSES:

AD Docket: You may examine the AD docket at regulations.gov under Docket No. FAA-2024-1482; 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 EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: ADs@easa.europa.eu; website: easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available at regulations.gov under Docket No. FAA-2024-1482.

FOR FURTHER INFORMATION CONTACT:

Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206-231-3220; email: Shahram.Daneshmandi@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2023-02-08, Amendment 39-22315 (88 FR 7867, February 7, 2023) (AD 2023-02-08). AD 2023-02-08 applied to certain ATR—GIE Avions de Transport Régional Model ATR42-500 airplanes. AD 2023-02-08 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. The FAA issued AD 2023-02-08 to prevent reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on June 13, 2024 (89 FR 50241). The NPRM was prompted by AD 2024-0052, dated February 23, 2024, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2024-0052) (also referred to as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

In the NPRM, the FAA proposed to retain the requirements of AD 2023-02-08. 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 2024-0052. The FAA is issuing this AD to address among other things, fatigue cracking and damage in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket at regulations.gov under Docket No. FAA-2024-1482.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Material Incorporated by Reference Under 1 CFR Part 51

The FAA reviewed EASA AD 2024–0052 that revises the ATR42–400/–500 Time Limits Document and incorporates EASA AD 2020–0249R1, which required a repetitive operational test for discrepancies of the stall warning system and stick pusher in the flight configuration for ATR–GIE Avions de Transport Régional Model ATR42–500 and ATR72 airplanes. This service information specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits. EASA AD 2020–0249R1 revises EASA AD 2020–0249, which corresponds to FAA AD 2020–26–17, Amendment 39–21372 (85 FR 81795, December 17, 2020) (AD 2020–26–17).

This AD also requires EASA AD 2022–0200, dated September 26, 2022, which the Director of the Federal Register approved for incorporation by reference as of March 14, 2023 (88 FR 7867, February 7, 2023).

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 17 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 2023–02–08 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 2023–02–08, Amendment 39–22315 (88 FR 7867, February 7, 2023); and
 - b. Adding the following new Airworthiness Directive:

2024–19–02 ATR—GIE Avions de Transport Régional: Amendment 39–22844; Docket No. FAA–2024–1482; Project Identifier MCAI–2024–00135–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 15, 2024.

(b) Affected ADs

This AD replaces AD 2023–02–08, Amendment 39–22315 (88 FR 7867, February 7, 2023) (AD 2023–02–08).

This AD affects AD 2020–26–17, Amendment 39–21372 (85 FR 81795, December 17, 2020) (AD 2020–26–17).

(c) Applicability

This AD applies to ATR–GIE Avions de Transport Régional Model ATR42–500 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before October 16, 2023.

(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 among other things, fatigue cracking and damage in principal structural elements. The unsafe condition, if not addressed, 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 a New Terminating Action

This paragraph restates the requirements of paragraph (j) of AD 2023–02–08, with a new terminating action. For airplanes with an original airworthiness certificate or original export certificate of airworthiness dated on or before July 29, 2022: 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 2022–0200, dated September 26, 2022 (EASA AD 2022–0200). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2022–0200, With No Changes

This paragraph restates the exceptions specified in paragraph (k) of AD 2023–02–08, with no changes.

(1) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0200 do not apply to this AD.

(2) Paragraph (3) of EASA AD 2022–0200 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 March 14, 2023 (the effective date of AD 2023–02–08).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0200 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2022–0200, or within 90 days after March 14, 2023 (the effective date of AD 2023–02–08), whichever occurs later.

(4) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0200 do not apply to this AD.

(5) The “Remarks” section of EASA AD 2022–0200 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs), With New Exception

This paragraph restates the requirements of paragraph (l) of AD 2023–02–08, with a new exception. Except as required by paragraph (j) of this AD, after the maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.*, inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2022–0200.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2024–0052, dated February 23, 2024 (EASA AD 2024–0052). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2024–0052

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2024–0052.

(2) Paragraph (3) of EASA AD 2024–0052 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 2024–0052 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2024–0052, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2024–0052.

(5) This AD does not adopt the “Remarks” section of EASA AD 2024–0052.

(l) New Provisions for Alternative Actions, Intervals, and CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.*, inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2024–0052.

(m) Terminating Action for Certain Tasks Required by AD 2020–26–17

For Model ATR42–500 airplanes only: Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2020–26–17 for the tasks identified in the service information referenced in EASA AD 2024–0052 only.

(n) Additional AD Provisions

The following provisions also apply to this AD:

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

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

(o) Additional Information

For more information about this AD, contact Shahram Daneshmandi, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 206–231–3220; email: Shahram.Daneshmandi@faa.gov.

(p) Material Incorporated by Reference

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

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

(3) The following material was approved for IBR on November 15, 2024.

(i) European Union Aviation Safety Agency (EASA) AD 2024–0052, dated February 23, 2024.

(ii) [Reserved]

(4) The following material was approved for IBR on March 14, 2023 (88 FR 7867, February 7, 2023).

(i) EASA AD 2022–0200, dated September 26, 2022.

(ii) [Reserved]

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

(6) 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.

(7) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on September 10, 2024.

Victor Wicklund,

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

[FR Doc. 2024–23539 Filed 10–10–24; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA–2024–1694; Project Identifier MCAI–2024–00016–T; Amendment 39–22845; AD 2024–19–03]

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) 2023–12–03 and AD 2023–04–05, which applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2023–12–03 and AD 2023–04–05 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 all actions in AD 2023–12–03 and certain actions in AD 2023–04–05, and requires revising the existing maintenance or inspection program, as applicable, to incorporate 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 November 15, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of November 15, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of August 7, 2023 (88 FR 42598, July 3, 2023; corrected August 7, 2023 (88 FR 52024)).

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of April 10, 2023 (88 FR 13668, March 6, 2023).

ADDRESSES:

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1694; 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 EASA material identified in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email ADs@easa.europa.eu; website easa.europa.eu. You may find this material on the EASA website at ad.easa.europa.eu.

- 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 at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1694.

FOR FURTHER INFORMATION CONTACT: Dat Le, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email dat.v.le@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2023–12–03, Amendment 39–22461 (88 FR 42598, July 3, 2023; corrected August 7, 2023 (88 FR 52024)) (AD 2023–12–03), and AD 2023–04–05, Amendment 39–22352 (88 FR 13668, March 6, 2023) (AD 2023–04–05). AD 2023–12–03 and AD 2023–04–05 applied to certain Airbus SAS Model A350–941 and –1041 airplanes. AD 2023–12–03 and AD 2023–04–05 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. AD 2023–12–03 specified that accomplishing the revision required by that AD terminated certain requirements of AD 2023–04–05. The FAA issued AD 2023–12–03 and AD 2023–04–05 to address reduced structural integrity of the airplane.

The NPRM published in the **Federal Register** on June 26, 2024 (89 FR 53364). The NPRM was prompted by AD 2024–0005, dated January 5, 2024, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2024–0005) (also referred to as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

In the NPRM, the FAA proposed to continue to require all actions in AD 2023–12–03 and certain actions in AD 2023–04–05, and to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2024–0005. The FAA is issuing this AD to address reduced structural integrity of the airplane. The unsafe condition, if not addressed, could result in loss of structural integrity of the airplane.

You may examine the MCAI in the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA–2024–1694.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Material Incorporated by Reference Under 1 CFR Part 51

EASA AD 2024–0005 specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits.

This AD also requires EASA AD 2023–0004, dated January 6, 2023, which the Director of the Federal Register approved for incorporation by reference as of August 7, 2023 (88 FR 42598, July 3, 2023; corrected August 7, 2023 (88 FR 52024)).

This AD also requires EASA AD 2022–0125, dated June 28, 2022, which the Director of the Federal Register approved for incorporation by reference as of April 10, 2023 (88 FR 13668, March 6, 2023).

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 31 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 2023–12–03 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) 2023–04–05, Amendment 39–22352 (88 FR 13668, March 6, 2023); and AD 2023–12–03, Amendment 39–22461 (88 FR 42598, July 3, 2023; corrected August 7, 2023 (88 FR 52024)); and
- b. Adding the following new AD:

2024–19–03 Airbus SAS: Amendment 39–22845; Docket No. FAA–2024–1694; Project Identifier MCAI–2024–00016–T.

(a) Effective Date

This airworthiness directive (AD) is effective November 15, 2024.

(b) Affected ADs

This AD replaces AD 2023–04–05, Amendment 39–22352 (88 FR 13668, March 6, 2023) (AD 2023–04–05); and AD 2023–12–03, Amendment 39–22461 (88 FR 42598, July 3, 2023; corrected August 7, 2023 (88 FR 52024)) (AD 2023–12–03).

(c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 30, 2023.

(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 reduced structural integrity of the airplane. The unsafe condition, if not addressed, could result in loss of 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 From AD 2023–04–05, With New Terminating Action

This paragraph restates the requirements of paragraph (j) of AD 2023–04–05, with new terminating action. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before May 2, 2022: 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 2022–0125, dated June 28, 2022 (EASA AD 2022–0125). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (n) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2022–0125

This paragraph restates the exceptions specified in paragraph (k) of AD 2023–04–05, with no changes.

(1) Where EASA AD 2022–0125 refers to its effective date, this AD requires using April 10, 2023 (the effective date of AD 2023–04–05).

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0125 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2022–0125 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 April 10, 2023 (the effective date of AD 2023–04–05).

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2022–0125 is at the applicable "thresholds" as incorporated by the requirements of paragraph (3) of EASA AD 2022–0125, or within 90 days after April 10, 2023 (the effective date of AD 2023–04–05), whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2022–0125 do not apply to this AD.

(6) The "Remarks" section of EASA AD 2022–0125 does not apply to this AD.

(i) Retained Provisions for Alternative Actions and Intervals From AD 2023–04–05, With No Changes

This paragraph restates the requirements of paragraph (l) of AD 2023–04–05, with no changes. Except as required by paragraphs (j) and (n) 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) and intervals are allowed unless they are approved as specified in the provisions of the "Ref. Publications" section of EASA AD 2022–0125.

(j) Retained Revision of the Existing Maintenance or Inspection Program From AD 2023–12–03, With New Terminating Action

This paragraph restates the requirements of paragraph (g) of AD 2023–12–03, with new terminating action. For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before November 1, 2022: Except as specified in paragraph (k) of this AD, comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0004, dated January 6, 2023 (EASA AD 2023–0004). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (n) of this AD terminates the requirements of this paragraph.

(k) Retained Exceptions to EASA AD 2023–0004, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2023–12–03, with no changes.

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0004.

(2) Paragraph (3) of EASA AD 2023–0004 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 August 7, 2023 (the effective date of AD 2023–12–03).

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2023–0004 is on or before the applicable “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2023–0004, or within 90 days after August 7, 2023 (the effective date of AD 2023–12–03), whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) of EASA AD 2023–0004.

(5) This AD does not adopt the “Remarks” section of EASA AD 2023–0004.

(l) Retained Provisions for Alternative Actions and Intervals From AD 2023–12–03, With No Changes

This paragraph restates the requirements of paragraph (i) of AD 2023–12–03, with no changes. Except as required by paragraph (n) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (j) 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 2023–0004.

(m) Retained Terminating Action From AD 2023–12–03, With No Changes

This paragraph restates the terminating action specified in paragraph (j) of AD 2023–12–03, with no changes. Accomplishing the actions required by paragraph (j) of this AD terminates the corresponding requirements of paragraph (g) of this AD, for the tasks identified in the material referenced in EASA AD 2023–0004 only.

(n) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (o) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2024–0005, dated January 5, 2024 (EASA AD 2024–0005). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraphs (g) and (j) of this AD.

(o) Exceptions to EASA AD 2024–0005

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2024–0005.

(2) Paragraph (3) of EASA AD 2024–0005 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 2024–0005 is at the applicable “limitations” and “associated thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2024–0005, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraphs (4) and (5) of EASA AD 2024–0005.

(5) This AD does not adopt the “Remarks” section of EASA AD 2024–0005.

(p) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (n) 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 2024–0005.

(q) Additional AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer*: For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, 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.

(r) 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 dat.v.le@faa.gov.

(s) Material Incorporated by Reference

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

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

(3) The following material was approved for IBR on November 15, 2024.

(i) European Union Aviation Safety Agency (EASA) AD 2024–0005, dated January 5, 2024.

(ii) [Reserved]

(4) The following material was approved for IBR on August 7, 2023 (88 FR 42598, July 3, 2023; corrected August 7, 2023 (88 FR 52024)).

(i) EASA AD 2023–0004, dated January 6, 2023.

(ii) [Reserved]

(5) The following material was approved for IBR on April 10, 2023 (88 FR 13668, March 6, 2023).

(i) EASA AD 2022–0125, dated June 28, 2022.

(ii) [Reserved]

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

(7) 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.

(8) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit www.archives.gov/federal-register/cfr/ibr-locations or email fr.inspection@nara.gov.

Issued on September 11, 2024.

Suzanne Masterson,
Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.

[FR Doc. 2024–23540 Filed 10–10–24; 8:45 am]

BILLING CODE 4910–13–P

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

[Docket No. FAA–2024–2329; Project Identifier AD–2024–00451–R; Amendment 39–22864; AD 2024–20–05]

RIN 2120–AA64

Airworthiness Directives; Columbia Helicopters, Inc., and Restricted Category Model CH–47D Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Columbia Helicopters, Inc., Model 234 helicopters and restricted category Model CH–47D helicopters. This AD was prompted by two reports of a flight control rigid connecting link (link) failure, due to a manufacturing defect.

This AD requires removing certain links from service and prohibits installing those links. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 28, 2024.

The FAA must receive comments on this AD by November 25, 2024.

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

- *Federal eRulemaking Portal:* Go to [regulations.gov](https://www.regulations.gov). Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at [regulations.gov](https://www.regulations.gov) under Docket No. FAA-2024-2329; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Related Material: For Boeing material identified in this AD, contact Billings Flying Service, Inc., 309 Jellison Road, Billings, MT 59101; phone: (406) 252-6937; email: jed@flybfs.com.

FOR FURTHER INFORMATION CONTACT: David Herron, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (206) 231-3544; email: david.herron@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2024-2329; Project Identifier AD-2024-00451-R” at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR

11.35, the FAA will post all comments received, without change, to [regulations.gov](https://www.regulations.gov), including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as “PROPIN.” The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to David Herron, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (206) 231-3544; email: david.herron@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 received two reports of a link part number (P/N) 145C3340-10 failure involving a Model CH-47D helicopter. In both reports, it was determined that the failed link was manufactured by Aero Components Inc., which was not an approved supplier for these links. Boeing advised that failure of one link was caused by an eccentricity of the threaded bore in the end of the tube associated with the rod-end installation, which was determined to be a manufacturing defect; this resulted in a thin wall condition on one side. Failure of the other link showed the same contributor, but on the opposite end of the tube.

Boeing advised some links having P/N 145C3340 have been found to have missing or illegible markings; however, both failed links involve clear Aero Components Inc. CAGE code markings. Columbia Helicopters, Inc., Model 234 helicopters are also affected by the unsafe condition since the affected links may also be installed on that model helicopter.

This condition, if not addressed, could result in link failure within the flight control system due to fatigue. The

FAA is issuing this AD to address the unsafe condition on these products and subsequent immediate loss of control of the helicopter.

FAA's Determination

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

Related Material

The FAA reviewed Boeing CH-47 Service Bulletin No. 145-67-1047, dated May 22, 2024. This material specifies procedures for inspecting link P/N 145C3340-10 to determine its manufacturing code and, depending on the results, contacting Boeing for additional assistance or replacing the link.

AD Requirements

This AD requires removing links P/N 145C3340-10 with manufacturing CAGE code 59213 from service and prohibits installing those links on any helicopter.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because the affected component is part of an assembly that is critical to the flight control of a helicopter, such that if failure occurs in the affected component subsequent immediate loss of control of a helicopter will occur. As the FAA has no information pertaining to the extent of fatigue of the affected component that may currently exist in helicopters or how quickly the condition may propagate to failure, the actions required by this AD must be accomplished within 5 days. The compliance time in this AD is shorter than the time necessary for the public to comment and for publication of the final

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

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 36 helicopters of U.S. registry. Labor costs are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Replacing a link will take 8 work-hours and parts will cost \$1,963 for an estimated cost of \$2,643 per helicopter.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866, and
- (2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2024–20–05 Columbia Helicopters, Inc., and Restricted Category Model CH–47D Helicopters: Amendment 39–22864; Docket No. FAA–2024–2329; Project Identifier AD–2024–00451–R.

(a) Effective Date

This airworthiness directive (AD) is effective October 28, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the helicopters identified in paragraphs (c)(1) and (2) of this AD with a flight control rigid connecting link (link) part number (P/N) 145C3340–10 having manufacturing CAGE code 59213, a link P/N 145C3340–10 having an unknown manufacturing CAGE code, a link with an unknown P/N having manufacturing CAGE code 59213, or a link with an unknown P/N and unknown manufacturing CAGE code, installed.

- (1) Columbia Helicopters, Inc., Model 234 helicopters, certificated in any category; and
- (2) Restricted category Model CH–47D helicopters; current type certificate holders include, but are not limited to, Billings Flying Service, Inc., Columbia Helicopters, Inc., Tandem Rotor, LLC, and Unical Air Inc.

Note 1 to paragraph (c): A flight control rigid connecting link is also referred to as a rigid connecting link in related material.

Note 2 to paragraph (c): The P/N and manufacturing CAGE code information may be located on the tube of the link assembly. Information about the location of the P/N and manufacturing CAGE code is available in Boeing Service Bulletin CH–47, No. 145–67–1047, dated May 22, 2024.

(d) Subject

Joint Aircraft System Component (JASC) Code: 2700, Flight control systems.

(e) Unsafe Condition

This AD was prompted by two reports of a link failure, due to a manufacturing defect. The FAA is issuing this AD to address non-conforming links. The unsafe condition, if not addressed, could result in a link failure within the flight control system due to fatigue and subsequent immediate loss of control of the helicopter.

(f) Compliance

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

(g) Required Actions

Within 5 days after the effective date of this AD, remove the link from service and replace it with an airworthy link.

(h) Parts Installation Prohibition

As of the effective date of this AD, do not install a link identified in the introductory text of paragraph (c) of this AD on any helicopter.

(i) Special Flight Permit

Special flight permits are prohibited.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Additional Information

(1) For more information about this AD, contact David Herron, Aviation Safety Engineer, FAA, 3960 Paramount Boulevard, Lakewood, CA 90712; phone: (206) 231–3544; email: david.herron@faa.gov.

(2) For Boeing material identified in this AD that is not incorporated by reference, contact Billings Flying Service, Inc., 309 Jellison Road, Billings, MT 59101; phone: (406) 252–6937; email: jed@flybfscom.

(l) Material Incorporated by Reference

None.

Issued on October 3, 2024.

Steven W. Thompson,

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

[FR Doc. 2024–23547 Filed 10–8–24; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY**Financial Crimes Enforcement Network****31 CFR Part 1010****Imposition of Special Measure Prohibiting the Transmittal of Funds Involving PM2BTC**

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Final order.

SUMMARY: FinCEN is issuing notice of an order, pursuant to the Combating Russian Money Laundering Act, as amended by the National Defense Authorization Act for Fiscal Year 2022, to prohibit certain transmittals of funds by any covered financial institution involving PM2BTC, a financial institution operating outside of the United States determined to be of a primary money laundering concern in connection with Russian illicit finance.

DATES: This order is effective October 11, 2024.

FOR FURTHER INFORMATION CONTACT: The FinCEN Resource Center, 1-800-767-2825 or electronically at frc@fincen.gov.

SUPPLEMENTARY INFORMATION:**I. Summary of Order**

This order (1) sets forth FinCEN's determination that PM2BTC, an unincorporated convertible virtual currency (CVC) exchanger (a type of virtual asset service provider or VASP), is a financial institution operating outside of the United States that is of primary money laundering concern¹ in connection with Russian illicit finance; and (2) prohibits certain transmittals of funds involving PM2BTC by any covered financial institution.

As set out in this order, PM2BTC, a CVC exchanger offering CVC and fiat currency exchange services with significant ties to, and connections with, Russia, is of primary money laundering in connection with Russian illicit finance through its facilitation of funds transfers by illicit actors and association with a wide array of illicit activities, including fraud schemes, sanctions evasion, ransomware attacks, and child abuse.

¹ The application of FinCEN's authorities in this order is specific only to section 9714 of the Combating Russian Money Laundering Act, as amended. It is not intended to otherwise reflect the applicability of, or obligations under, any provision of the Bank Secrecy Act (BSA) or its implementing regulations, and FinCEN has not considered the extent to which PM2BTC does business in the United States.

II. Background**A. Statutory provisions**

Section 9714(a) of the Combating Russian Money Laundering Act (Pub. L. 116-283), as amended by section 6106(b) of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117-81) (hereafter, "section 9714"),² provides, in relevant part, that, if the Secretary of the Treasury (Secretary) "determines that reasonable grounds exist for concluding that one or more financial institutions operating outside of the United States . . . is of primary money laundering concern in connection with Russian illicit finance," the Secretary may, "by order, regulation, or otherwise as permitted by law": (1) require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in 31 U.S.C. 5318A(b);³ or (2) prohibit, or impose conditions upon, certain transmittals of funds (as defined by the Secretary) by any domestic financial institution or domestic financial agency, if such transmittal of funds involves any such institution. The authority of the Secretary to administer both section 9714 and the Bank Secrecy Act (BSA) has been delegated to FinCEN.⁴

The six special measures set out in section 9714 are prophylactic safeguards that may be employed to defend the United States financial system from money laundering and terrorist financing risks with a nexus to Russian illicit finance. The Secretary may impose one or more of these special measures in order to protect the U.S. financial system from such threats. Specifically, the Secretary may impose any of the five special measures set out in 31 U.S.C. 5318A, commonly known as section 311 of the USA PATRIOT Act. Through special measure one, the Secretary may require domestic financial institutions and domestic financial agencies to maintain records,

² Section 9714 (as amended) may be found in a note to 31 U.S.C. 5318A.

³ 31 U.S.C. 5318A grants the Secretary the authority, upon finding that reasonable grounds exist for concluding that one or more financial institutions operating outside of the United States is of primary money laundering concern, to require domestic financial institutions and domestic financial agencies to take certain "special measures."

⁴ Pursuant to Treasury Order 180-01, the authority of the Secretary of the Treasury (Secretary) to administer the BSA, including, but not limited to, 31 U.S.C. 5318A, has been delegated to the Director of FinCEN. Treasury Order 180-01 (Jan. 14, 2020). On August 11, 2022, and in accordance with Treasury Order 101-05 and 31 U.S.C. 321(b), Treasury's Under Secretary for Terrorism & Financial Intelligence re-delegated to the Director of FinCEN the authority of the Secretary under section 9714.

file reports, or both, concerning the aggregate amount of transactions or individual transactions.⁵ Through special measures two through four, the Secretary may impose additional recordkeeping, information collection, and reporting requirements on covered domestic financial institutions and domestic financial agencies.⁶ Through special measure five, the Secretary may prohibit, or impose conditions upon, the opening or maintaining in the United States of correspondent or payable-through accounts for or on behalf of a foreign banking institution, if the class of transactions found to be of primary money laundering concern may be conducted through such correspondent account or payable-through account.⁷ In addition to the special measures set out in 31 U.S.C. 5318A, section 9714 also provides that the Secretary may impose a special measure prohibiting, or imposing conditions upon, certain transmittals of funds.⁸

B. PM2BTC

PM2BTC is a CVC exchanger, a category of VASP, that exists as a collection of several exchange services. By its own account, PM2BTC is comprised of the following exchange services: PM2BTC.ME, BTC2PM.ME, PM2CASHIN.ME, BTC2CASHIN.ME, PM2WM.ME, and BTC2WM.ME.⁹

Although PM2BTC—through each of its constituent exchange services—is advertised as an automated web product, FinCEN assesses that this collective grouping of exchange services should be considered a single organization, and for that reason, FinCEN will correspondingly refer to this collective, its activities, and its website as "PM2BTC". Indeed, notwithstanding the characterization in its advertisements, PM2BTC holds itself out as a legal person insofar as PM2BTC states—in its terms of service—that use of its exchange services constitutes a contract between parties to an agreement, with PM2BTC expressly identified as a party. Consistent with that characterization in its terms of service, FinCEN assesses that PM2BTC also operates as a standard organization, comprised of its founders/operators and employees, with consistent and

⁵ See section 9714(a)(1); 31 U.S.C. 5318A(b)(1).

⁶ See section 9714(a)(1); 31 U.S.C. 5318A(b)(2)–(b)(4).

⁷ See section 9714(a)(1); 31 U.S.C. 5318A(b)(5).

⁸ See section 9714(a)(2).

⁹ This statement was made by the BitcoinTalk user, "pm2btc," which FinCEN assesses is the official account for PM2BTC, on the CVC forum BitcoinTalk. See BitcoinTalk, PM2BTC Post, available at <https://bitcointalk.org/index.php?topic=639799.msg7140395#msg7140395> (last accessed Sept. 17, 2024).

has ongoing arrangements with numerous Russian financial institutions and financial service providers, including but not limited to JSC Alfa-Bank (Alfa-Bank),²² Perfect Money, WebMoney, and Limited Liability Company YooMoney (YooMoney).²³ For instance, according to PM2BTC's official BTC2CASHIN.ME website, PM2BTC's services that offer conversion of BTC to cash for customers contain a drop-down menu called "method of obtaining" for customers to select which of the financial institutions they wish to transact with. The dropdown menu lists numerous Russian banks and money service businesses, including, but not limited to, Alfa-Bank and YooMoney.

III. Finding That PM2BTC Is of Primary Money Laundering Concern in Connection With Russian Illicit Finance

Based on public and non-public information available to FinCEN, FinCEN finds that reasonable grounds exist for concluding that PM2BTC, a CVC exchanger with significant ties to and connections with Russia, is a financial institution of primary money laundering concern in connection with Russian illicit finance through its facilitation of funds transfers by Russian-affiliated illicit actors and associated with a wide array of illicit activities, including fraud schemes, sanctions evasion, ransomware attacks, and child abuse.

BTC2CASHIN, available at <https://btc2cashin.me> (last accessed Sept. 17, 2024), <https://pm2cashin.me> (last accessed Sept. 17, 2024); BTC2CASHIN, available at <https://btc2cashin.me> (last accessed Sept. 17, 2024).

²² On April 6, 2022, Treasury's Office of Foreign Assets Control (OFAC) sanctioned Alfa-Bank and six of its subsidiaries pursuant to E.O. 14024 for having operated in the Russian financial services sector. Treasury, Press Release, *U.S. Treasury Escalates Sanctions on Russia for its Atrocities in Ukraine* (Apr. 6, 2022), available at <https://home.treasury.gov/news/press-releases/jy0705>.

²³ On February 24, 2022, OFAC sanctioned YooMoney (also known as Yoo Money, Yu Money, and Yandex Money). Treasury, Press Release, *U.S. Treasury Announces Unprecedented & Expansive Sanctions Against Russia, Imposing Swift and Severe Economic Costs* (Feb. 24, 2022), available at <https://home.treasury.gov/news/press-releases/jy0608>; see also Treasury, Press Release, *U.S. Treasury Escalates Sanctions on Russia for its Atrocities in Ukraine* (Apr. 6, 2022), available at <https://home.treasury.gov/news/press-releases/jy0705>; Treasury, Sanctions List Search, Limited Liability Company YooMoney, available at <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=34597>. Yoo Money is a Moscow, Russia based payment processor that was acquired by PJSC Sberbank (Sberbank) on July 2, 2020, available at <https://www.crunchbase.com/organization/yandex-money> (last accessed on Sept. 17, 2024). The BTC2CASHIN.ME website uses the spelling "Yu Money", but FinCEN assesses this is a transliteration variant and will subsequently refer to the entity as "Limited Liability Company YooMoney". See *id.*

A. The Extent to Which PM2BTC Is of Money Laundering Concern in Connection With Russian Illicit Finance

Based on blockchain analysis, FinCEN identified significant ties between PM2BTC and a broad spectrum of illicit actors and illicit activities. FinCEN's analysis, using the combined counterparty information from two clusters attributed to PM2BTC by commercially available blockchain analytic software found that a substantial percentage of transactions processed through PM2BTC were associated with wallet addresses linked to illicit actors and activity, including fraud shops, illicit actors or organizations, sanctioned persons and jurisdictions, ransomware attackers, darknet markets (DNMs), scam operators, child abuse materials traffickers, and entities that are the subject of FinCEN-imposed special measures. In addition to the specific categories of illicit activity with which PM2BTC is associated, FinCEN determined that PM2BTC facilitates a disproportionately high volume of suspected illicit activity compared to peer exchange service providers. Moreover, alarmingly, PM2BTC also employs a technique that is used to stymie the ability to trace illicit funds to or from PM2BTC, which permits illicit actors access to a money laundering platform and also decreases the risk of this activity being identified by investigating authorities.

1. PM2BTC's Disproportionate Volume of Transactions Involving Illicit Activities

As a threshold matter, FinCEN found that a predominant percentage of transactions processed through PM2BTC were linked to suspected illicit activity. Based on analysis conducted using commercially available blockchain analysis software A, FinCEN has determined that, as a percentage of all funds transacted before July 2023, the cumulative value of suspected illicit funds accounted for up to 43.1 percent of all CVC received by PM2BTC. Those funds were associated with suspected illicit activities that include, in order of cumulative value, fraud schemes, transfers of stolen funds, sanctions evasion, terrorist financing, ransomware payments, and child abuse materials transactions. Significantly, further analysis comparing transactions through PM2BTC against transactions involving 1,244 other VASPs from around the world indicated that, after adjusting for the relative size of the other VASPs analyzed, PM2BTC is in the top one percent of direct receiving exposure and

the top two percent of indirect receiving exposure to the categories deemed to be associated with suspected illicit activity. In short, PM2BTC has exceedingly high exposure to, and association with, transactions associated with suspected illicit activity compared to peer VASPs throughout the world, presenting a significant money laundering risk.

2. PM2BTC's Ties to Illicit Actors

PM2BTC's exposure to, and facilitation of, transactions associated with suspected illicit activity is, importantly, consistent with its long-standing associations with a wide range of illicit actors, including, in particular, Russian ransomware groups, darknet markets, and sanctioned persons.

For several years, PM2BTC processed, for example, a substantial volume of transactions associated with the now-defunct Conti and Trickbot ransomware gangs.²⁴ According to blockchain analysis using commercially available blockchain analytic software, between February 5, 2018, and February 2, 2021,

²⁴ Based on public and non-public information, FinCEN assesses that, on or around 2021, the Conti and Trickbot ransomware gangs had effectively merged and were effectively one and the same. For further details concerning Trickbot and its relation to Conti or their collective Russia connections, see WIRED, *Leaked Ransomware Doc Show Conti Helping Putin from Shadows* (Mar. 18, 2022), available at <https://www.wired.com/story/conti-ransomware-russia/> (describing Conti's pledged allegiance to Russia, its connection to Russian cybercrime and Russia's intelligence apparatus); CPO Magazine, *After Declaring Support for Russian Invasion, Conti Ransomware Gang Hit With Data Leak* (Mar. 8, 2022), available at <https://www.cpomagazine.com/cyber-security/after-declaring-support-for-russian-invasion-conti-ransomware-gang-hit-with-data-leak/> (concerning Conti's relationship with Russian law enforcement); CyberScoop, *Conti Ransomware Group Announces Support of Russia, Threatens Retaliatory Attack* (Feb. 25, 2022), available at <https://cyberscoop.com/conti-ransomware-russia-ukraine-critical-infrastructure/>; Reuters, *Russia-Based ransomware Group Conti Issues Warning to Kremlin Foes* (Feb. 26, 2022), available at <https://www.reuters.com/technology/russia-based-ransomware-group-conti-issues-warning-kremlin-foes-2022-02-25/> (concerning Trickbot's support of the Russian Government); Security Week, *Conti Ransomware 'Acquires' Trickbot as it Thrives Amid Crackdowns* (Feb. 21, 2022), available at <https://www.securityweek.com/conti-ransomware-acquires-trickbot-it-thrives-amid-crackdowns/>; WIRED, *Inside Trickbot, Russia's Notorious Ransomware Gang* (Feb. 1, 2022), available at <https://www.wired.com/story/trickbot-malware-group-internal-messages/> (concerning the connection between Trickbot and Conti); Department of Justice, *Russian National Sentenced for Involvement in Development and Deployment of Trickbot Malware* (Jan. 25, 2024), available at <https://www.justice.gov/opa/pr/russian-national-sentenced-involvement-development-and-deployment-trickbot-malware>; Treasury, *United States and United Kingdom Sanction Additional Members of the Russia-Based Trickbot Cybercrime Gang* (Sept. 7, 2023), available at <https://home.treasury.gov/news/press-releases/jy1714> (concerning recent U.S. government actions against Trickbot).

Trickbot, including its affiliates and associates, processed approximately \$4,299,457 of CVC through PM2BTC.²⁵ Those transactions constituted, by value, a significant majority of PM2BTC's ransomware-related financial activity during the period. In addition, although the Conti and Trickbot ransomware gangs are now defunct, PM2BTC continues to process transactions involving CVC from sources attributed to other variants of ransomware.

In addition to ties to ransomware-related transactions, PM2BTC has a long history of facilitating transactions involving darknet²⁶ markets, including the now-defunct Russia-linked darknet markets Hydra—which was sanctioned by OFAC in April 2022²⁷—and Ferum Shop.²⁸ Darknet markets are fundamentally illicit in nature and can operate largely as a result of the inherent anonymity of the darknet infrastructure, facilitating illicit activity because of the difficulty involved for law enforcement in identifying users, infrastructure, and even domains associated with the sale of illicit goods and services.²⁹ FinCEN assesses that,

²⁵ This analysis takes into account only direct transfers (e.g., where an address attributed to Trickbot transfers directly to PM2BTC). It does not include indirect exposure in which Trickbot sought to obfuscate the transactional path between their addresses and PM2BTC, nor does it include any transfers in which Trickbot first sent to another service and subsequently sent from that service to PM2BTC. All transaction values throughout this Order represent the USD exchange rate of the CVC at the time of the transaction.

²⁶ “Darknet” is a term used to refer to networks that are only accessible through the use of specific software or network configurations. In particular, darknet content is not indexed by web search engines, and is often accessed via anonymized, encrypted systems like the software The Onion Router (TOR). Darknet markets are online markets only accessible with the use of software like TOR, and because such markets are not indexed, they can only be found if the domain name and URL are already known to the user. As a result of the inherent anonymity of the darknet infrastructure, darknets facilitate criminal activity because of the difficulty involved for law enforcement in identifying users, infrastructure, and even domains associated with the sale of illicit goods and services.

²⁷ See Treasury, Press Release, *Treasury Sanctions Russia-Based Hydra, World's Largest Darknet Market, and Ransomware-Enabling Virtual Currency Exchange Garantex* (Apr. 5, 2022), available at <https://home.treasury.gov/news/press-releases/jy0701>.

²⁸ Elliptic, *Elliptic Analysis: Russia Seizes Four Major Dark Web Carding Sites with \$263 million in crypto sales* (Feb. 9, 2022), available at <https://www.elliptic.co/blog/russia-seizes-four-major-dark-web-carding-sites-with-263-million-in-crypto-sales>.

²⁹ FinCEN, Proposal of Special Measure Regarding Convertible Virtual Currency Mixing, as a Class of Transactions of Primary Money Laundering Concern, 88 FR 72701 (Oct. 23, 2023), available at <https://www.federalregister.gov/documents/2023/10/23/2023-23449/proposal-of-special-measure-regarding-convertible-virtual-currency-mixing-as-a-class-of-transactions>.

between 2016 and 2022, PM2BTC regularly processed transactions involving Hydra and Ferum Shop. For instance, between June 15, 2016, and January 30, 2021, Hydra sent a total of \$41,361 worth of CVC to PM2BTC. Similarly, based on analysis conducted using commercially available blockchain analytic software, Ferum Shop sent a total of \$3,453,610 worth of CVC to PM2BTC between April 6, 2021, and February 8, 2022. In addition, although Hydra and Ferum Shop have now been shut down,³⁰ PM2BTC continues to process a substantial volume of transactions, by value, associated with darknet markets. Indeed, based on analysis conducted using commercially available blockchain analytic software, PM2BTC processed transactions valued at over \$600,000 involving other darknet markets between July 22, 2023, and January 14, 2024.

Finally, PM2BTC has long-standing and close ties to an array of Russian or Russian-affiliated financial institutions that are the subject of U.S. sanctions or other restrictions. As noted earlier, PM2BTC has ongoing arrangements with numerous Russian financial institutions and financial service providers, including but not limited to YooMoney (an affiliate of Sberbank) and Alfa-Bank, each of which are the subject of U.S. sanctions.³¹ In addition, since 2020, PM2BTC has conducted an increasing volume of transactional activity with Garantex, a Russian-affiliated VASP that was sanctioned by the United States in April 2022.³² Between November 11, 2020, and September 20, 2023, PM2BTC engaged in CVC transactions with a value of nearly \$300,000 involving Garantex, and notably, the bulk of those transactions occurred only after sanctions were imposed on Garantex. During largely the same period, PM2BTC also engaged in a sizable volume of transactions with

³⁰ In February 2022, the Russian Ministry of Internal Affairs took down four major illicit dark websites: Sky-Fraud Forum, Trump's Dumps, UAS Store, and Ferum Shop. Elliptic, *Elliptic Analysis: Russia Seizes Four Major Dark Web Carding Sites with \$263 million in crypto sales* (Feb. 9, 2022), available at <https://www.elliptic.co/blog/russia-seizes-four-major-dark-web-carding-sites-with-263-million-in-crypto-sales>. Because the Russian Ministry of Internal Affairs carried out what amounts to a coordinated, simultaneous takedown of multiple darknet markets, but indicated no coordination with any international partners, FinCEN assesses Ferum Shop was at least partially operated in Russia.

³¹ See *supra* notes 22–23.

³² See Treasury, Press Release, *Treasury Sanctions Russia-Based Hydra, World's Largest Darknet Market, and Ransomware-Enabling Virtual Currency Exchange Garantex* (Apr. 5, 2022), available at <https://home.treasury.gov/news/press-releases/jy0701>.

Bitzlato Limited (Bitzlato), a Russian-affiliated CVC exchanger identified by FinCEN in January 2023 as a financial institution operating outside of the United States that was of primary money laundering concern in connection with Russian illicit finance, under section 9714.³³ According to blockchain analysis conducted by FinCEN using commercially available blockchain analytic software, between May 10, 2018, and January 17, 2023, Bitzlato sent approximately \$154,429 worth of CVC to PM2BTC and, in turn, received approximately \$541,307 worth of CVC from PM2BTC.

Taken as a whole, PM2BTC's historic and ongoing facilitation of transactions by, and associations with, illicit actors, including ransomware groups, darknet markets, and sanctioned persons connected to Russian illicit finance, combined with its access to international markets presents substantial money laundering risk.

3. PM2BTC's Lax Anti-Money Launder Policies and Procedures

The risks presented by PM2BTC associations with illicit actors and comparative high volume of transactional activity linked to suspected illicit activity are compounded by PM2BTC's lax KYC and AML policies and procedures, as well as recent technical changes that have the effect of obscuring PM2BTC's involvement in transactions.

Although PM2BTC purports to maintain KYC and AML policies and procedures, those policies and procedures appear inadequate and loosely implemented. According to its website, PM2BTC “adhere[s] to a number of rules and implements a number of procedures aimed at preventing the use of the service for the purpose of money laundering operations.”³⁴ Moreover, as set out in its terms of service, PM2BTC retains the ability to, and may, suspend the execution of transactions until verification is carried out in accordance

³³ FinCEN, *Imposition of Special Measure Prohibiting the Transmittal of Funds Involving Bitzlato*, 88 FR 3919 (Jan. 23, 2023) available at <https://www.federalregister.gov/documents/2023/01/23/2023-01189/imposition-of-special-measure-prohibiting-the-transmittal-of-funds-involving-bitzlato>.

³⁴ PM2BTC Terms, available at <https://pm2btc.me/terms> (last accessed Sept. 17, 2024); BTC2CASHIN Terms, available at <https://btc2cashin.me/terms> (last accessed Sept. 17, 2024); BTC2WM Terms available at <https://btc2wm.me/terms> (last accessed Sept. 17, 2024); BTC2PM Terms, available at <https://btc2pm.me/terms> (last accessed Sept. 17, 2024); PM2WM Terms available at <https://pm2wm.me/terms> (last accessed Sept. 17, 2024); PM2CASHIN Terms available at <https://pm2cashin.me/terms> (last accessed Sept. 17, 2024).

with the Financial Action Task Force (FATF) recommendations and “request from the User identification data and data confirming the source of funds.”³⁵

However, in practice, PM2BTC appears to only require users to provide the following information in order to conduct a transaction: (1) the type of CVC involved; (2) the value of the CVC to be sent or received; and (3) an email address (required “in order to communicate with the User, if necessary, to notify about Service’s profitable offers”).³⁶ Such limited information is not consistent with FATF recommendations. There appears to be no requirement to provide a name, date of birth, address, national identification, or any other proof of identification—all necessary to meaningfully establish and verify the identity of users and core features of the FATF’s guidance on necessary official identity data points for an effective KYC and AML program.³⁷ Indeed, in contrast to PM2BTC’s claim that it adheres to FATF standards, it represents that it offers “[c]omplete anonymity of exchanges” and that “[t]here is no need to register or undergo any verification to make an exchange.”³⁸

Notwithstanding its purported policies and procedures, FinCEN assesses that PM2BTC has implemented technical changes to its wallet arrangement that have the effect of obscuring its involvement when transacting with other VASPs. On or around July 2023, FinCEN assesses that PM2BTC implemented a cyclical infrastructure setup—a continuous creation of new wallets which are rotating and temporary—that avoids the reuse of wallets and, contrary to standard practice among VASPs, impedes any capacity to capture long-

term transactional histories that would allow financial institutions to identify PM2BTC as the counterparty to a transaction. This typology is not wholly new and, for instance, has been employed by several VASPs of concern, some of whom are subjected to OFAC sanctions. In FinCEN’s assessment, this typology can be, and has been, used to facilitate evasion of U.S. sanctions. Here, FinCEN assesses that PM2BTC’s cyclical infrastructure setup is an effort to avoid blockchain forensics-based transaction monitoring—an outcome that is already evident in the precipitous decline in observable transactions associated with suspected illicit activity since July 2023. FinCEN assesses that this decline in such observable transactions is a result of PM2BTC’s efforts to avoid blockchain activity monitoring, and is not a true reflection of PM2BTC’s actual business activity with illicit actors.

Taken together, PM2BTC’s lax implementation of KYC and AML policies and procedures and adoption of a technical arrangement that inhibits effective blockchain analysis increases the risk PM2BTC poses to the international and U.S. financial systems.

B. Whether the Money Laundering Concern Posed by PM2BTC Outweighs Any Legitimate Business Activity It May Conduct

The record amply demonstrates that PM2BTC’s services are used, to an unusually large extent by comparison to other CVC exchanges, to facilitate illicit activities by illicit actors. Although PM2BTC offers services that could potentially be used by licit actors, those services may be found at other VASPs, including VASPs located in jurisdictions with robust AML/CFT frameworks and regulatory oversight. Legitimate actors have access to a broad range of comparable services that provide for appropriate transparency and can support international efforts to protect the integrity of the international financial system, including transactions involving CVC. Accordingly, given the extensive flow of illegitimate funds through PM2BTC, FinCEN assesses that the need to protect U.S. financial institutions from the money laundering risks presented by PM2BTC outweighs any potential legitimate utility its services may provide.

IV. Imposition of Special Measure Prohibiting Transmittals of Funds Involving PM2BTC

Having found that PM2BTC is a financial institution operating outside the United States that is of primary money laundering concern in

connection with Russian illicit finance, FinCEN has determined that the imposition of a special measure prohibiting certain transmittals of funds involving PM2BTC is warranted.³⁹

A. Whether the Prohibition of Certain Transmittals of Funds Involving PM2BTC Will Address the Money Laundering Concern in a Manner Consistent With U.S. National Security and Foreign Policy Interests

Given PM2BTC’s extensive association with suspected illicit activity and illicit actors, FinCEN assesses that imposing a prohibition on certain transmittals of funds involving PM2BTC is necessary to safeguard U.S. national security and the U.S. financial system, as well as serve key U.S. national security objectives. In light of the predominant percentage of transactions linked to known or suspected illicit activity processed through PM2BTC, prohibiting certain transmittals of funds involving PM2BTC will insulate the U.S. financial system from international money laundering and other financial crimes.

In particular, prohibiting certain transmittals of funds involving PM2BTC will further ongoing U.S. efforts to curtail suspected Russian-associated illicit activity and financial transactions. Targeting illicit proceeds obtained by ransomware actors, especially those with a nexus to Russia, is, for instance, a high priority for the United States. Recent actions by FinCEN, OFAC, and intergovernmental task forces have also focused on Russia-related illicit finance threats. Prohibiting certain transmittals of funds involving PM2BTC will serve the United States’ national security and foreign policy interests by protecting U.S. businesses and interests from known ransomware threat actors, by publicly countering a financing mechanism used by illicit entities, including entities that seek to further the Russian state’s aims of political and

³⁵ BTC2WM Terms, available at <https://btc2wm.me/terms> (last accessed Sept. 17, 2024); BTC2PM Terms available at <https://btc2pm.me/terms> (last accessed Sept. 17, 2024); BTC2CASHIN Terms, available at <https://btc2cashin.me/terms> (last accessed Sept. 17, 2024).

³⁶ BTC2CASHIN, available at <https://btc2cashin.me> (last accessed Sept. 17, 2024); see also, BTC2PM available at <https://btc2pm.me> (last accessed Sept. 17, 2024); BTC2WM, available at <https://www.btc2wm.me> (last accessed Sept. 17, 2024); PM2BTC, available at <https://pm2btc.me> (last accessed Sept. 17, 2024); PM2CASHIN, available at <https://pm2cashin.me> (last accessed Sept. 17, 2024); PM2WM, available at <https://pm2wm.me> (last accessed Sept. 17, 2024).

³⁷ FATF, Guidance on Digital Identity (Mar. 2020), at 63, available at <https://www.fatf-gafi.org/content/dam/fatf-gafi/guidance/Guidance-on-Digital-Identity.pdf>.

³⁸ This statement was made by the BitcoinTalk user, “pm2btc,” which FinCEN assesses is the official account for PM2BTC, on the CVC forum BitcoinTalk. See BitcoinTalk PM2BTC Post, available at <https://bitcointalk.org/index.php?topic=639799.msg7140395#msg7140395> (last accessed Sept. 17, 2024).

³⁹ In connection with this action, FinCEN consulted with staff at the following Departments and agencies with regard to the proposed order and prohibition: the Department of Justice; the Department of State; the Board of Governors of the Federal Reserve System; the Federal Deposit Insurance Corporation; the Securities and Exchange Commission; the Commodity Futures Trading Commission; the Office of the Comptroller of the Currency; and the National Credit Union Administration Board. Those consultations involved sharing drafts and information for the purpose of obtaining interagency views on the imposition of a prohibition on certain transmittals of funds by any domestic financial institution from or to PM2BTC, or from an account or CVC address administered by or on behalf of PM2BTC, and the effect that such a prohibition would have on the domestic and international financial system. Each of the Departments and agencies concurred in the issuance of this order.

economic destabilization. Similarly, such a prohibition would sever a pathway that might facilitate circumvention of U.S. economic sanctions, supporting the efficacy of U.S. sanctions and complementing previous actions taken by the U.S. government.

Additionally, this action reinforces the expectations of AML/CFT compliance in the virtual asset ecosystem in order to improve the identification and reporting of suspicious activity by financial institutions around the world.

B. Whether the Prohibition of Certain Transmittals of Funds Involving PM2BTC Would Impose Burdens on Legitimate Activity of PM2BTC or Third Parties

FinCEN assesses that prohibiting certain transmittal of funds involving PM2BTC will impose limited burdens on legitimate activities currently transacted through PM2BTC and, indeed, will have a positive systemic impact on the international payment, clearance, and settlement system.

By U.S. and international standards, PM2BTC represents a limited percentage of total received BTC (directly and indirectly). As of April 15, 2024, PM2BTC's total received value was between .0002 and 0.0014 percent (respectively) of the largest U.S.-domiciled CVC VASP (hereinafter referred to as "VASP 1"). PM2BTC's transaction history with VASP 1 totals just over \$32 million in CVC over nearly 11 years. By contrast, a CVC price and volume aggregator estimates that VASP 1 processed more than \$3 billion in transfers daily⁴⁰ as of April 17, 2024. By comparison, PM2BTC's largest U.S.-based counterparty (hereinafter referred to as "VASP 2") sent approximately \$147 million worth of CVC to PM2BTC between 2018 and 2024, which amounted to approximately 0.002 percent of VASP 2's overall sending activity. As such, there is no evidence that PM2BTC is a major participant in the international payment system or relied upon by the international banking community. Indeed, given its size and limited international presence, the legitimate business services that it offers would be readily available through other regulated institutions. Further, as noted in the February 16, 2022, Financial Stability Board's Assessment of Risks to Financial Stability, direct connections between CVC as a whole, and systemically important financial

institutions and core financial markets, are limited at present. Volatility and disruptions in the CVC ecosystem have been contained within the CVC markets and have not significantly spilled over to financial markets and infrastructures.⁴¹

Given widespread availability of other VASP services, as well as PM2BTC's predominant use for suspected illicit activity, imposing a prohibition on certain transmittals of funds involving PM2BTC will merely remove from transaction chains a VASP that facilitates illicit or otherwise unduly risky transactions that pose a risk to the international financial system. This action will not have an adverse impact on the international payment, clearance, and settlement system or on legitimate business activities currently involving PM2BTC.

Moreover, FinCEN assesses that imposing a prohibition on certain transmittals of funds involving PM2BTC will not present a significant competitive disadvantage for financial institutions organized or licensed in the United States given PM2BTC's relatively small size and the relatively limited burden that compliance with this order would impose. Given the small size of PM2BTC and the comparatively low value of activity between U.S. financial institutions and PM2BTC, FinCEN assesses that this would impose neither an undue cost nor substantial burden these financial institutions. Further, compliance with the prohibition on certain transmittals of funds set out in this order requires no tools or competencies other than those already employed by domestic financial institutions to maintain their current AML/CFT compliance programs. In order to ensure that is the case, FinCEN has elected to provide within this order for the rejection of certain transmittals of CVC that are received from or originate at PM2BTC and outline the steps a covered financial institution should take in such circumstances.

In providing for the rejection of CVC under certain limited circumstances, FinCEN acknowledges that, at this time, there are technological limitations that may limit or preclude covered financial institutions from declining CVC transfers originating at addresses outside of their control, and compliant institutions may find themselves in receipt of CVC from PM2BTC despite a desire and effort to limit such

exposure.⁴² This order allows covered financial institutions the flexibility to act with discretion based on the facts and circumstances of a particular transaction and comply with this order, even where the originating address is no longer accessible, where, for example, (1) CVC transfers originated from PM2BTC but were held for an extended period of time in an unhosted wallet, or (2) the covered financial institution's risk mitigation procedures would preclude returning funds to PM2BTC. Moreover, by providing for the rejection of CVC, this order ensures that covered financial institutions will not be subject to an undue cost or burden associated with compliance.

C. Whether Any Other Reasonable Alternatives or Special Measures Would Adequately Address the Money Laundering Concern

FinCEN considered other special measures available pursuant to section 9714 prior to selecting the prohibition reflected in this order.⁴³ However, prohibiting certain transmittals of funds involving PM2BTC is the only means of adequately addressing the money laundering concern in connection with Russian illicit finance posed by PM2BTC.

In particular, none of the special measures described in 31 U.S.C. 5318A would effectively address the illicit finance threat posed by PM2BTC.⁴⁴ Any

⁴² FinCEN notes that CVC payment systems are often designed to limit the control of specific financial institutions over transactions and to prevent rejections of funds by persons or entities other than the sender of funds. As a result, although covered financial institutions may institute an internal prohibition on the sending of CVC transactions to another address or entity, FinCEN assesses that there are few, if any, readily available ways for covered financial institutions to "reject" incoming CVC transactions (prior to receipt).

⁴³ Pursuant to section 9714, these measures include: (1) the special measures described in 31 U.S.C. 5318A, including the imposition of additional recordkeeping, information collection, and reporting requirements on covered U.S. financial institutions and/or the prohibition or imposition of conditions upon the opening or maintaining of correspondent or payable-through accounts for or on behalf of a foreign banking institution; and (2) the imposition of conditions on the transmittal of funds, as an alternative to a prohibition on the transmittal of funds.

⁴⁴ Likewise, imposing conditions on transmittals of funds, pursuant to section 9714(a)(2), would be insufficient to address the threat. While imposing conditions, rather than a full prohibition, may be appropriate in circumstances where the institution provides services for legitimate business that are not easily replicated or where a complete prohibition on transactional activity would otherwise unduly harm legitimate economic activity, PM2BTC provides a service that is easily obtainable for legitimate customers through other providers, and in this case the value of any legitimate activity it may conduct is outweighed by the significant proportion of illicit financial activity identified and its lack of mandatory KYC.

⁴⁰ CoinGecko, *Exchanges*, available at <https://www.coingecko.com/en/exchanges> (last accessed Sept. 17, 2024).

⁴¹ Financial Stability Board, *Assessment of Risks to Financial Stability from Crypto-assets* (Feb. 16, 2022), at 5, available at <https://www.fsb.org/wp-content/uploads/P160222.pdf> (last accessed Sept. 17, 2024).

additional recordkeeping, information collection, or reporting requirements, as described in 31 U.S.C 5318A(b)(1)–(4), would be insufficient to guard against the risks posed by covered financial institutions processing transmittals of funds involving PM2BTC. Such measures may allow such transfers to continue to benefit of illicit actors connected to Russian illicit finance. Further, placing conditions upon or prohibiting the opening or maintaining in the United States of a correspondent account or payable-through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, as described in 31 U.S.C 5318A(b)(5), is similarly inadequate because the types of CVC transactions that PM2BTC facilitates do not rely on correspondent or payable-through accounts, and FinCEN is unaware of such relationships between PM2BTC and U.S. or foreign financial institutions. In addition, PM2BTC's recordkeeping is incomplete, so imposing additional recordkeeping requirements is not likely to be successful or sufficient to address the risks it poses. For these reasons, FinCEN assesses that the prohibition on certain transmittals of funds, including CVC, involving PM2BTC is the most appropriate special measure.

D. Whether the Special Measure Prohibiting Certain Transmittals of Funds Should Be Imposed by Order or Regulation

Pursuant to section 9714, the Secretary may impose specified special measures, including a prohibition on certain transmittals of funds, “by order, regulation or otherwise as permitted by law.” In determining the appropriate approach in this instance, FinCEN considered imposing special measures by order or regulation. Although PM2BTC is not a large participant in the international payment system, FinCEN determined that proceeding by an order is the most appropriate course of action given the imminent threats posed by the illicit actors whose transactions and access to funds PM2BTC facilitates as well as the ongoing transactions associated with suspected illicit activity that continue to be processed through PM2BTC.

A copy of this order will be published in the **Federal Register**. To the extent PM2BTC or other parties have information relevant to this order, they may submit it to FinCEN at frc@fincen.gov.

V. Order

A. Definitions

1. PM2BTC

The order defines PM2BTC, a CVC exchanger comprised of a collection of the services PM2BTC.ME, BTC2PM.ME, PM2CASHIN.ME, BTC2CASHIN.ME, PM2WM.ME, and BTC2WM.ME, to mean all subsidiaries, branches, and offices of PM2BTC operating in any jurisdiction, as well as any successor entity.

2. Convertible Virtual Currency (CVC)

The order defines convertible virtual currency (CVC) as a medium of exchange that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. Despite having legal tender status in at least one jurisdiction, for the purpose of this order, Bitcoin is included as a type of CVC.

3. Covered Financial Institution

The order defines a covered financial institution as having the same meaning as “financial institution” in 31 CFR 1010.100(t).

4. CVC Exchanger

The order defines a CVC exchanger as any person engaged as a business in the exchange of CVC for fiat currency, funds, or other CVC.

5. Recipient

The order defines recipient as the person to be paid by the recipient's covered financial institution.

6. Successor Entity

The order defines successor entity as any person that replaces PM2BTC by acquiring its assets, in whole or in part, and/or carrying out the affairs of PM2BTC under a new name.

7. Transmittal of Funds

The order defines transmittal of funds as the sending and receiving of funds, including CVC.

8. Meaning of Other Terms

All terms used but not otherwise defined herein shall have the meaning set forth in 31 CFR Chapter X and 31 U.S.C. 5312.

B. Prohibition of the Transmittal of Funds Involving PM2BTC

1. Prohibition

A covered financial institution is prohibited from engaging in a transmittal of funds from or to PM2BTC, or from or to any account or CVC address administered by or on behalf of PM2BTC.

2. Rejection of Funds and Condition on the Transfer of Rejected Funds

A covered financial institution will be deemed not to have violated this Order where, upon determining that it received CVC that originated from PM2BTC or from an account or CVC address administered by or on behalf of PM2BTC, that covered financial institution rejects the transaction, preventing the intended recipient from accessing such CVC and returning the CVC to PM2BTC, or to the account or CVC address from which the CVC originated.

C. Order Period

The terms of this order are effective October 11, 2024, with no cessation date.

D. Reservation of Authority

FinCEN reserves its authority pursuant to section 9714 to impose conditions on certain transmittals of funds from or to PM2BTC, or from or to any account or CVC address administered by or on behalf of PM2BTC.

E. Other Obligations

Nothing in this order shall be construed to modify, impair, or otherwise affect any requirements or obligations to which a covered financial institution is subject pursuant to the BSA, including, but not limited to, the filing of Suspicious Activity Reports (SARs), or other applicable laws or regulations, such as the sanctions administered and enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control.

F. Penalties for Noncompliance

The covered financial institution, and any of its officers, directors, employees, and agents, may be liable for civil or criminal penalties under 31 U.S.C. 5321 and 5322 for violating any of the terms of this order.⁴⁵

G. Validity of Order

Any judicial determination that any provision of this order is invalid shall not affect the validity of any other provision of this order, and each other

⁴⁵ Section 6106(b) of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81) amended section 9714 of the Combatting Russian Money Laundering Act (Pub. L. 116–283) to, among other things, provide that the penalties set forth in 31 U.S.C. 5321 and 5322 shall apply to violations of any order, regulation, special measure, or other requirement imposed under section 9714, in the same manner and to the same extent described in sections 5321 and 5322.

provision shall thereafter remain in full force and effect.

Jimmy L. Kirby,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2024–23430 Filed 10–10–24; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2024–0919]

RIN 1625–AA08

Special Local Regulation; Elizabeth River, Norfolk Harbor, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulation for waters of the Elizabeth River, in Norfolk, Virginia to protect personnel, vessels, and the marine environment from potential hazards created by a boat parade that is scheduled for the afternoon of October 20, 2024. Parade participants operating within the regulated area must comply with all instructions given by the on-scene Patrol Commander (PATCOM). Vessels or persons entering the regulated area during the enforcement period are subject to the direction and control of the on-scene PATCOM as designated and specifically authorized by the Captain of the Port, Sector Virginia.

DATES: This rule is effective on October 20, 2024, from noon to 4 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2024–0919 in the search box and click “Search.” Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email LCDR Justin Strassfield, Sector Virginia Waterways Management Division, U.S. Coast Guard; telephone 757–668–5581, email Justin.Z.Strassfield@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations

COTP Captain of the Port

DHS Department of Homeland Security

FR Federal Register

NPRM Notice of proposed rulemaking

PATCOM Patrol Commander

§ Section

SLR Special Local Regulation

U.S.C. United States Code

II. Background Information and Regulatory History

The marine event sponsor of a boat parade is expecting to draw a high concentration of vessels to the Norfolk Harbor area along the proposed parade route. Traditionally, the Norfolk Harbor area serves as a major thoroughfare for commercial traffic, naval operations, ferry routes, and several other recreational uses through the connecting waters of the James River, Elizabeth River, and Lower Chesapeake Bay. The Coast Guard is establishing a Special Local Regulation (SLR) to monitor the parade before, during, and after the event to minimize impacts on this congested waterway. We must promulgate this rule by October 20, 2024, to ensure the safety of individuals, property, and the marine environment.

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because it would be impracticable to publish an NPRM, consider comments, and publish a final rule before this rule needs to be in place to serve its purpose. This rule is necessary to accommodate the number of vessels expected to participate in the boat parade.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the potentially significant increase in vessel traffic not local to the area and to the risks associated with large congregations of vessels navigating unfamiliar waters.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. Captains of the Port are authorized by 33 CFR 100.35 to issue SLRs. The Captain of the Port (COTP), Sector Virginia has determined that potential hazards associated with the proposed parade starting October 20, 2024, will be a safety concern for anyone within the vicinity of the parade route. This rule is

needed to protect personnel, vessels, and the marine environment in the navigable waters within the SLR during the enforcement period of this rule.

IV. Discussion of the Rule

This rule establishes an SLR from noon until 4 p.m. on October 20, 2024. The SLR will cover all navigable waters within the Elizabeth River from shoreline to shoreline beginning in the vicinity of the Craney Island Flats, proceeding south through the Norfolk Harbor Reaches, and ending at the Waterside District in Norfolk, Virginia, to promote safety along the “Mid-Atlantic Trump Boat Parade” route. The southern boundaries of the SLR are bound by the following fixed structures: all waters north of the I–264 Norfolk/Portsmouth (Downtown Tunnel), east of the West Norfolk Bridge and west of the Berkley Bridge. This SLR will also temporarily establish the southern area of Anchorage N (Hospital Point) as a First Amendment area (where people may lawfully assemble and convey their message in a safe manner to their intended audience), to be used at the discretion of the Coast Guard Patrol Commander (PATCOM) as a spectator area.

The duration of the SLR has been tailored to protect personnel, vessels, and the marine environment in these navigable waters when the parade is scheduled to occur, while minimizing the burden on routine vessel traffic. Vessels or persons entering the SLR during the enforcement period are subject to the direction and control of the on-scene PATCOM, as designated and specifically authorized by the Captain of the Port, Virginia.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on two considerations. The special local regulation will be enforced for only four hours on one day. Also, persons and vessels may still enter, transit through, anchor in, or remain within the regulated area or anchor in the spectator area, during the enforcement period if authorized by the COTP Virginia or a designated representative, who will be onsite to direct the movement of vessels such that unsafe conditions are avoided but will otherwise not interfere with commercial vessels or normal traffic in the area.

B. Impact on Small Entities

The regulatory flexibility analysis provisions of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, do not apply to rules not subject to notice and comment. As the Coast Guard has, for good cause, waived notice and comment requirement that would otherwise apply to this rulemaking, the Regulatory Flexibility Act's provisions do not apply here.

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves This rule involves an SLR lasting only 6 hours that will monitor entry to the SLR for the duration of the enforcement period to cover before, during and after the parade has concluded. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places, or vessels. All non-participant vessels or persons engaged in protest activity will be directed to the southern part of Anchorage N (Hospital Point) if they wish to remain in the regulated area.

List of Subjects in 33 CFR Part 100

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

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

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS.

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

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

■ 2. Add § 100. T599–0919 to read as follows:

§ 100. T599–0919 Special Local Regulation; Elizabeth River, Norfolk Harbor, Norfolk, VA

(a) Regulated area. The regulations in this section apply to the following areas (coordinates are based on Datum NAD 1983):

(1) All navigable waters of Hampton Roads Harbor, from surface to bottom, encompassed by a line connecting the following northern boundary points beginning from a position on the north coast of the Craney Island Disposal Area at 36°55.49' N, 076°22.40' W; leading north to position 36°56.64' N, 076°22.40' W; then east to the coast of Norfolk at 36°56.64' N, 076°19.73' W following all waters of the Elizabeth River from shoreline to shoreline; Craney Island Flats, Craney Island Reach, Lamberts Bend to Town Point Reach from surface to bottom, encompassed by the following southern boundary points; all waters west of the Berkely Bridge, north of the I–264 Norfolk/Portsmouth (Downtown Tunnel) and east of the West Norfolk Bridge. Any waters that are covered by a Department of Defense Restricted Area or Danger Zone are excluded from this regulated area.

(2) Special Spectator Area. All navigable waters from surface to bottom within the southern area of Anchorage N (Hospital Point), as specified in 33 CFR 110.168, and bound by a northern boundary line drawn easterly from Hospital Point.

(b) Definitions. As used in this section—

Designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty

officer, or other officer operating a Coast Guard vessel and a Federal, State, and local law enforcement officer designated by or assisting the Captain of the Port Sector Virginia (COTP) in the enforcement of the regulations in this section.

Participant means all persons and vessels directly engaged in the parade present within the established SLR during the enforcement period of the parade.

(c) Regulations. (1) All non-participants are prohibited from entering, transiting through, anchoring in, or getting underway within the regulated area described in paragraph (a)(1) of this section unless authorized by the Captain of the Port, Sector Virginia or their designated representative.

(2) To seek permission to enter, contact the COTP by calling the Sector Virginia Command Center at 757-638-6635 or contact the COTP's designated representative on Marine band Radio, VHF-FM channel 16 (156.8 MHz). Those in the regulated area must comply with all lawful orders or directions given to them by the COTP or the designated representative.

(3) All non-participants, including those engaged in protest activity, may be directed by a designated representative to enforcement area described in section (a)(2) of this section, where they must remain during the effective period unless otherwise authorized or directed.

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

(d) Enforcement period. This section will be enforced from noon to 4 p.m. on Saturday, October 20, 2024.

Dated: October 7, 2024.

P.M. Britton,

Captain, U.S. Coast Guard, Captain of the Port, Sector Virginia.

[FR Doc. 2024-23587 Filed 10-10-24; 8:45 am]

BILLING CODE 9110-04-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2023-0648; FRL-11992-02-R6]

Air Plan Approval; New Mexico; Periodic Emission Inventory SIP for Sunland Park Nonattainment Area for 2015 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions related to the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on November 12, 2024.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2023-0648. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through <https://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Ms. Nevine Salem, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-7222, salem.nevine@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

On July 3, 2024 (89 FR 55136), the EPA published a Notice of Proposed Rulemaking (NPRM) for the State of New Mexico. The NPRM proposed approval of the state's periodic emissions inventory for Sunland Park, Doña Ana County, New Mexico marginal nonattainment area for the 2015 NAAQS. The background for this action and rationale for EPA's proposed action are explained in the NPRM and will not be restated here. We received a comment on our proposal from the New Mexico Environmental Department (NMED). Our response to the comment follows.

II. Response to Comments

We received one comment from the NMED regarding an inadvertent typographical error in the NPRM—in tables 1 and 2 that summarized the NO_x and VOC emissions in Sunland Park, Doña Ana County, New Mexico. The ozone season daily emissions (lb/day) column in the NPRM showed some discrepancies from what was submitted by the State. In response, the EPA is making the necessary corrections in the updated tables 1, and 2 listed below. The corrected values in fact are less than what was previously listed in tables 1 and 2 of the proposed action. This correction does not change or affect the total NO_x or VOC emissions in the 2020 periodic emission inventory for Sunland Park marginal nonattainment area for a typical ozone season day. Additionally, the original tables were included in the State's SIP revision submittal,¹ in the rulemaking docket.

TABLE 1—NO_x EMISSIONS SUNLAND PARK, DOÑA ANA COUNTY, NEW MEXICO

Source category	Doña Ana County emissions (tpy)	Sunland Park, NM nonattainment emissions (tpy)	Sunland Park, NM nonattainment area ozone season daily emissions (lb/day)
Point	1,155.22	740.60	4,046.97
Nonpoint Area	1,588.62	42.01	215.22
Onroad	3,590.66	111.04	603.13
Nonroad	430.87	10.49	58.42

¹ A copy of the SIP revision is available online at www.regulations.gov, Docket number EPA-R06-OAR-2023-0648.

TABLE 1—NO_x EMISSIONS SUNLAND PARK, DOÑA ANA COUNTY, NEW MEXICO—Continued

Source category	Doña Ana County emissions (tpy)	Sunland Park, NM nonattainment emissions (tpy)	Sunland Park, NM nonattainment area ozone season daily emissions (lb/day)
Total	6,765.37	904.14	4,923.74

TABLE 2—VOC EMISSIONS SUNLAND PARK, DOÑA ANA COUNTY, NEW MEXICO

Source category	Doña Ana County emissions (tpy)	Sunland Park, NM nonattainment area emissions (tpy)	Sunland Park, NM nonattainment area ozone season daily emissions (lb/day)
Point	114.84	41.78	228.32
Nonpoint Area	10,933.55	134.11	552.64
Onroad	1,206.00	25.41	138.49
Nonroad	311.27	7.92	50.36
Total	12,565.66	209.23	969.82

NMED had another remark stating that no public hearing was conducted for this rulemaking. EPA confirms that in section III of the proposal, we stated that “*New Mexico notified the public in both English and Spanish and offered the opportunity for comment and public hearing. A full record of public notices is included in the state’s submittal. New Mexico did not receive any comments during the 30-day public comment period or request for public hearing*”.

III. Final Action

We are approving the New Mexico SIP revisions submitted on December 20, 2023, to address the periodic ozone season daily and annual ozone precursor emission inventories for NO_x and VOC for the Sunland Park, Doña Ana County, New Mexico, nonattainment area for the 2015 ozone NAAQS.

IV. Environmental Justice Considerations

The EPA reviewed demographic data, which provides an assessment of individual demographic groups of the populations living within the approximate 13.86 square miles contained in the portion of the ozone nonattainment area within Sunland Park, New Mexico. The complete report is available in the public docket for this action. The Environmental Justice Index for eight of the twelve EJScreen indicators exceed the 80th percentile in the United States; seven of the twelve EJScreen indicators exceed the 80th percentile in the State of New Mexico. Five of the twelve indicators exceed the 90th percentile in both the State of New

Mexico and the United States, including indices for particulate matter 2.5, ozone, air toxics cancer risk, air toxics respiratory, and wastewater discharge. This analysis showed an approximate population of 17,408 residents based on the 2017–2021 Census. Within this area, EJScreen identified that approximately 95% of the population are people of color with 58% identified as low income. Additionally, approximately 34% of the population is linguistically isolated and 30% of the population has less than a high school education.

This action is to approve the periodic emission inventory for Sunland Park 2015 ozone nonattainment area, in which updated air emissions data in the National Emissions Inventory (NEI) is available on EPA public web page. This action is not anticipated to have a disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse

human health or environmental effects” of their actions on communities with environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The New Mexico Environmental Department did not evaluate environmental justice considerations as part of its SIP revision submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. EPA performed an environmental justice analysis, as is described above in the section titled, “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no

information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for communities with EJ concerns.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

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

Dated: October 3, 2024.

Eartheta Nance,
Regional Administrator, Region 6.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. In § 52.1620 (e), the table titled “EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP” is amended by adding the entry “2020 Periodic Emissions Inventory (NO_x and VOC ozone daily summer season and annual emissions) for the 2015 Ozone NAAQS” at the end of the table to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
* * *	* * *	* * *	* * *	* * *
2020 Periodic Emissions Inventory (NO _x and VOC ozone daily summer season and annual emissions) for the 2015 Ozone NAAQS.	Sunland Park ozone nonattainment area.	12/20/2023	10/11/2024, [Insert Federal Register citation].	

* * * * *

[FR Doc. 2024–23339 Filed 10–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2015–0083, EPA–R09–OAR–2021–0773, EPA–R09–OAR–2022–0306, and EPA–R09–OAR–2023–0479; FRL–12172–01–R9]

Air Plan Approvals; Arizona; California; Correcting Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: On various dates, the Environmental Protection Agency (EPA) published final rules in the **Federal Register** approving certain revisions to the Arizona State Implementation Plan (SIP) and the California SIP. In those final rules, inadvertent errors in the amendatory instructions resulted in inaccuracies in the regulatory text codifying the final actions into the Code of Federal Regulations (CFR). This document corrects the errors in the regulatory text for those final rules.

DATES: These correcting amendments are effective October 11, 2024.

ADDRESSES: The EPA has established dockets for this action under Docket No. EPA-R09-OAR-2015-0083, EPA-R09-OAR-2021-0773, EPA-R09-OAR-2022-0306, and EPA-R09-OAR-2023-0479. All documents in the dockets are listed on the <https://www.regulations.gov> website. Although listed in an index, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; phone: (415) 947-4137; email: wang.mae@epa.gov.

SUPPLEMENTARY INFORMATION: This action corrects regulatory text errors resulting from inadvertent errors in the amendatory instructions in final rulemakings affecting 40 CFR part 52. This action does not change any final action taken by the EPA in a previously published final rule. This action merely corrects regulatory text to properly codify the EPA's previously published final rulemakings. An explanation of each correction is listed below.

On March 27, 2015 (80 FR 16289), the EPA published a direct final rule that, among other actions, approved Ventura County Air Pollution Control District (APCD) Rule 74.31, "Metalworking Fluids and Direct-Contact Lubricants," adopted on November 12, 2013, as a revision to the California SIP. However, there was a typographic error in the amendatory instructions. The instructions for adding paragraph 52.220(c)(441)(i)(C)(2) inadvertently omitted the rule number from the text to be added. The EPA is correcting the text for paragraph 52.220(c)(441)(i)(C)(2) in this action.

On September 28, 2022 (87 FR 58729), the EPA published a final rule approving four permitting rules submitted as a revision to the San Diego County APCD portion of the California

SIP.¹ The revision concerned San Diego APCD Rule 11, "Exemptions From Rule 10 Permit Requirements," Rule 20.1, "New Source Review—General Provisions," Rule 20.3, "New Source Review—Major Stationary Sources and PSD Stationary Sources," and Rule 20.4, "New Source Review—Portable Emission Units." However, the text of the newly added paragraphs to codify the replacement of the previously-approved versions of these rules inadvertently listed the incorrect adoption dates for the replaced rules. In this action, the EPA is correcting the rule adoption dates appearing in 52.220(c)(488)(i)(A)(6), (c)(539)(i)(A)(5), (c)(539)(i)(A)(6), and (c)(539)(i)(A)(7).

On February 9, 2024 (89 FR 8999), the EPA published a final rule approving a revision to the California Air Resources Board (CARB) portion of the California SIP. This revision concerned regulations and a certification procedure for certification of vapor recovery systems for gasoline cargo tanks. However, there was a typographic error in the amendatory instructions for codifying the CARB regulation and the certification procedure. The date of the submittal letter listed in the corresponding entries for this revision in 40 CFR 52.220a(c) table 1 and table 2 should have been September 8, 2023, rather than September 21, 2023. The EPA is correcting this date in this action.

On April 14, 2022 (87 FR 22135), the EPA published a final rule that, among other actions, approved Maricopa County Ordinance P-26, "Residential Burning Restrictions," revised October 23, 2019, as a revision to the Maricopa County portion of the Arizona SIP. However, the amendatory instructions erroneously added an entry for Ordinance P-26 to table 4 of 40 CFR 52.120(c), rather than replacing the previously-approved entry for Maricopa County Ordinance P-26 in table 6 of 40 CFR 52.120(c). The EPA is correcting this error in this action.

The EPA has determined that this action falls under the "good cause" exemption in section 553(b)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are

impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action is unnecessary because the underlying rules for which these correcting amendments have been prepared were already subject to 30-day comment periods. Further, this action is consistent with the purposes and rationales of the final rules for which inaccurate amendatory instructions are being corrected herein. Because this action does not change the EPA's analyses or overall actions, no purpose would be served by additional public notice and comment. Consequently, additional public notice and comment are unnecessary.

The EPA also finds that there is good cause under APA section 553(d)(3) for these corrections to become effective on the date of publication of this action. Section 553(d)(3) of the APA allows an effective date of less than 30 days after publication "as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in APA section 553(d)(3) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. This rule does not create any new regulatory requirements such that affected parties would need time to prepare before the rule takes effect. This action merely corrects inaccurate amendatory instructions in previous rulemakings. For these reasons, the EPA finds good cause under APA section 553(d)(3) for these corrections to become effective on the date of publication of this action.

This action is subject to the Congressional Review Act (CRA), and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, the EPA has made such a good cause finding, including the reasons therefore, for this action to become effective on the date of publication. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

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

¹ On October 27, 2022 (87 FR 65015), the EPA published a correcting amendment to correct the amendatory instructions appearing in the September 28, 2022 final rule for codifying the replacement of the previously-approved versions of Rule 20.1, Rule 20.3, and Rule 20.4. The September 28, 2022 final rule had listed the incorrect paragraphs for the previously-approved versions of these rules and those corrections were made in the October 27, 2022 action.

requirements, Volatile organic compounds.

Dated: October 2, 2024.

Martha Guzman Aceves,
Regional Administrator, Region IX.

Accordingly, the Environmental Protection Agency is correcting 40 CFR part 52 by making the following correcting amendments:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart D—Arizona

- 2. In § 52.120, amend paragraph (c) by:

- a. Removing the subheading for “Maricopa County Ordinances” and the entry for “Ordinance P–26” in table 4, under the heading “Post-July 1988 Rule Codification,”; and

- b. Revising the entry for “Maricopa County Ordinance P–26” in table 6.

The revision reads as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

TABLE 6—EPA-APPROVED ORDINANCES ADOPTED BY MARICOPA COUNTY AND OTHER LOCAL JURISDICTIONS WITHIN MARICOPA COUNTY

County citation	Title/subject	State effective date	EPA approval date	Additional explanation
Maricopa County Ordinance P–26.	Residential Burning Restrictions.	October 23, 2019	April 14, 2022, 87 FR 22135.	Submitted on November 20, 2019.
*	*	*	*	*

* * * * *

Subpart F—California

- 3. Section 52.220 is amended by revising paragraphs (c)(441)(i)(C)(2); (c)(488)(i)(A)(6); (c)(539)(i)(A)(5), (6); and (7).

The revisions read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *
(441) * * *
(i) * * *
(C) * * *

(2) Rule 74.31, “Metalworking Fluids and Direct-Contact Lubricants,” adopted on November 12, 2013.

* * * * *

(488) * * *
(i) * * *
(A) * * *

(6) Previously approved on October 4, 2018, in paragraph (c)(488)(i)(A)(3) of this section and now deleted with replacement in paragraph (c)(557)(i)(B)(1) of this section: Rule 11, “Exemptions from Rule 10 Permit

Requirements,” revision adopted on May 11, 2016.

* * * * *

(539) * * *
(i) * * *
(A) * * *

(5) Previously approved on September 16, 2020, in paragraph (c)(539)(i)(A)(1) of this section and now deleted with replacement in paragraph (c)(588)(i)(A)(1) of this section: Rule 20.1, “New Source Review—General Provisions,” revision adopted on June 26, 2019.

(6) Previously approved on September 16, 2020, in paragraph (c)(539)(i)(A)(3) of this section and now deleted with replacement in paragraph (c)(588)(i)(A)(2) of this section: Rule 20.3, “New Source Review—Major Stationary Sources and PSD Stationary Sources” (except paragraphs (d)(1)(vi), (d)(2)(i)(B), (d)(2)(v), (d)(2)(vi)(B) and (d)(3)), revision adopted on June 26, 2019.

(7) Previously approved on September 16, 2020, in paragraph (c)(539)(i)(A)(4) of this section and now deleted with

replacement in paragraph (c)(588)(i)(A)(3), of this section: Rule 20.4, “New Source Review—Portable Emission Units” (except paragraphs (b)(2), (b)(3), (d)(1)(iii), (d)(2)(i)(B), (d)(2)(iv), (d)(2)(v)(B), (d)(3) and (d)(5)), revision adopted on June 26, 2019.

* * * * *

- 4. In § 52.220a, amend paragraph (c) by:

- a. Revising the entry for “94014” in table 1, under the subheading “Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board); Subchapter 8 (Compliance with Nonvehicular Emissions Standards); Article 1 (Vapor Recovery Systems in Gasoline Marketing Operations)”;
- b. Revising the entry for “Certification Procedure CP–204 Certification Procedure for Vapor Recovery Systems of Cargo Tanks” in table 2.

The revisions read as follows:

§ 52.220a Identification of plan—in part.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED STATUTES AND STATE REGULATIONS ¹

State citation	Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*	*
California Code of Regulations				
*	*	*	*	*
Title 17 (Public Health), Division 3 (Air Resources), Chapter 1 (Air Resources Board); Subchapter 8 (Compliance with Nonvehicular Emissions Standards); Article 1 (Vapor Recovery Systems in Gasoline Marketing Operations)				
94014	Certification of Vapor Recovery Systems for Cargo Tanks.	7/12/2023	2/9/2024, 89 FR 8999.	Submitted on September 13, 2023, as an attachment to a letter dated September 8, 2023.
*	*	*	*	*

¹ Table 1 lists EPA-approved California statutes and regulations incorporated by reference in the applicable SIP. Table 2 of paragraph (c) lists approved California test procedures, test methods and specifications that are cited in certain regulations listed in Table 1. Approved California statutes that are nonregulatory or quasi-regulatory are listed in paragraph (e).

TABLE 2—EPA-APPROVED CALIFORNIA TEST PROCEDURES, TEST METHODS, AND SPECIFICATIONS

Title/subject	State effective date	EPA approval date	Additional explanation
*	*	*	*
Certification Procedure CP–204 Certification Procedure for Vapor Recovery Systems of Cargo Tanks.	7/12/2023	2/9/2024, 89 FR 8999 ...	Submitted on September 13, 2023, as an attachment to a letter dated September 8, 2023.
*	*	*	*

* * * * *

[FR Doc. 2024–23423 Filed 10–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2024–0462; FRL–12317–01–R1]

Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Maine and Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking a direct final action to approve negative declarations in lieu of State plans to satisfy the requirements in the Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units for the State of Maine and the Commonwealth of Massachusetts. The negative declarations certify that the States do not have any existing sources within

their jurisdictions that must comply with the rule.

DATES: This direct final rule will be effective December 10, 2024, unless EPA receives adverse comments by November 12, 2024. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2024–0462. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA

requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Jessica Kilpatrick, Air Permits, Toxics, and Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, APTB05–2, Boston, MA 02109–0287. Telephone: 617–918–1652. Fax: 617–918–0652 Email: kilpatrick.jessica@epa.gov.

SUPPLEMENTARY INFORMATION:

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- I. Background
- II. Commercial and Industrial Solid Waste Incineration Regulations
- III. Final Action
- IV. Statutory and Executive Order Reviews

I. Background

The Clean Air Act (CAA) delineates regulations for air pollution emissions that can adversely impact public health. Section 111(d) of the CAA sets standards of performance for existing

sources of air pollution, specifically pertaining to the remaining useful life of a source. Air pollutants subject to this section are those which are not already regulated as air quality criteria pollutants via 42 U.S.C. 7408(a) or hazardous air pollutants via 42 U.S.C. 7412. Section 111(d) requires States to submit a plan to EPA for approval that establishes the standards of performance and provides for their implementation and enforcement. EPA prescribes a Federal plan in the cases that a State does not submit a State plan or the submitted State plan is disapproved. If a State has no designated facilities for a standards of performance source category, it may submit a negative declaration in lieu of a State plan for that source category according to 40 CFR 60.23(b) and 62.06.

II. Commercial and Industrial Solid Waste Incineration Regulations

The Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units at 40 CFR part 60, subpart DDDD (CISWI Emission Guidelines or subpart DDDD) regulate existing commercial and industrial solid waste incineration units (CISWIs) and air curtain incinerators (ACIs). A CISWI is defined at § 60.2875 as “any distinct operating unit of any commercial or industrial facility that combusts, or has combusted in the preceding 6 months, any solid waste as that term is defined in 40 CFR part 241.” The structure of a CISWI includes, but is not limited to, a solid waste feed system, a grate system, a flue gas system, a waste heat recovery equipment, if any, and bottom ash system. An ACI is defined at § 60.2875 as “an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.” Existing units are CISWIs and ACIs that: (1) commenced construction on or before November 30, 1999 and that were not modified or reconstructed after June 1, 2001; (2) commenced construction after November 30, 1999, but no later than June 4, 2010, or commenced modification or reconstruction after June 1, 2001 but no later than August 7, 2013; or (3) commenced construction on or before June 4, 2010, or commenced modification or reconstruction after June 4, 2010 but no later than August 7, 2013.

The air quality programs Administrator of a State subject to subpart DDDD must submit a State plan to EPA that implements the CISWI

Emission Guidelines via § 60.2505. A State with no existing units is required to submit a negative declaration letter in place of the State plan in accordance with § 60.2510. The Maine Department of Environmental Protection (ME DEP) submitted a negative declaration to EPA on May 3, 2018, certifying that there are no existing sources in the State subject to the requirements of 40 CFR part 60, subpart DDDD. Likewise, the Massachusetts Department of Environmental Protection (MassDEP) submitted a negative declaration for subpart DDDD to EPA on December 18, 2018.

III. Final Action

EPA is approving the negative declarations submitted by ME DEP and MassDEP serving in lieu of their CAA 111(d) State plans for the CISWI Emission Guidelines to satisfy the requirements of §§ 60.23(b) and 62.06.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the negative declarations should relevant adverse comments be filed. This rule will be effective December 10, 2024 without further notice unless the Agency receives relevant adverse comments by November 12, 2024.

If EPA receives such comments, we will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on the proposed rule. All parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 10, 2024 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comments on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of adverse comments.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator has the authority to approve a 111(d) negative declaration in lieu of a State plan that complies with the provisions

of the CAA and applicable Federal regulations. See 40 CFR 62.06. In reviewing 111(d) negative declaration letters, EPA's role is to approve State choices, provided that they meet the criteria of the CAA and of EPA's implementing regulations. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

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

In addition, this action does not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. As such, it does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on Tribal governments or preempt Tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 10, 2024. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section in this issue of the **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Industrial facilities, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: October 2, 2024.

David Cash,

Regional Administrator, EPA Region 1.

For the reasons stated in the preamble, part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLAN FOR DESIGNATED FACILITIES AND POLLUTANTS

■ 1. The authority citation for part 62 continues to read as follows:

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

■ 2. Revise § 62.4980 to read as follows:

§ 62.4980 Identification of Plan—negative declaration.

On May 3, 2018, the Maine Department of Environmental Protection submitted a letter certifying no existing sources subject to 40 CFR part 60, subpart DDDD operate within the State’s jurisdiction.

■ 3. Revise § 62.5475 to read as follows:

§ 62.5475 Identification of Plan—negative declaration.

On December 18, 2018, the Massachusetts Department of Environmental Protection submitted a letter certifying no existing sources subject to 40 CFR part 60, subpart DDDD operate within the Commonwealth’s jurisdiction.

[FR Doc. 2024–23172 Filed 10–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2024; FRL–12229–01–R6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending an exclusion for Bayer Material Science LLC, Baytown, Texas facility to reflect changes in ownership and name.

DATES: This rule is effective October 11, 2024.

FOR FURTHER INFORMATION CONTACT: Eshala Dixon, RCRA Permits & Solid Waste Section (LCR–RP), Land, Chemicals and Redevelopment Division, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, TX 75270, phone number: 214–665–6592; email address: dixon.eshala@epa.gov.

SUPPLEMENTARY INFORMATION: In this document EPA is amending appendix IX to part 261 to reflect a change in the ownership and name of a particular facility. This action documents the transfer of ownership and name change by updating appendix IX to incorporate the change in owner’s name for the Bayer Material Science LLC, Baytown, TX facility for the exclusion from hazardous waste (K027) (K104) (K111) and (K112) from the wastewater treatment plant. The exclusion or

“delisting” was granted to Bayer Material Science LLC on July 25, 2005 (see 70 FR 49187). The EPA has been notified that the transfer of ownership of the Bayer Material Science LLC, Baytown, TX facility to Covestro Industrial Park Baytown occurred on September 1st 2015. Covestro has certified that it plans to comply with all the terms and conditions set forth in the delisting and will not change the characteristics of the wastes subject to the exclusion at the Baytown, TX facility. This action documents the change by updating appendix IX to incorporate a change in name.

The changes to appendix IX to part 261 are effective October 11, 2024. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of the Resource Conservation and Recovery Act (RCRA) to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. As described above, the facility has certified that it is prepared to comply with the requirements of the exclusion. Therefore, a six-month delay in the effective date is not necessary in this case. This provides the basis for making this amendment effective immediately upon publication under the Administrative Procedures Act pursuant to 5 United States Code (U.S.C.) 553(d). The EPA has determined that having a proposed rulemaking and public comment on this change is unnecessary, as it involves only a change in company ownership, with all of the same delisting requirements remaining in effect.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: September 30, 2024.

Helena Healy,

Director, Land, Chemicals and Redevelopment Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. Amend table 1 of Appendix IX to part 261 by removing the second entry for “Bayer Material Science LLC” “Baytown, TX” and adding an entry for “Covestro Industrial Park Baytown” in alphabetical order by facility.

The addition reads as follows:

**Appendix IX to Part 261—Waste
Excluded Under §§ 260.20 and 260.22**

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
Covestro Industrial Park Baytown.	Baytown, TX	Outfall 007 Treated Effluent (EPA hazardous Waste No. K027, K104, K111 and K112) generated at a maximum rate of 18,071,150 cubic yards (5.475 billion gallons) per calendar year after July 25, 2005, as it exits the Outfall Tank and disposed in accordance with the TPDES permit. The delisting levels set do not relieve Bayer of its duty to comply with the limits set in its TPDES permit. For the exclusion to be valid, Covestro must implement a verification testing program that meets the following Paragraphs: (1) Delisting Levels: All concentrations for those constituents must not exceed the maximum allowable concentrations in mg/kg specified in the paragraph. Outfall 007 Treated Effluent Total Concentrations (mg/kg): Antimony-0.0816; Arsenic-0.385, Barium-22.2; Chromium-153.0; Copper-3620.0; Cyanide-0.46; Mercury-0.0323; Nickel-11.3; Selenium-0.23; Thallium-0.0334; Vanadium-8.38; Zinc; 112.0; Acetone-14.6; Acetophenone-15.8; Aniline-0.680; Benzene-0.0590; Bis(2ethylhexyl)phthalate-1260.0; Bromodichloromethane-0.0719; Chloroform-0.077; Di-n-octyl phthalate-454.0; 2,4-Dinitro-toluene-0.00451; Diphenylamine-11.8; 1,4-Dioxana-1.76; Di-n-butyl phthalate-149.0; Fluoranthene-24.6; Methylene chloride-0.029; Methyl ethyl ketone-87.9; Nitrobenzene-0.0788; m-phenylenediamine-0.879; Pyrene-39.0; 1,1,1,2-Tetrachloroethane-0.703; o-Toluidine-0.0171; p-Toluidine-0.215; 2,4-Toluenediamine-0.00121. Toluene diisocyanate-0.001. (2) Waste Holding and Handling: (A) Waste classification as non-hazardous cannot begin until compliance with the limits set in paragraph (1) for the treated effluent has occurred for two consecutive quarterly sampling events and those reports have been approved by the EPA. The delisting for the treated effluent applies only during periods of TPDES compliance. (B) If constituent levels in any sample taken by Covestro exceed any of the delisting levels set in paragraph (1) for the treated effluent, Covestro must do the following: (i) notify EPA in accordance with paragraph (6) and (ii) Manage and dispose the treated effluent as hazardous waste generated under Subtitle C of RCRA (iii) Routine inspection and regular maintenance of the effluent pipe line must occur to prevent spills and leaks of the treated effluent prior to discharge. (1) Testing Requirements: Sample collection and analyses, including quality control procedures, must be performed using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by references in 40 CFR 260.11 must be used without substitution. As applicable, the SW-846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (used EPA method 1664, Rev A), 9071B and 9095B. Methods must meet Performance based Measurement System Criteria in which Data Quality objectives are to demonstrate that representative samples of the Covestro treated effluent meet the delisting levels in paragraph (1). (A) Quarterly Testing: Upon the exclusion becoming final, Covestro may perform quarterly analytical testing by sampling and analyzing the treated effluent as follows (i) Collect two representative composite samples of the treated effluent at quarterly intervals after EPA grants the final exclusion. The first composite samples may be taken at any time after EPA grants the final approval. Sampling should be performed in accordance with the sampling plan approved by EPA in support of the exclusion. (ii) Analyze the samples for all constituents listed in paragraph (1). Any composite sample taken that exceeds the delisting levels listed in paragraph (1) for the treated effluent must be disposed of as a hazardous waste in accordance with the applicable hazardous waste requirements in its TPDES discharge permit. (iii) Within thirty (30) days after taking its first quarterly sample, Covestro will report its first quarterly analytical test date to EPA. If levels of constituents measured in the samples of the treated effluent do not exceed the levels set forth in paragraph (1) of this exclusion for two consecutive quarters, Covestro can manage and dispose the nonhazardous treated effluent according to all applicable solid waste regulations. (B) Annual Testing: (i) If Covestro completes the four (4) quarterly testing events specified in paragraph (3) (A) above and no samples contains a constituent with a level which exceeds the limits set forth in paragraph (1), Covestro may begin annual testing as follows: Covestro must test two representative composite samples of the treated effluent for all constituents listed in paragraph (1) at least once per calendar year. (ii) The samples for the annual testing shall be a representative composite sample according to appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW-846 methods incorporated by reference in 40 CFR 260.11 must be used with substitution. As applicable the SW-846 methods might include Methods 0010, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020A, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (used EPA Method 1664 Rev. A) 9071B and 9005B. Methods must meet Performance Based Management System Criteria in which the Data Quality Objectives are to demonstrate that representative samples of the Covestro treated effluent testing taken for the second and subsequent annual testing events shall be taken within the same calendar month as the first annual sample taken.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility

- (1) Changes in Operating Conditions: If Covestro significantly changes the process describes in its petition or starts any process that generates(s) the waste that may or could affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the waste generated from the new process as nonhazardous until the waste meet the delisting levels set in paragraphs (1) and it has received written approval to do so from EPA. Covestro must submit a modification to the petition complete with full sampling and analysis for circumstances where volume changes and/or additional waste codes are added to the waste stream.
- (2) Data Submittals: Covestro must submit the information described below. If Covestro fails to submit the required data within the specified time or maintain the required records on site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph (6). Covestro must: (i) Submit the data obtained through paragraph (3) to the Section Supervisor, RCRA Corrective Action, UST, Solid Waste and Permit Branch, EPA Region 6 1201 Elm Street Suite 500, Dallas, Texas 75270, Mail Code, (6LCR-RC) within the time specified. (ii) Compile records of analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (iii) Furnish these records and data when either EPA or the State of Texas request them for inspection. (iv) Send along with all data signed copy of following certification statement, to attest to the truth and accuracy of the data submitted:
- “Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928, I certify that the information contained in or accompanying this documents is true, accurate and complete.
- Also, to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having a supervisory responsibility for the persons who, acting under my direct instructions made the verification that this information is true, accurate and complete.
- If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion.”
- (3) Reopener: (i) If, any time after disposal of the delisted waste Covestro possess or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste including that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director within 10 days of first possessing or being made aware of that data. (ii) If either the quarterly or annual testing of the waste does not meet the delisting requirements in paragraph (1) Covestro must report the data, in writing, to the Division Director with 10 days of first possessing or being made aware of that data. (iii) If Covestro fails to submit the information described in paragraph (5), (6)(i), or (6)(ii) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (iv) If the Division Director determines that the reported information requires action by EPA, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (v) Following the receipt of information from the facility described in paragraph (6)(iv) or (if no information is presented under paragraph (6)(iv)(ii) the initial receipt of information described in paragraphs (5)(6)(i) or (6)(ii), the Division Director will issue a final written determination describing EPA actions that are necessary to protect human health and/or the environment. Any required action described in the Division Directors' determination shall become effective immediately, unless the Division Director provides otherwise.

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[FR Doc. 2024-23274 Filed 10-10-24; 8:45 am]

BILLING CODE 6560-50-P

**FEDERAL COMMUNICATIONS
COMMISSION****47 CFR Part 64**

[CG Docket No. 02–278; FCC 24–24; FR ID 248552]

**Strengthening the Ability of
Consumers To Stop Robocalls**

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective dates.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces the effective date of the rules adopted in the Telephone Consumer Protect Act (TCPA) Consent Order. Specifically, the Commission amended existing rules and adopted new rules to make it simpler for consumers to revoke consent to unwanted robocalls and robotexts while requiring that callers and texters honor these requests in a timely manner.

DATES: The effective date for the amendments to 47 CFR 64.1200(a)(9)(i)(F) and (d)(3) and the addition of 47 CFR 64.1200(a)(10) and (11), published March 5, 2024, at 89 FR 15756 is April 11, 2025.

FOR FURTHER INFORMATION CONTACT:

Richard D. Smith of the Consumer and Governmental Affairs Bureau at (717) 338–2797 or *Richard.Smith@fcc.gov*. For information regarding the PRA information collection requirements contained in the PRA, contact Cathy Williams, Office of Managing Director, at (202) 418–2918, or *Cathy.Williams@fcc.gov*.

SUPPLEMENTARY INFORMATION: This document announces that the Office of Management and Budget (OMB) approved the information collection requirements in 47 CFR 64.1200(a)(9)(i)(F), (a)(10) and (11), and (d)(3) on September 26, 2024. In the TCPA Consent Order, the Commission concluded that the appropriate

timeframe for implementation of these amended rules is six months following publication in the **Federal Register** of notice that OMB has completed any required review of the adopted rules. The Commission publishes this document as an announcement of the effect date of these rules.

The full text of document FCC 24–24 is available online at FCC–24–24A1.pdf. To request this document in accessible formats for people with disabilities (*e.g.*, Braille, large print, electronic files, audio format) or to request reasonable accommodations (*e.g.*, accessible format documents, sign language interpreters, CART), send an email to *fcc504@fcc.gov* or call the FCC’s Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice).

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2024–23605 Filed 10–10–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register

Vol. 89, No. 198

Friday, October 11, 2024

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 AGRICULTURE

Agricultural Marketing Service

9 CFR Part 201

[Doc. No. AMS–FTPP–24–0013]

RIN 0581–AE30

Price Discovery and Competition in Markets for Fed Cattle

AGENCY: Agricultural Marketing Service, Department of Agriculture.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The United States Department of Agriculture’s (USDA or Department) Agricultural Marketing Service (AMS or Agency) is seeking advance comment on a proposal to amend the regulations under the Packers and Stockyards Act (P&S Act or Act). The purpose of this advance notice of proposed rulemaking (ANPR) is to solicit feedback on an identified set of regulatory options that AMS could employ to address concerns regarding price discovery and fairness in fed cattle markets. Information from public comments would inform AMS’s approach to this topic, including any future regulatory changes.

DATES: Electronic or written comments must be submitted by December 10, 2024.

ADDRESSES: Comments can be submitted through the Federal e-rulemaking portal at <https://www.regulations.gov> and should reference the document number and the date and page number of this issue of the **Federal Register**. AMS strongly prefers comments be submitted electronically. However, written comments may be submitted (*i.e.*, postmarked) via mail to Docket No. AMS–FTPP–24–0013, S. Brett Offutt, Chief Legal Officer, Packers and Stockyards Division, USDA, AMS, FFTP; Room 2097–S, Mail Stop 3601, 1400 Independence Ave. SW, Washington, DC 20250–3601. All comments submitted in response to this advance notice of proposed rule will be

included in the record and will be made available to the public. Please be advised that the identity of individuals or entities submitting comments will be made public on the internet at the address provided above. Parties who wish to comment anonymously may do so by entering “N/A” in the fields that would identify the commenter. A plain-language summary of this advance notice of proposed rule is available at <https://www.regulations.gov> in the docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Chief Legal Officer/Policy Advisor, Packers and Stockyards Division, USDA AMS Fair Trade Practices Program, 1400 Independence Ave. SW, Washington, DC 20250; phone: (202) 690–4355; or email: s.brett.offutt@usda.gov.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

AMS seeks input from stakeholders about ways to improve price discovery and fair and competitive trading environments in fed cattle markets, many of which are concentrated markets. Those concentrated markets may have played a role in packers imposing fed cattle purchasing agreements on producers, commonly known as alternative marketing arrangements (AMAs), that use some method of calculating prices other than cash negotiated or “spot” pricing. Fed cattle AMAs have achieved a well-established position in the cattle industry, accounting for the majority of cattle traded. The vast majority of AMAs are formula pricing agreements that use an external benchmark price to establish a base price in the contract when determining the price a seller will receive. In formula contracts, which this ANPR focuses on, the base price is not known when the contract is signed, and it fluctuates in accordance with the benchmark. Aspects of the design of formula contracts have some adverse consequences—directly or in conjunction with certain trading practices—for producers and the markets in which they operate, and potentially for other packers seeking to compete for fed cattle in the market. It is possible that some of these adverse consequences could give rise to a violation of the Act or other antitrust laws.

This ANPR seeks comment on a range of options designed to ensure that base prices in formula pricing agreements are broadly representative of fair market conditions and are not vulnerable to unfair, deceptive, manipulative, unduly preferential, or anticompetitive practices that could cause prices to shift. The targeted options also seek to address obstacles that market participants face when engaging in price discovery and contributing to transparent markets. These options are further intended to mitigate the market design, trading practices, or preferences that underlie the complaints AMS has received over the years relating to aspects of formula pricing agreements and their impact on producers and the cattle markets.

AMS seeks comment on the experience of producers, packers, and other market participants in relation to the problems undergirding these complaints, as well as the effectiveness, workability, and economic impacts of several potential solutions identified. Relevant data, information, and opinions to explain those views are all welcome. This request for comment is principally focused on what could be done by AMS’s Packers and Stockyards Division (PSD) under the authority of the Packers & Stockyards Act of 1921, as amended (7 U.S.C. 181 *et seq.*). AMS is also interested, however, in commenters’ views on any other authorities that USDA could deploy. These could include efforts in connection with other authorities or offices of USDA—such as the Office of the Chief Economist (OCE)—which provide market-relevant information or analysis. Comments received in response to this ANPR will inform AMS’s approach to regulating the Nation’s fed cattle markets.

II. Background

A. Trading Practices in the Fed Cattle Industry

The United States’ fed cattle industry involves multistage ownership, regional variability, and a variety of different contracting and trading practices. Careful attention to this range of factors is essential to successfully promoting fairer, more competitive markets for all producers. In this ANPR, the term “fed cattle” refers to cattle raised and fed for slaughter as beef or beef by-products; the term “packer” refers to the entities

that purchase and then slaughter fed cattle for use as beef or other meat by-products. Currently, the fed cattle industry is characterized by a high degree of packer concentration and predominant use of formula pricing agreements to market fed cattle.

In the first half of the 20th century, producers sold cattle to packers at terminal stockyards. Sellers consigned cattle with one of the commission firms operating at the stockyard, which then negotiated the sale and collected a commission from the seller. Stockyards also served to aggregate livestock from widely dispersed areas. This centralization allowed packers to purchase the quantities necessary to operate their plants from one location, where the presence of many buyers together in one place likely improved competition because producers could sell to multiple, competing packers.

During the latter half of the 20th century, the cattle feeding industry emerged in the Plains states, near areas of feed production and weather conditions suitable for cattle feeding.

Packing plants relocated to areas near the cattle feeders, and the industry shifted from terminal stockyards to decentralized marketing through local auctions¹ or, more commonly, a “bid and ask” system of direct negotiations between packers and cattle feeders (in other words, cash negotiations for live animals). In this cash or “spot” market, the price for cattle is negotiated between a fed cattle producer and a packer at the time of sale, in other words, “on the spot.”² In healthy trading markets with multiple buyers, packers must compete with one another to purchase cattle.

In the 1990s and early 2000s, the beef cattle industry began to move toward quality differentiation and “value-based marketing,” in which price premiums

¹ Although they served as an important outlet for marketing fed cattle as terminal markets declined, local auctions now primarily market feeder and cull cattle. A relatively small number of fed cattle continue to be sold through live and video auctions.

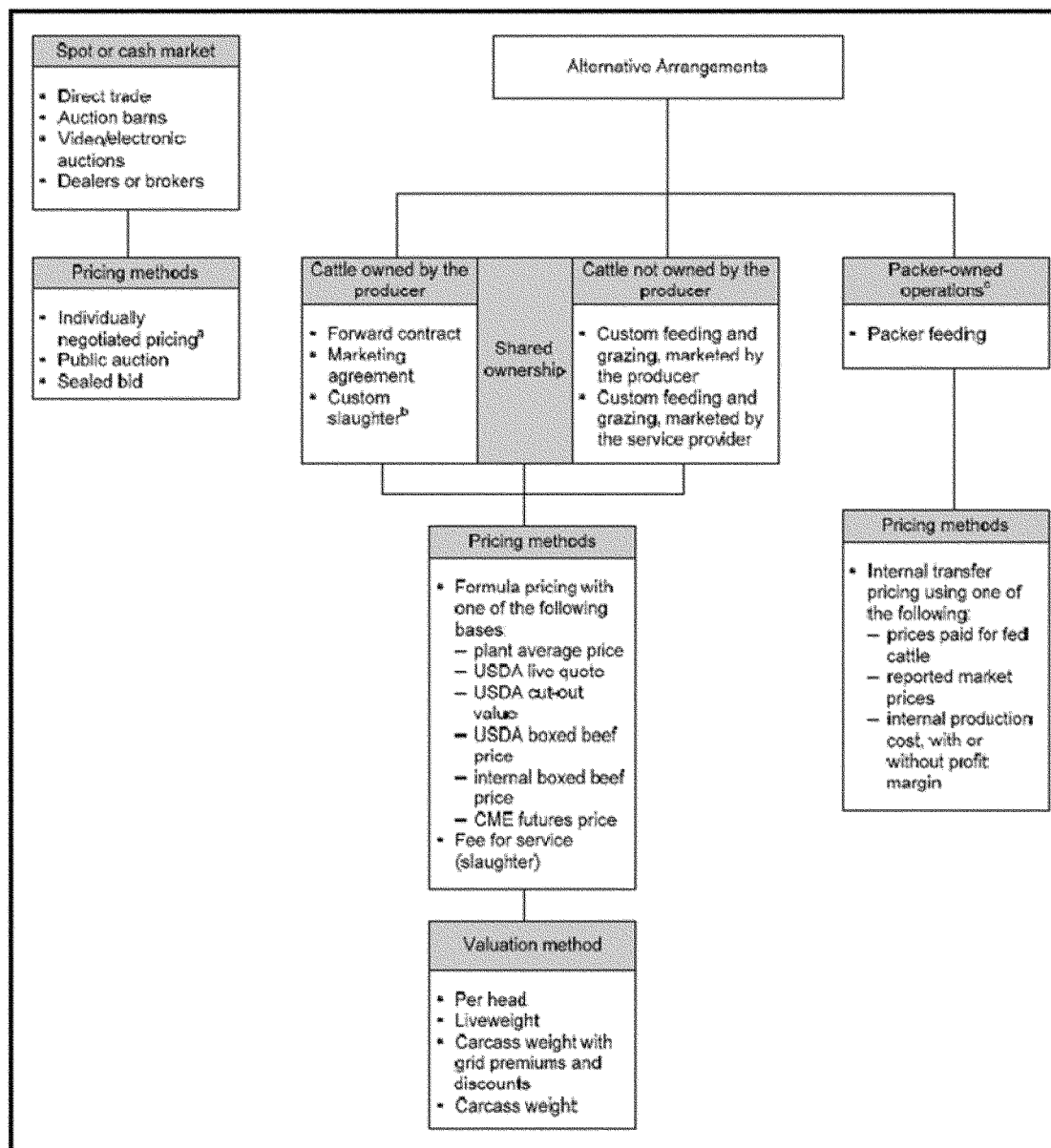
² The spot market technically refers to all transactions in the physical commodity, as opposed to transactions for a derivative thereof, such as a future. Cash negotiated transactions can also be on a dressed basis, where payment is made based on the carcass weight rather than live weight.

and discounts were applied for quality grade differences of harvested cattle using a “grid” matrix.³ Under these arrangements, packers offer a different price for each individual head, which is determined post-slaughter by offering a base price plus a premium or discount for a number of carcass attributes such as quality grade, yield grade, and weight. Some even offer price premiums for certain production practices such as antibiotic-free feeding. These arrangements contrast with traditional cash negotiations or auction sales, where the buyer would bid a single price per pound for an entire lot. Eventually, these new arrangements came to be known as Alternative Marketing Arrangements (AMAs). See Figure 1, which contains a graphic showing various types of fed cattle marketing arrangements.

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³ See Peel, Derrell S. “How We Got Here: A Historical Perspective on Cattle and Beef Markets,” in *The U.S. Beef Supply Chain: Issues and Challenges*, Ed. by B.L. Fisher et al., Texas A&M University, June 3–4, 2021.

Figure 1

Marketing Arrangements for Sale or Transfer of Feeder and Fed Cattle⁴

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Formula agreements are the most common AMAs. Formula prices are determined using a base or reference price, such as the reported live negotiated price from the cash or spot market for the week prior to delivery. Although not always made in writing, formula agreements commonly include an express or implied agreement to purchase all the producer's cattle. A "grid" of premiums and discounts is then applied to the base price.

⁴ Source: Muth, M.K., J. Del Roccili, M. Asher, J. Atwood, G. Brester, S.C. Cates, M.C. Coglati, S.A.

Over the past 20 years, the use of formula agreements has increased relative to negotiated cash agreements, and around 2010, formula agreements became the dominant method of sale. As shown in Figure 2, in 2005, beef packers acquired roughly 55 percent of their cattle through cash negotiations and 30

Karns, S. Koontz, J. Lawrence, Y. Liu, J. Marsh, B. Martin, J. Schroeter, J. L. Taylor, and C. L. Viator. 2007. GIPSA Livestock and Meat Marketing Study, Volume 3: Fed Cattle and Beef Industries. Research Triangle Park, NC: RTI International for USDA Grain Inspection, Packers and Stockyards Administration. 1–16.

percent through formula agreements. By March 2021, the same analysis found cash negotiations accounted for about 20 percent of cattle purchases, and formula agreements accounted for 65 percent. These statistics reflect the state of cattle marketing nationally; however, in three out of the country's five USDA-designated cattle procurement regions, the cash negotiated share is significantly lower than 20 percent, reaching as low as 12.5 percent of total cattle sales in the Kansas (KS) region, 8.3 percent in the Colorado (CO) region, and 2.6 percent in the Texas-Oklahoma-New Mexico (TX-

OK-NM) region. In contrast, the Iowa-Minnesota (IA-MN) region has reliably maintained cash-market procurement of 50 percent or more of marketed cattle, in part reflecting the prevalence of smaller “farmer-feeders.” Nebraska (NE) region’s percentage has hovered between 30 and 40 percent. The higher prevalence of cash market transactions in IA-MN and NE may reflect a range of reasons, including producer preference for cash negotiated transactions, the size and number of sellers, and smaller lot sizes limiting the bargaining power of those producers in securing more favorable terms through AMAs.⁵ These trends are discussed at greater length later in this ANPR, including in Figures 2 and 3 below.

Producers’ views on formula agreement AMAs (hereinafter, AMAs refer to formula agreement AMAs unless otherwise noted) can vary widely, and sometimes sharply. Producers that use AMAs commonly note they generally offer convenience, cost-savings, and certainty, which is valuable in securing financing.^{6,7} Other producers, especially smaller producers commonly referred to as independents, more strongly value attributes in the cash market, such as the ability to negotiate on price with multiple packers in real time during a given week and to lock in that price at the time of sale, rather than relying on the application of a grid after slaughter. Independent producers have also expressed concern that the use of AMAs allows packers to avoid competition and exploit their market power and therefore broadly suppresses cattle prices. Some assert that packers engage in strategic behavior to control or manipulate the cash market for fed cattle, including going in and out of cash markets or otherwise changing their bidding practices, owing to the linkage between the AMA’s base price and the underlying cash market.⁸ Some also argue that the decline in demand for cash transactions reduces bidding in the

cash market, which can adversely affect competition—a problem commonly referred to as “captive supply.”⁹

A critical factor underlying producer concerns around AMAs is the continuing market concentration in meat packing, which, at the regional level, has been both high and persistent. The DOJ Consent Decree of 1920, which secured a broad injunction enjoining dominant packers from consolidation and vertical integration, came to an end in 1981,¹⁰ thus permitting packers to merge. Some additional vertical integration occurred during the 1980s between packers and feedlots, in part owing to deregulation of the P&S Act. However, in the 2000s the largest packers divested their feedlot operations. The question of closer relations between packers and feedlots today largely centers around questions of preferences in contractual terms, such as financing, risk-sharing, and profit-sharing. The AMS Cattle Contract Library (CCL) Pilot collects data on whether packers have financing, risk-sharing or profit-sharing terms.¹¹ Whether the CCL Pilot discloses terms would depend upon a confidentiality analysis. However, no such terms have been reported to AMS under the CCL Pilot, either at inception in January 2023 or to date as confirmed again this year.

Between 1980 and 1995, the percentage of fed cattle slaughtered by the four largest packers (the four-firm concentration ratio or CR4) rose from 35.7% to 79.3%.¹² In other words, by the mid-1990s the four largest packers in the fed cattle industry controlled of almost 80% of all fed cattle slaughtered

in the U.S. Notably, national concentration levels mask the impacts at the regional level. While four packers may compete directly in national grocery chain markets, producers commonly have even fewer packers to transact with in their regional markets. Based on AMS’s experience conducting investigations and monitoring markets, there are commonly only one or two buyers in some local geographic markets, and few sellers have the option of selling fed cattle to more than three or four packers. In Colorado, for example, AMS Market News cattle price reports are usually withheld because two packers account for most purchases and Market News guidelines require at least three packers to be active in the reporting period to disclose price data.

The Herfindahl-Hirschman Index (HHI) is a standard used to measure industry concentration,¹³ and current U.S. Department of Justice and Federal Trade Commission Merger Guidelines state that “markets with an HHI greater than 1,800 are highly concentrated.”¹⁴ At a national level, the HHI for fed cattle packing was 1,687 in 2021, but in some regional markets the HHI exceeded 3,000. Although the regional areas defined for Market News reporting do not perfectly define the extent of regional markets and may therefore overstate or understate concentration to some degree, these regional HHI measurements are nevertheless revealing of limited competition. Annual adjusted regional HHIs as of 2021 ranged between 2,200–2,400 in Kansas and Nebraska and over 3,200 in Texas-Oklahoma-New Mexico.¹⁵

In response to concerns that ongoing packer concentration and the rise of AMAs were negatively impacting transparency in the cash markets, Congress passed the Livestock Mandatory Reporting Act of 1999 (Pub. L. 106–78, title IX).¹⁶ The law enhances

¹³ The HHI is calculated by summing the squares of the individual firms’ market shares. PSD calculates the HHI of market concentration for packers from the individual packer’s market shares based on Annual Commercial Slaughter totals. See Agricultural Marketing Service, USDA, *Packers and Stockyards Division: Annual Report 2021 & 2022*, pg. 14, https://www.ams.usda.gov/sites/default/files/media/PackersandStockyards2021_2022ReporttoCongress.pdf.

¹⁴ Antitrust Division, U.S. Department of Justice, 2023 Merger Guidelines, December 18, 2023, <https://www.justice.gov/atr/2023-merger-guidelines> (last accessed 7/17/2024).

¹⁵ Agricultural Marketing Service, USDA, “Agricultural Competition: A Plan in Support of Fair and Competitive Markets,” May 2022, p. 4, available at https://www.ams.usda.gov/sites/default/files/media/USDAPlan_EO_COMPETITION.pdf.

¹⁶ See, for example, *Summary in Congressional Research Service, “Reauthorization of the Livestock Mandatory Reporting (LMR) Act in the 114th*

⁵ The size of feedlots, which constitute the vast majority of cattle sales to packers, differs considerably by state. In Texas and Kansas, the average number of head that a feedlot sold in 2022 was 12,851 and 5,694, respectively. In contrast, the averages in Iowa and Minnesota were 441 and 237, respectively. National Agricultural Statistics Service, 2022 Census of Agriculture.

⁶ Id.

⁷ Kades Report at 24.

⁸ See, for example, Giles Stockton, “There is a Solution,” 2017, <https://www.worc.org/cattle-market/>; Western Organization of Resource Councils (WORC), Petition for Rulemaking, 62 FR 1845 (1997); In addition, even packer leadership noted some of these concerns. See, e.g., C. Robert Taylor, “Harvested Cattle, Slaughtered Markets?” (April 27, 2022) Available at <https://ssrn.com/abstract=4094924>, pgs. 25, 29 (quoting and citing Bob Peterson, CEO of IBP), *infra*.

⁹ See, e.g., Bill Bullard, “Chronically Besieged: The U.S. Live Cattle Industry,” Presented at Big Ag & Antitrust Conference, Thurman Arnold Project at Yale, Jan. 2021; U.S. Department of Justice & U.S. Department of Agriculture, Public Workshops Exploring Competition in Agriculture, Livestock Industry Agenda, August 27, 2010, Fort Collins, Colorado, available at <https://www.justice.gov/archives/atr/event/ag-workshops-livestock-industry-agenda> (accessed 7/18/2024); C. Robert Taylor and David A. Domina, “Restoring Economic Health to Beef Markets,” Aug. 25, 2010, available at <https://www.dominalaw.com/documents/Restoring-Economic-Health-to-Beef-Markets.pdf>.

¹⁰ *United States v. Swift & Co.*, No. 58 C 613, 1981 WL 2171, at *1 (N.D. Ill. Nov. 23, 1981); see also Aduddell, Robert M. and Louis P. Cain, “Public Policy Toward ‘The Greatest Trust in the World’,” *Business History Review*, vol. 55 (1981), pp. 217–42.

¹¹ Authorized by the Consolidated Appropriations Act of 2022 (Pub. L. 117–103). Implementing rule, “Cattle Contracts Library Pilot Program,” 87 FR 74951 (December 7, 2022).

¹² Azzedine M. Azzam & Dale G. Anderson, USDA, Grain Inspection Packers and Stockyards Administration, Packers and Stockyards Statistical Report: 1995 Reporting Year, GIPSA 97–1, 1996, https://www.ers.usda.gov/webdocs/publications/47232/17820_tb1874h_1_.pdf?v=0 (accessed 7/3/24).

transparency and accuracy in reporting by requiring covered packers to report all livestock and meat transactions to AMS, which then must compile the reports and make them publicly available, subject to appropriate confidentiality protections.¹⁷ USDA implemented this statute by establishing the Livestock Mandatory Reporting (LMR) program (65 FR 75464, December 1, 2000; and 66 FR 8151, January 30, 2001 (postponing the rule's effective date)).¹⁸ The LMR program provides weekly reports on "livestock and meat price trends, contracting agreements, and supply and demand conditions."¹⁹

Congress." November 20, 2015, <https://crsreports.congress.gov/product/pdf/R/R44025/4>, last accessed 8/14/2024.

¹⁷ The Secretary of Agriculture was directed to establish, among other things, a cattle marketing information program that would "provide[s] information that can be readily understood by producers, packers and other market participants, including information with respect to the pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products." (7 U.S.C. 1635 Purpose).

¹⁸ The program is renewed periodically per statute. It was renewed most recently by the Consolidated Appropriations Act of 2024, which extended LMR authority to September 30, 2024 (Pub. L. 118–42).

¹⁹ AMS Livestock Mandatory Reporting Background, <https://www.ams.usda.gov/rules-regulations/mmr/lmr/background#:~:text=On%20April%202%2C%202001%2C%20the%20USDA%E2%80%99s%20Agricultural%20Marketing,sales%20of%20livestock%20and%20livestock%20products%20to%20AMS> (accessed 7/3/24).

The Regulatory Impact Analysis *Summary of Benefits* of the LMR implementing rule described how mandatory price reports would serve as benchmark prices (also called base prices or reference prices) for formula agreements, and thus enhance price discovery in the face of declining negotiated cash transactions in the cattle industry.²⁰

Following the implementation of LMR and the associated increase in price transparency, packers widely adopted LMR-based reference prices as base prices in AMAs due to the widespread trust in LMR-based price reports. However, as more cattle were purchased under AMAs, the percentage of cattle purchased on the spot market declined, leaving the regional cash markets heavily used as AMA base price benchmarks with fewer spot transactions to draw from. (Note, different LMR reports will cover different transactions; some focus on a regional cash trade, while others show AMA transactions with various degrees of aggregation or confidentiality. All transactions are reported in some way, including AMA purchases). LMR has greatly expanded transparency in fed cattle markets overall, which is critical for all producers, but its authorities are not designed to address the use of LMR reports by market participants in

contracts and the competitive impacts on the broader markets from doing so.

In the last two decades, the fed cattle market has become even more reliant on formula pricing agreements. In 2008, formula pricing agreements accounted for 34.4% of fed cattle purchases, while spot market transactions accounted for 50.5%.²¹ By 2021, formula pricing agreements accounted for 61% of fed cattle procurement, while spot market (*i.e.*, cash negotiated live and dressed) transactions accounted for 19%.²² This shift to formula pricing agreements varies by region, with relatively low usage in the Northern Midwest (which is more commonly characterized by smaller "farmer-feeder" operations where cash negotiated transactions still account for 40–50% of sales) and very high usage in Texas and Kansas (where larger "corporate" feedlots are the norm and cash negotiated transactions are as low as 6–10%). See Figure 2. Some regions, notably Texas and Kansas, saw the number of cattle transacted in the cash market approach zero in some weeks. See Figure 3.

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²¹ 2012 Annual Report, Packers and Stockyards Program, pg. 39, https://www.ams.usda.gov/sites/default/files/media/2012_psp_annual_report.pdf (accessed 7/3/2024).

²² Packers and Stockyards Division: Annual Report 2021 & 2022, p. 19, https://www.ams.usda.gov/sites/default/files/media/PackersandStockyards2021_2022ReporttoCongress.pdf.

²⁰ 65 FR 75464, 75490 (December 1, 2000).

Figure 2

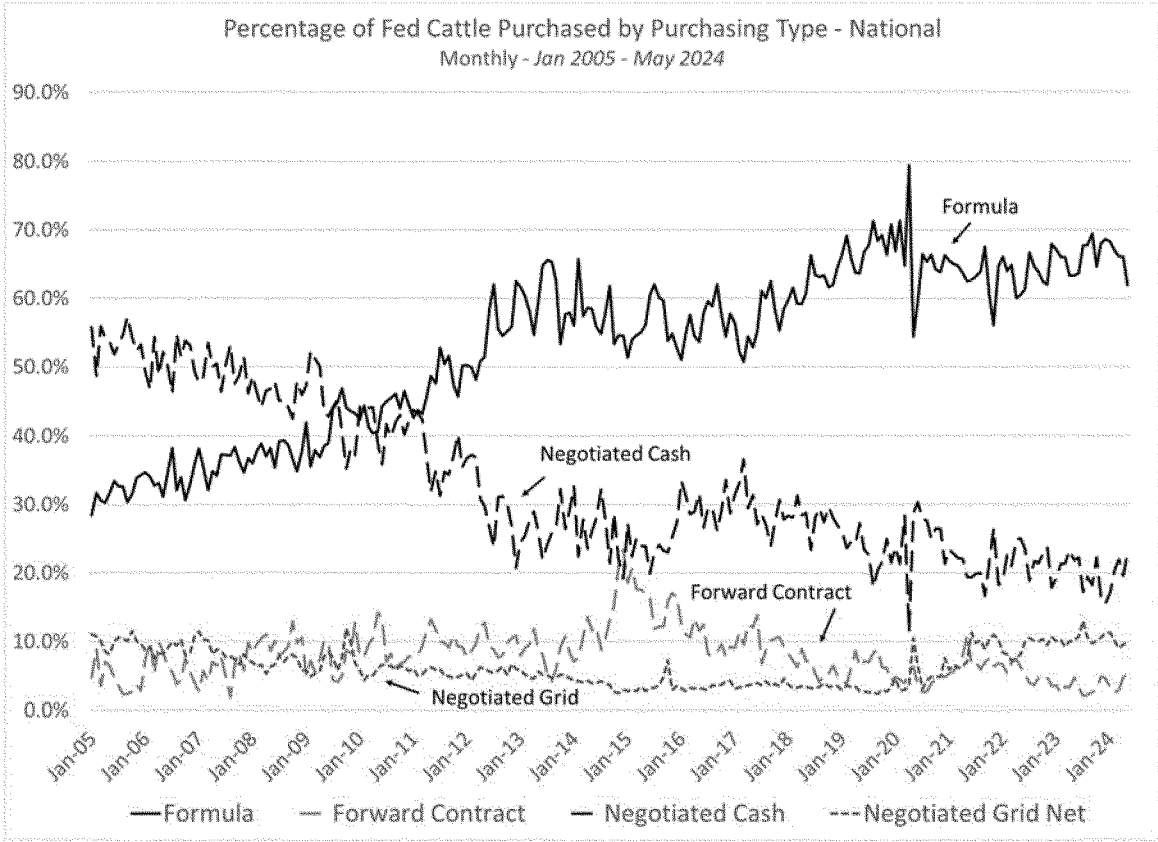
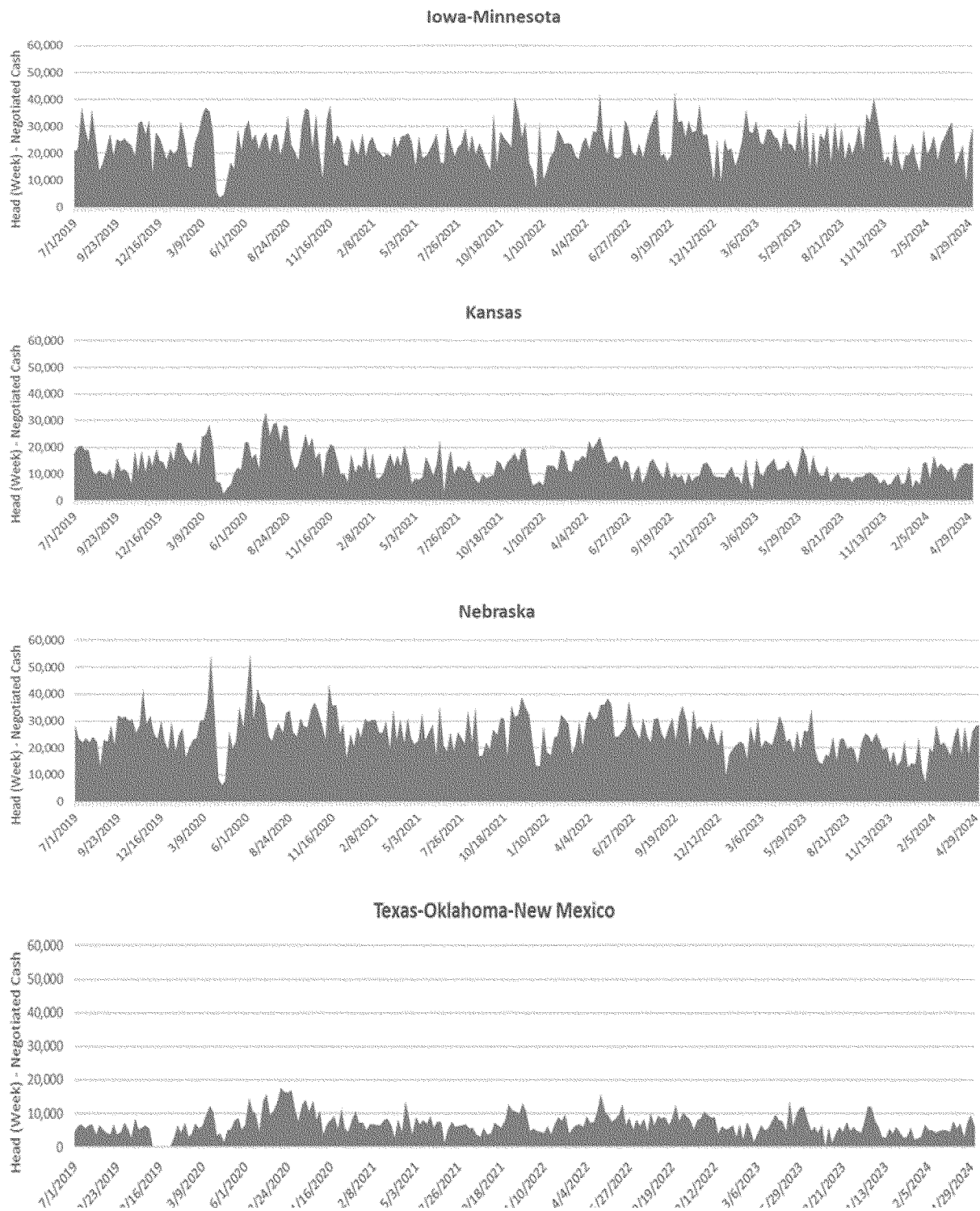


Figure 3

Weekly Head Sold – Beef Type All Negotiated Methods – July 2019 – April 2024

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Although it varies from plant to plant and region to region, the cash market can now be considered a residual

market²³ where packers fill in gaps in

²³ Adjemian, Michael K., Tina L. Saitone, and Richard J. Sexton. 2016. "A Framework to Analyze the Performance of Thinly Traded Agricultural

Commodity Markets" *Amer. J. Agr. Econ.* 98(2): 581–596; and Koontz, Steven R. 2015. "Marketing Method Use in Trade of Fed Cattle: Causes and Consequences of Thinning Cash Markets and

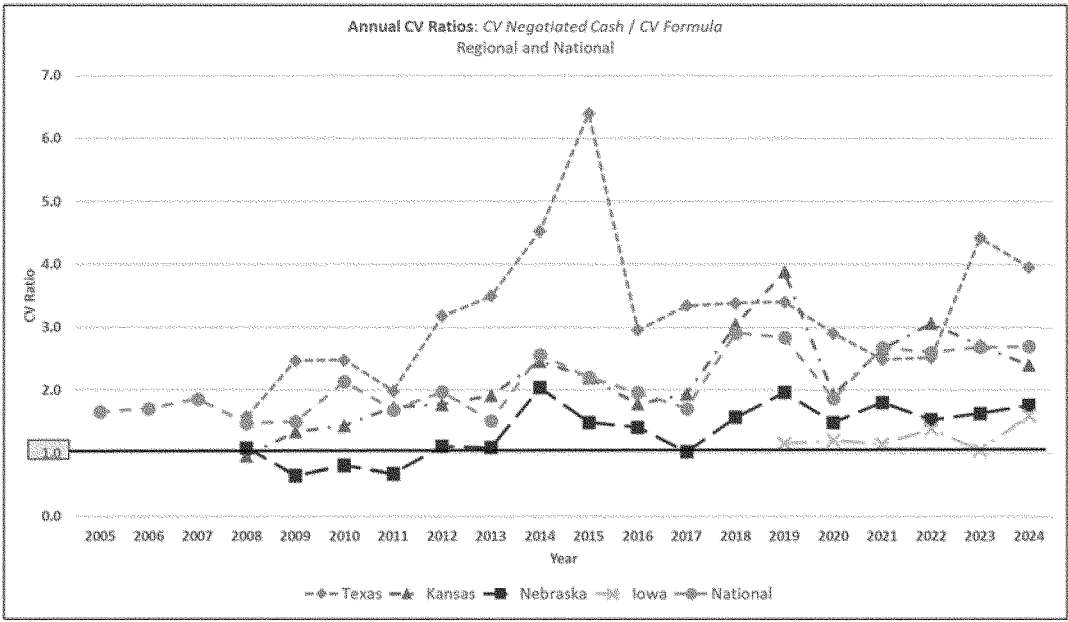
Continued

their supply needs not otherwise served first by cattle purchased with AMAs. Thin markets—meaning those with few purchasers or limited trading volume or liquidity—have received attention from policymakers because of concerns that processing firms could depress farm-level prices below those that would prevail in a competitive market. Cash markets and, in particular, the regional cash negotiated live markets, continue to serve as the primary price discovery vehicle for all cattle traded. Data from USDA’s CCL Pilot shows that more than 75% of contracts analyzed rely on an AMS Market News price report to determine the base price used in the contract.²⁴ Moreover, the CCL Pilot revealed that more than 90% of those contracts use one of three regional cash markets—negotiated cash purchases in Nebraska, Kansas, or Texas-Oklahoma-

New Mexico—to price their cattle. These AMA contract base prices almost always use the reported average from the previous week’s cash trade. Those trading in the negotiated cash market—who are, generally, smaller producers without AMAs—generally absorb weekly fluctuations in packer demand. Cash markets are commonly viewed as a residual market, as packers usually prioritize AMA purchases to fill plant needs first. The relationship of the variation week-to-week in numbers of cattle purchased through negotiated cash and formula methods differs between regions. Notably, the difference in measured variation between the two markets is markedly lower in Iowa and Nebraska, and markedly higher in Texas-Oklahoma-New Mexico and in Kansas.²⁵ Figure 4 displays a ratio between the coefficients of variation (CV) calculated annually for number of

cattle sold weekly through negotiated cash and formula purchase methods in each region as a measure of relative variability. A CV ratio equal to one indicates equal variability, and higher values of the ratio indicate greater variability of quantities purchased in the negotiated cash market relative to formulas. The figure shows that in recent years CV ratios have been consistently higher in the Kansas region and the Texas, Oklahoma, and New Mexico region where formula methods predominate. Although there could be reasons for the differences other than thin markets, the figure below is consistent with the idea that as regional negotiated cash markets become thinner, cash sellers in those markets face increasing volatility and uncertainty in marketing their cattle relative to those selling with a formula.

Figure 4



Source: Calculated from USDA-AMS Market News LMR Weekly Data. Coefficient of variation (CV = standard deviation divided by mean). CV Ratio = CV of Weekly Head Purchased of Negotiated Cash Divided by CV of Weekly Head Purchased Formula.

Additionally, AMA base prices established using cash negotiated market price reports simply reflect the quality or specification of cattle that were traded during the week in the

reporting area. Most AMA formulas use prices that weight the average weekly prices by number of head but do not standardize or weight the cattle to a particular quality grade (for example,

USDA Choice—Yield Grade 3, etc.). That is to say, the base price simply reflects the numerical average of the prices of whatever qualities of cattle appear in the market that week;

Potential Solutions” Invited Paper American Applied Economics Association and Western Agricultural Economics Association Joint Annual Meeting, June 2015.

²⁴ https://mymarketnews.ams.usda.gov/Cattle_Contract_Library (accessed 7/3/2024). The CCL Pilot presents these base prices as “options” in the

contract. About 11 percent small percent of contracts contain an CME Live Cattle Futures Market option for a base. Less than 10 percent have a negotiated option, while less than 4 percent have a “top of the market” option. Some contacts may use more than one option: for example, a contract may set out that a negotiated option is to be utilized

when one or more of the LMR-reported base price region fails to hit a targeted volume of cash trade in the week.

²⁵ Taylor, C.R. “Risk Shifting via Partial Vertical Integration: Beef Packers’ Acquisition of Slaughter Cattle,” November 2022, <https://ssrn.com/abstract=4276805>.

however, the value of cattle—and thus the prices—can vary greatly depending on quality.²⁶ The benchmarks, therefore, are vulnerable to fluctuation based on the different types of cattle sold in the market. It is commonly understood that different states reflect different qualities of quality, and that producers will seek to use base prices for regions that reflect their own cattle trading strategy. Yet the benchmark remains inherently vulnerable to changes in the quality that appear during a given week.

Tying the price of AMA cattle to the cash negotiated market price without a quality specification also creates unusual incentives that may distort cattle trading. The packer, for example, may seek to avoid cattle with higher quality specifications that would raise the price of its AMA formula cattle, or to underpay for such cattle. AMS has heard reports that packers may find other ways to trade that keep transactions out of the relevant region's cash market (and hence not affect the relevant AMA base price) for similar reasons.²⁷ These AMA base price benchmark practices contrast with the Chicago Mercantile Exchange's (CME's) Live Cattle Futures, which is tied to particular specifications for a lot of cattle. Cattle of all range of quality and type may still trade in the spot market at whatever value or premium that packers and producers agree upon, but the futures market is grounded in a clear, transparent basket of cattle for valuation and transparency purposes. AMS understands that packers will internally weight or standardize all purchases to a particular quality grade, usually USDA Choice—Yield Grade 3, so that the packer can measure its procurement efficiency even while permitting cattle quality to vary.

²⁶ Note, previous academic studies have highlighted the potential value of augmenting the amount of information reported and collected on fed cattle premiums and discounts. Ted C. Schroeder, Brian K. Coffey, and Glynn T. Tonsor, "Hedonic Modeling to Facilitate Price Reporting and Fed Cattle Market Transparency," *Applied Economic Perspectives and Policy* vol 45(3), Jan. 2022, p. 1716.

Sheppard G. Rogers, Ted C. Schroeder, Glynn T. Tonsor, and Brian K. Coffey, "Describing Variation in Formula Base Prices for U.S. Fed Cattle: A Hedonic Approach," *Journal of Agricultural and Applied Economics* vol 55(1), Feb. 2023 p. 117.

²⁷ Types of transactions that are not included in Livestock Mandatory Reporting (LMR) include those for which confidentiality is not met (such as frequently occurs in the Colorado region), or information is not required to be submitted (such as auction purchases). See Livestock Mandatory Reporting Excluded Transaction Summaries: <https://www.ams.usda.gov/rules-regulations/mmr/lmr/excluded-transactions>.

B. Longstanding Concerns and Market Shocks

For over 20 years, a range of producers have complained about the unfairness of the prices they are paid for fed cattle arising out of the relationship between AMAs and the regional cash markets that form their base price. Producers have highlighted adverse impacts on trading behavior, fewer and commonly lower bids on cattle, difficulty attempting to negotiate with packers, increased pricing and sales risk in the cash market overall, and packer pickup problems, among other concerns. Some producers assert a predatory pricing strategy to lock up the industry among only favored players. They also fear the loss of independence and further vertical integration as has occurred in other protein species. However, the boldest reform attempts to date have not met with success.

As early as 1996, the Western Organization of Resource Councils (WORC), a federation of grassroots organizations, submitted a petition to the Secretary of Agriculture to issue rules that would restrict the use of forward contracts and packer ownership of cattle, including a prohibition on the use of base prices that reference a future, as yet unknown, price.²⁸ WORC put forth this petition out of concern that forward contracts using formulas for the base price encourage manipulation of cash fed cattle markets to lower formula base prices. Also, the petition asserted that higher quality cattle are sold on a formula basis, even as the base price for such sales are set on the negotiated cash market, where cattle are lower quality. The petition asserted that the combination of incentives leads to lower fed cattle prices on negotiated cash markets and to lower formula prices than would be the case if cattle purchasing was conducted in a more competitive, open manner.

Complaints about AMAs were central to many of the reforms that were considered during the 2008–2010 period, including both the 2008 Farm Bill's provision on "undue preferences" and subsequent efforts by USDA to write rules under the P&S Act in 2010.²⁹

²⁸ Petition submitted to USDA on October 8, 1996; published by USDA in the *Federal Register*, 62 FR 1845, January 14, 1997.

²⁹ See title XI of the Food, Conservation and Energy Act of 2008 (2008 Farm Bill) (Pub. L. 110–246); see also, U.S. Department of Justice & U.S. Department of Agriculture, Public Workshops Exploring Competition in Agriculture, Livestock Industry Agenda, August 27, 2010, Fort Collins, Colorado, available at <https://www.justice.gov/archives/atr/event/ag-workshops-livestock-industry-agenda> (accessed 7/18/2024); see also 75 FR 35338, June 22, 2010; see also, e.g., C. Robert Taylor and David A. Domina, "Restoring Economic Health to

More recently, in 2014, USDA's then Grain Inspection, Packers and Stockyards Administration (GIPSA) completed an investigation into complaints from cattle industry participants regarding possible anticompetitive behavior by the four largest packers, in part due to the packers' use of formula pricing agreements (which are referred to in the report as AMAs).³⁰ Complainants asserted to USDA that packers are able to lower prices in the cash market and thus impact prices paid under AMAs by (1) buying fewer cattle on a cash basis, which results in thinner volumes; (2) making unreasonably low bids (or bidding less aggressively, making "take it or leave it" short-term pressure bids); and (3) only offering market-based price bids once a lower market price is established. The investigation found that, "on a week-to-week basis, higher levels of AMA procurement [as a percentage of slaughter capacity] were associated with lower negotiated cash prices."³¹ This suggests that cash or spot market prices are more likely to be depressed in weeks when packers rely more heavily on AMA procurement to fill slaughter needs. Yet the report focused on AMAs as a whole, rather than on base price selection, and found that AMAs "have significant economic benefits," including for packers, consumers, and fed cattle producers.³² Reported benefits to packers included a reduction in transaction costs; benefits to consumers included improvement in beef quality, and benefits to cattle feeders, included a reduction in transaction costs, assurance of timely market access, and reduction in the price risk associated with raising and selling fed cattle. AMS does not, however, endorse cross-market balancing, as benefits and harms should only be considered within a market.

Smaller producers selling in the negotiated cash market have complained to USDA for many years about unfair practices leading to lower prices in the cash markets and so-called "sweetheart deals" in the form of AMAs, where the AMA-receiving producer secured pricing better than that secured in cash negotiated markets

Beef Markets," Aug. 25, 2010, available at <https://www.dominalaw.com/documents/Restoring-Economic-Health-to-Beef-Markets.pdf>.

³⁰ USDA, GIPSA, Packers and Stockyards Program, Western Regional Office, Investigation of Beef Packers' Use of Alternative Marketing Arrangements, July 2014, <https://www.r-calfusa.com/wp-content/uploads/2020/07/200721-2014-GIPSA-Investigation-of-Cattle-Market.pdf> (accessed 7/3/2024).

³¹ Id., pg. i.

³² Id., pg. ii.

for the same quality cattle.³³ Part of the concern from these producers is that they engage in the work of price discovery—the risks, the costs, the inability to place cattle, etc.—yet are not compensated for those costs and risks, as AMA formulas incorporate whatever the cash negotiated price is into the AMA.³⁴ Moreover, as revealed by the CCL Pilot, AMA contracts commonly pay adjustments above the base price, although the ultimate economics of the agreement depends upon the premiums and discounts. To the extent that packers seek to lower their procurement costs by only purchasing lower quality cattle within relevant markets, or through exercising softer bidding or other trading practices, producers selling in cash markets would also experience harms compared to AMA holders, who receive upwards adjustments in the base price beyond the LMR prices³⁵ along with quality bonuses based on the grid.

Concerns raised by producers regarding concentration and insufficient price discovery came to a head as a result of a series of market shocks in 2019 and 2020. The first arose following the closure of one processing plant, which, due to the plant's size, impacted the entire industry. On August 9, 2019, a beef packing plant in Holcomb, Kansas closed after extensive damage from a fire.³⁶ The plant was responsible for 5 to 6% of the Nation's beef processing

capacity.³⁷ Though the plant's owner quickly transferred cattle to its other facilities,³⁸ an AMS investigation found significant economic impacts resulted from the fire. With respect to pricing, for the week ending August 24, 2019, the spread (the difference between the average price packers paid to cattle producers for fed cattle and the average price paid by wholesale beef buyers for USDA Choice grade beef) was \$67.17, representing a 143% increase from the average spread between 2016 and 2018.³⁹ Though this eventually stabilized, the spread remained above 2016–2018 levels.⁴⁰ With respect to trading, AMS found that in the aftermath of this crisis, sales in the spot market decreased while formula trading increased: in the week after the fire, spot market trading decreased by 27%, while formula trading increased by 15,000 head of fed cattle.⁴¹ This is significant because, as noted above in this ANPR's overview of the fed cattle industry, more than 75% of formula pricing agreements base the price paid for cattle on prices paid in the spot market. Therefore, the nature of the trading that is conducted in the spot market—for example, the number of packers competing against one another to bid on the price paid for cattle, whether those trades are public, and the quality of information disclosed publicly—heavily impacts the amount paid for cattle under formula pricing agreements. As AMAs are commonly exclusive with an express or implied obligation that the packer will take all of the producer's cattle, market shocks such as this more heavily impact trading in spot markets, leaving those producers unable to timely sell their cattle.

The COVID–19 pandemic also impacted pricing, trading, and the beef supply chain, but even more severely. By late March of 2020, slaughter rates fell as workers fell sick and plants closed, and consumer demand surged, shifting from restaurant demand to retail demand.^{42 43 44} Fed cattle purchases

declined, as did fed cattle prices.⁴⁵ An AMS investigation found that, “[f]rom the beginning of April until the third week of May, the spread rose from approximately \$66/cwt. to just over \$279/cwt., an increase of approximately 323 percent . . . and the largest spread between the price of fed cattle and the price of boxed beef since the inception of Mandatory Price Reporting in 2001.”⁴⁶ The investigation found that, although the spread fell in subsequent months, it remained high by historical standards. A year later, cattle producers were still suffering economically while packers profited as COVID–19 kept plants at reduced capacity for an extended period: in its July 2021 Congressional testimony, a cattle trade association reported that “gross packer margin . . . exceeded \$1,000 per head” while fed cattle producers across the nation “struggled to break even.”⁴⁷ During this time, “[o]n average, estimated returns for cattle producers were below cost of production.”⁴⁸

Cattle inventories continued to contract at the national level after 2021, and widespread drought conditions contributed to the beef cow herd reaching its lowest level in more than 60 years. Concurrent with herd contraction, cattle prices had recovered, reaching record highs during 2023 and 2024 and leading to estimated returns above cost of production for producers.

In response to the disruptions caused by COVID and the closed plant in Holcomb, Kansas, USDA has taken a wide range of measures to boost resiliency and competitiveness in the meat supply chain, including investing more than \$1 billion into new local and regional meat processing capacity.⁴⁹ Yet, given the interdependent nature of the fed cattle industry and the continuing level of concentration in the beef industry, future packer crises may still have far-reaching pricing and trading impacts. AMS believes that regulatory consideration of trading market structures and practices must be part of any effort to increase the resiliency and competitiveness, as well as fairness, of the cattle pricing system

³³ See, e.g., Bill Bullard, “Chronically Besieged: The U.S. Live Cattle Industry,” Presented at Big Ag & Antitrust Conference, Thurman Arnold Project at Yale, Jan. 2021; Bill Bullard, “Under Siege: The U.S. Live Cattle Industry,” S. Dakota L. Rev., 2013; 2010 GIPSA Hearings; Taylor, Legal and Economic Issues (supra).

³⁴ For more on the costs/risks and collective action problems associated with price discovery, see Darrell Peel, David Anderson, et al., “Fed Cattle Price Discovery Issues and Considerations,” Oklahoma State University Extension, (E–1053), Nov. 2020, available at <https://extension.okstate.edu/fact-sheets/print-publications/e/fed-cattle-price-discovery-issues-and-considerations-e-1053.pdf> and John D. Anderson, James L. Mitchell, and Andrew M. McKensie, “Analysis of the Cattle Price Discovery and Transparency Act of 2021, University of Arkansas (FC–2022–001), Jan. 2022, available at <https://wordpress.uark.edu/frayar-center/files/2023/02/CPDTA-analysis-01.18.22.pdf>.

³⁵ For the first half of 2024 34.2% of all contracts in the Cattle Contract Library Pilot dashboard received base price adjustments. During the same time frame, the average base price adjustment for contracts that used USDA Market News LMR data to determine a base price and applied quality premiums and discounts made an average base price adjustment of \$1.10/cwt before quality premiums and discounts were applied.

³⁶ Michael Nepveux, American Farm Bureau Federation, “Impacts of the Packing Plant Fire in Kansas,” September 10, 2019, <https://www.fb.org/market-intel/impacts-of-the-packing-plant-fire-in-kansas> (accessed 7/5/2024).

³⁷ USDA, AMS, “Boxed Beef & Fed Cattle Price Spread Investigation Report,” July 22, 2020, <https://www.ams.usda.gov/sites/default/files/media/CattleandBeefPriceMarginReport.pdf> (accessed 7/5/2024).

³⁸ Nepveux, “Impacts of the Packing Plant Fire in Kansas.”

³⁹ “Boxed Beef & Fed Cattle Price Spread Investigation Report,” pg. 3.

⁴⁰ Id. at pg. 5.

⁴¹ Ibid.

⁴² Kate Vaiknoras, et. al., USDA, ERS, “COVID–19 Working Paper: COVID–19 and the U.S. Meat and Poultry Supply Chains,” February 2022, <https://www.ers.usda.gov/webdocs/publications/103178/ap-098.pdf?v=8386.2> (accessed 7/5/2024).

⁴³ J.E. Hobbs, “The Covid–19 pandemic and meat supply chains,” Meat Sci, November 2021, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9761612/>, (accessed 7/5/2024).

⁴⁴ “Boxed Beef & Fed Cattle Price Spread Investigation Report,” pg. 9.

⁴⁵ Ibid.

⁴⁶ Id., pg. 9.

⁴⁷ “Beefing up Competition: Examining America's Food Supply Chain”: U.S. Senate Committee on the Judiciary (July 28, 2021) (Written Testimony of the Iowa Cattlemen's Association, <https://www.judiciary.senate.gov/imo/media/doc/Schaben%20-%20Testimony.pdf> (accessed 7/5/2024)).

⁴⁸ Ibid.

⁴⁹ AMS, “Agricultural Competition,” supra. See also www.usda.gov/meat (last accessed July 2024).

that undergirds our nation's meat supply.

An additional concern relates to when cattle sold on a liveweight basis are picked up. Feedlots typically sell their animals when they reach a weight that is considered "finished," or ready for slaughter. In most cases, the packer schedules a subsequent time to pick up the purchased cattle, also known as "calling for cattle." Feedlot sellers incur ongoing costs of feed, yardage, etc., for cattle from the time of sale until the buyer picks the animals up and takes them to the plant. Although a seven-day pickup window is often considered standard practice, sellers have reported packers waiting more than six weeks after purchase before picking up cattle.

In major cattle feeding regions, a seven-day pick-up time has been the accepted industry practice. After seven days have elapsed, it is common practice for sellers to "weigh-up" cattle, which means weighing them before putting them back on feed and shifting responsibility for all future costs of feed, yardage, death loss, etc., to the packer. Weighing-up cattle helps clearly determine the value of cattle that have been sold on a negotiated cash live weight basis. The packer owes the seller an amount equal to the negotiated price multiplied by weight at the time of the weighing-up. From that point forward, the packer must pay all future costs for animal maintenance, while also accruing the benefit of any weight gain that occurs after the weigh-up.⁵⁰

Notably, failure to pick up cattle in a timely manner adds, in the view of some producers, to the packer's "captive supply" of cattle that reduces demand for bidding in the cash market.

C. Academic Review and Other Regulatory Models

There exists a relatively large body of empirical research into AMAs in livestock markets and fed cattle markets specifically. The presentation of some research here is necessarily exemplary of the available research and is not intended to reflect AMS's endorsement of conclusions or even the relative balance of the presentation, be it perceived as favorable or unfavorable to certain aspects of AMAs.

Early studies consistently found a small but significant negative

correlation between fed cattle prices and the number of cattle purchased through AMAs from week to week. While these studies were unable to prove conclusively that this negative correlation was due to market power, the correlation has remained robust across time.⁵¹ ⁵² A recent study found a continued statistically significant negative correlation between spot fed cattle prices and AMAs, and empirically demonstrates that increases in AMAs may have contributed to an increase in the observed spread between the prices that packers pay for cattle from feedlots and the value of the beef they sell to retailers.⁵³

A range of studies have explored the benefits of AMAs, almost always looking at them holistically. McDonald and McBride and several others have documented efficiency gains from contracting in livestock markets. In the 2007 GIPSA Meat and Livestock Marketing Study, Muth *et al.*, found benefits to packers, cattle producers, and consumers. Benefits to cattle producers were larger than any potential decrease in prices to producers, whether due to market power or otherwise. AMAs enable packers and feeders to make better use of their capacity, further reducing costs, and reducing risk for producers as they know they have a buyer for their cattle well in advance. AMS does not endorse the type of cross-market balancing that would seek to justify harms to smaller producers with

⁵¹ Examples include among others Emmett Elam. 1992. "Cash Forward Contracting versus Hedging of Fed Cattle, and the Impact of Cash Contracting on Cash Prices" *Journal of Agricultural and Resource Economics*, 17(1): 205–217.

Clement E. Ward, Stephen R. Koontz, and Ted C. Schroeder. 1998. "Impacts from Captive Supplies on Fed Cattle Transaction Prices" *Journal of Agricultural and Resource Economics* 23(2):494–514. Schroeter John R. and Azzeddine Azzam. 1999. "Econometric analysis of fed cattle procurement in the Texas Panhandle" Report to USDA, Grain Inspection Packers and Stockyards Administration. Ji, In Bae and Chanjin Chung. 2012. "Causality Between Captive Supplies and Cash Market Prices in the U.S. Cattle Procurement Market" *Agricultural and Resource Economics Review*, 41/3 (Dec. 2012) 340–350.

⁵² See, e.g., Garrido, F.G. and M. Kim, N.H. Miller, and M.C. Weinberg. "Buyer Power in the Beef Packing Industry: An Update on Research in Progress," Report prepared for Washington Center for Equitable Growth, March 30, 2022; C. Robert Taylor, "Harvested Cattle, Slaughtered Markets"; USDA, GIPSA, Packers and Stockyards Program, Western Regional Office, Investigation of Beef Packers' Use of Alternative Marketing Arrangements, July 2014, <https://www.r-calfusa.com/wp-content/uploads/2020/07/200721-2014-GIPSA-Investigation-of-Cattle-Market.pdf> (accessed 7/3/2024).

⁵³ Garrido, F., M. Kim, N.H. Miller, and M.C. Weinberg. "Buyer Power in the Beef Packing Industry," January 2024, <https://www.nathanhmilller.org/cattlemarkets.pdf> (accessed 9/25/2024).

benefits to larger producers. AMS does not express an opinion in this ANPR regarding whether the conclusions from these studies would still hold given significant market shifts over the last 17 years, even if attempting to balance harms and benefits to producers. Nor does AMS express an opinion on whether it would utilize the same methodology used in earlier studies.

Researchers have also explored how AMAs and grid pricing have changed risk and pricing signals between packers to producers.⁵⁴ AMAs use the grid to link pay premiums and discounts that are added to or subtracted from base prices directly to valued characteristics of fed beef cattle such as degree of marbling and yield of sellable meat.⁵⁵ AMAs are also used to encourage production of some process-verified cattle characteristics (including natural, organic, non-hormone treated, grass-fed, or age and source verification) that require increased coordination between beef producers and packer buyers. These pricing incentives are clearly laid out for producers in contracts and evaluated post-slaughter.⁵⁶ That is, in contrast to a simple live cash price paid before harvest as a single per pound rate for a group of cattle "on the hoof," AMAs typically link payment to carcass performance after harvest (e.g., yield and quality grade) and other value-added characteristics, including process verification. Accordingly, the risks that the packer bears in cash markets through its buyer agents' ability to identify and signal to producers the importance of particular quality characteristics are borne by producers in AMAs. In doing so, AMAs have been found to be more effective at passing price signals from consumers—as identified by the packer—up to

⁵⁴ Schroeder, T.C., B.K. Coffey, and G.T. Tonsor. "Enhancing Supply Chain Coordination through Marketing Agreements: Incentives, Impacts, and Implications," in *The U.S. Beef Supply Chain: Issues and Challenges: Proceedings of a Workshop on Cattle Markets*, ed. by Fisher, B.L., J.L. Outlaw, and D.P. Anderson, Agricultural and Food Policy Center Texas A&M University, June 3–4, 2021, p. 81.

⁵⁵ See, for example, Ward, C.E., T.C. Schroeder, and D.M. Feuz, "Grid Pricing of Fed Cattle: Base Prices and Premiums-Discounts," Oklahoma Cooperative Extension Service, AGEC-560, available at: <https://extension.okstate.edu/fact-sheets/print-publications/agec/grid-pricing-of-fed-cattle-base-prices-and-premiums-discounts-agec-560.pdf>.

⁵⁶ Some standard pricing incentives used in fed cattle contracts are reported in the Cattle Contract Library Pilot Program. For more information, please see *USDA AMS LPGMN Cattle Contracts Library—Explanatory Notes*: https://www.ams.usda.gov/sites/default/files/media/CCL_ExplanatoryNotes.pdf.

⁵⁰ In 2023, the National Cattlemen's Beef Association (NCBA) adopted a similar resolution in favor of adopting a 7-day standard for picking up cattle purchased on a negotiated cash basis, after which cattle would be weighed up and the buyer would be responsible for additional expenses. Policy handbook (p. 98) available at <https://www.ncba.org/Media/NCBAorg/Docs/2024-ncba-policy-book.pdf> (last accessed 7/18/2024).

producers.⁵⁷ Negotiated grid transactions, in which a firm base price is negotiated between buyer and seller, also apply quality premiums and discounts to the prices paid for fed cattle based on actual carcass performance, but lack the vertical coordination aspect of AMAs and thus do not provide price incentives for process-verified characteristics such as organic or all natural that feeders need to know they will receive prior to feeding.

The above line of argument remains contested, however. Indeed, most lower quality cattle have historically been purchased through AMAs in the southern feeding regions, while in the northern feeding regions a larger proportion of cattle are higher quality and are much more likely to be purchased using negotiated methods.⁵⁸ Packer buyers are highly skilled at predicting how live cattle will grade out after slaughter as their job depends on it. They also are skilled at communicating to sellers what they are looking for in a pen of cattle. Moreover, negotiated grid transactions preserve the benefits of the grid while also retaining the advantages of a negotiated base price, although they lack the buyer commitment dimension of AMAs.

Nevertheless, as the number of cattle that packers purchased with AMAs became considerably larger than the spot negotiated market, academic focus shifted to the issue of thin negotiated markets. Market stakeholders also began to question whether spot market prices are representative of the value of fed cattle on the market, and thus cast doubt on the merits of using them as base prices in AMAs.⁵⁹ Carstensen (2022) and others have argued that the full extent of how buyer power influences the use of AMAs remains

underappreciated in mainstream agricultural economic analysis.⁶⁰

Economic research into price discovery in thin markets has, however, generally been skeptical of interventions that would set a floor number or percentage of fed cattle to be traded in spot markets each week. Koontz examined the role that different regions play in leading price discovery, as well as the relative thinness and thickness of the regional markets.⁶¹ He also estimated high costs to the industry from proposed interventions that would impose a limit on AMA usage in fed cattle markets.⁶² Peel *et al.* (2020) added that such steps to mandate negotiated trade could have the unintended effect of undermining the reliability of market price reporting by creating incentives for misrepresenting transaction types.⁶³ Adjemian *et al.* also suggested a floor percentage would not be beneficial. They also pointed out that thin markets tended to benefit large firms, so programs to aid small producers might be a good focus for regulatory agencies.⁶⁴ Dennis and Lubben (2022) surface potential factors and tradeoffs around the effectiveness of regional-based minimums.⁶⁵

There is less available research on how benchmarks are used as base prices in marketing agreements. Cattle markets are not the only markets that employ benchmarked prices with manipulation concerns. Oil and financial markets are two examples of markets that rely on benchmarks, and both have seen large manipulation schemes.⁶⁶ In a game theory model, Hatfield and Lowery

found that pegging prices in formula pricing agreements to spot market prices can facilitate collusion among packers and facilitate monopsonistic pricing. The authors suggest that these advantages could explain why packers have shifted toward the use of what they call spot-contracting (*i.e.*, the use of variable spot-market prices in formula pricing agreements).⁶⁷ Earlier theoretical work by Xia and Sexton and Davis found that use of “top-of-the-market pricing” (TOMP) arrangements in particular bears similarities to “most-favored” nation (MFN) clauses and that their use exhibits similar potential to facilitate coordination between competitors, as well as dampen competition and prices.⁶⁸ The structure of TOMP purchasing arrangements reduces packer incentives to buy cattle in the spot market. A more recent study by Garrido *et al.* also suggests more generally that referencing reported prices in marketing agreements distorts packer’s incentives, reducing a packer’s incentive to increase bids to procure more cattle.⁶⁹

Policy discussions following from this research have tended to frame the problem as a zero-sum debate between the use of formula contracts and cash negotiated transactions.⁷⁰ Legislative proposals for mandatory minimum cash trading and voluntary industry proposals to address concerns around price discovery commonly focus on the numerical volume of spot, negotiated grid, or otherwise qualified trading.⁷¹ However, it may be that it’s not an either/or question, but rather how formula contracts are developed, and

⁵⁷ See, for example, Doumit, K.M. and T.C. Schroeder, “Fed Cattle and Beef Premiums and Discounts: Trends and Implications,” Kansas State University Department of Agricultural Economics Extension Publication, 8/28/2023. Available at: <https://agmanager.info/livestock-meat/marketing-extension-bulletins/marketing-strategies-and-livestock-pricing/fed-cattle-0> (last accessed 10/1/2024).

⁵⁸ See, *e.g.*, Thayer, A.W., Benavidez, J.R., and Anderson D.P., “Exploring the Impact of Fed Cattle Grade on Transaction Type,” ASFMRA 2024 Journal, available at https://higherlogicdownload.s3.amazonaws.com/ASFMRA/aeb240ec-5d8f-447f-80ff-3c90f13db621/UploadedImages/Journal/2024/Impact_of_Fed_Cattle_Grade.pdf; Taylor, C.R. (2022) Harvested cattle, slaughtered markets? Available at: <http://dx.doi.org/10.2139/ssrn.4094924>.

⁵⁹ Fischer, B.L., and J.L. Outlaw. 2021. “Introduction.” *The U.S. Beef Supply Chain: Issues and Challenges*. B.L. Fischer, J.L. Outlaw, and D.P. Anderson, eds. College Station, TX: Agricultural and Food Policy Center, Texas A&M University.

⁶⁰ Carstensen, P.C., “Dr. Pangloss as an Agricultural Economist: The Analytic Failures of ‘The U.S. Beef Supply Chain: Issues and Challenges,’” (2022), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4049230.

⁶¹ Koontz, Stephen R. 2016, “Price Discovery Research Project—Objective Measures Findings Summary,” Colorado State University, 10, available at <https://webdoc.agsci.colostate.edu/koontz/thinmarkets/Price%20Discovery%20Objective%20Measures%20Report%202016-06.pdf>.

⁶² Koontz, Stephen R. 2021. “Another Look at Alternative Marketing Arrangement Use by the Cattle and Beef Industry.” *The U.S. Beef Supply Chain: Issues and Challenges*. B.L. Fischer, J.L. Outlaw, and D.P. Anderson, eds. College Station, TX: Agricultural and Food Policy Center, Texas A&M University.

⁶³ Op Cit.

⁶⁴ Adjemian, M.K., W. Brorsen, W. Hahn, T. Saitone, and R. Sexton. 2016. “Thinning Markets in U.S. Agriculture: What Are the Implications for Producers and Processors?” ERS EIB number 148.

⁶⁵ Dennis, E.J. and Lubben, B.D., “Regional Minimums in the U.S. Beef Complex,” (2022), available at <https://cap.unl.edu/livestock/new-report-regional-minimums-us-beef-complex>.

⁶⁶ Gina-Gail S. Fletcher, “Benchmark Regulation,” 102 *Iowa Law Review* 1929–1982 (2017), available at: https://scholarship.law.duke.edu/faculty_scholarship/4014

⁶⁷ Hatfield, J.W. and R. Lowery. “Facilitating Collusion with Spot-Price Contracting,” University of Texas—Austin: McCombs School of Business, August 2, 2023. <https://ssrn.com/abstract=4529677> (accessed 7/5/2024).

⁶⁸ See, Davis, D. “Does Top of the Market Pricing Facilitate Oligopsony Coordination?” South Dakota State University Discussion Paper, August 9, 2000; see also Xia, T. and R.J. Sexton. “The Competitive Implications of Top-of-the-Market and Related Contract-Pricing Clauses,” *American Journal of Agricultural Economics* 92(4): 1181–1194, April 2010.

⁶⁹ Garrido, F., M. Kim, N.H. Miller, and M.C. Weinberg. “Buyer Power in the Beef Packing Industry,” January 2024, <https://www.nathanhmillr.org/cattlemarkets.pdf> (accessed 9/25/2024); Garrido, F. G and M. Kim, N.H. Miller, and M.C. Weinberg. “Buyer Power in the Beef Packing Industry: An Update on Research in Progress,” Report prepared for Washington Center for Equitable Growth, March 30, 2022.

⁷⁰ See, *e.g.* TAMU, <https://afpc.tamu.edu/research/publications/710/cattle.pdf>.

⁷¹ See, *e.g.*, S. 4030 (117th Cong., 2021–2021); Letter from Marty Smith, President, National Cattlemen’s Beef Association, to Fellow Cattle Producers, Oct. 15, 2020, available at <https://cdn.farmjournal.com/s3fs-public/inline-files/Letter%20from%20Marty%20to%20NCBA%20Membership%20-%20FINAL.pdf>.

thus in turn how they affect the cash negotiated market. The question, then, is whether the incentive structure can be appropriately shifted such that formula pricing arrangements facilitate rather than restrict price discovery and fair competition.

In financial and commodity trading markets, increasing attention has been paid in recent years to the regulation of benchmarks to ensure reliability and prevent manipulation of the benchmark or other forms of unfair or deceptive trading in relation to the benchmark.⁷² The extraordinary manipulation of the London Interbank Offer Rate (LIBOR), which was the reference price for interest rates cases from 2015 and affected trillions of dollars of financial instruments, drove widespread interest in regulating benchmarks.⁷³ Among the reforms adopted by various regulators include changing which benchmarks are available for use in contracts.⁷⁴ Another tool deployed by financial regulators has been enhanced transparency in the underlying benchmark market, which in turn has enhanced the opportunity for standardization and improved price discovery in certain previously-thought bespoke and difficult to regulate markets. The most notable of these is the bond market, where the Financial Industry Regulatory Association (FINRA)'s Trade Reporting and Compliance Engine (TRACE) system immediately reports a handful of key characteristics for bond transactions, which allows investors and market participants to normalize pricing across diverse bond trading and, in effect, compare apples to oranges. In doing so, it dramatically reduced the fees that dealer banks could charge through opaque pricing, and improved trading efficiency and fairness for investors.⁷⁵

⁷² Gina-Gail S. Fletcher, "Benchmark Regulation," 102 *Iowa Law Review* 1929–1982 (2017), available at: https://scholarship.law.duke.edu/faculty_scholarship/4014; Andrew Verstein, Benchmark Manipulation, 56 *Boston College Law Review* 215 (2015), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2482021.

⁷³ See, e.g., Deutsche Bank's London Subsidiary Agrees to Plead Guilty in Connection with Long-Running Manipulation of LIBOR," available at <http://www.justice.gov/opa/pr/deutsche-banks-london-subsidiary-agrees-plead-guilty-connection-long-running-manipulation>.

⁷⁴ See, generally, Federal Reserve Board and Federal Reserve Bank of New York, "Transition from LIBOR," available at <https://www.newyorkfed.org/arrc/sofr-transition>; Alternative Reference Rates Committee, "ARRC Closing Report: Final Reflections on the Transition from LIBOR," Nov. 2023, available at <https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2023/ARRC-Closing-Report.pdf>.

⁷⁵ Kumar Venkataraman, "Market Transparency, Liquidity Externalities, and Institutional Trading Costs in Corporate Bonds," available at <https://>

FINRA also confidentially reports scorecards to broker-dealers providing them information about their performance relative to peers, which has reduced markups that investors pay. Regulators have also long paid attention to trading incentives, pricing differences, and fairness concerns that may arise from the transparency differences between "lit" (reported) and "dark" (unreported) markets.⁷⁶

Other industries have developed solutions to address complex pricing challenges, some of which may have the potential to inform development of new market price information and reporting products that would provide additional options and could be adopted as alternative benchmarks in the cattle industry. Levin and Milgrom (2010) discuss several ways in which concepts of "standardization" and "conflation" have been applied in the context of pricing a variety of diverse goods that include wheat, diamonds, radio spectrum, and internet advertising.⁷⁷

In light of identified concerns about existing cattle industry benchmarks, application of ideas from other industries could prove useful. USDA, through a range of programs, regularly provides a wide array of useful market information and could continue to explore possibilities for developing additional price reports that provide valuable price discovery information to the industry. Expanded price discovery information from newly developed reports could create additional options that market participants could potentially use as benchmarks that improve price discovery and make the market more transparent. Other possibilities might include the

papers.ssrn.com/sol3/papers.cfm?abstract_id=827984. Also on FINRA's TRACE: <https://www.finra.org/filing-reporting/trace/trace-independent-academic-studies>.

⁷⁶ See, e.g., Chair Gary Gensler, U.S. Securities and Exchange Commission, "Market Structure and the Retail Investor:" Remarks Before the Piper Sandler Global Exchange Conference," June 8, 2022, available at <https://www.sec.gov/newsroom/speeches-statements/gensler-remarks-piper-sandler-global-exchange-conference-060822>; Commissioner Kara M. Stein, U.S. Securities and Exchange Commission, "Market Structure in the 21st Century: Bringing Light to the Dark," Sept. 30, 2015, available at <https://www.sec.gov/newsroom/speeches-statements/stein-market-structure>; Commissioner Michael S. Piwowar, U.S. Securities and Exchange Commission, "The Benefit of Hindsight and the Promise of Foresight: A Proposal for A Comprehensive Review of Equity Market Structure," Dec. 9, 2013, available at <https://www.sec.gov/newsroom/speeches-statements/2013-spch12013msp>.

⁷⁷ Jonathan Levin and Paul Milgrom, "Online Advertising: Heterogeneity and Conflation in Market Design," *American Economic Review* vol. 100(2), May 2010, p. 603, available at <https://web.stanford.edu/~jdlevin/Papers/OnlineAds.pdf> last accessed 7/18/2024.

production of reports that could function more similarly to the TRACE system, which immediately reports a handful of specific identified characteristics for every transaction on a national, anonymous basis.

This ANPR focuses on which benchmarks are appropriate for use as base prices in formula agreements, along with related trading practices and implications arising from the use of those benchmarks. As discussed below, the purpose of this ANPR is to solicit useful information that can be used to inform future rulemaking that could either change base price choices or otherwise regulate packer trading connected with the use of base prices.

III. Potential Options To Remove Barriers to Price Discovery and Improve the Fair Trading in Relation to Cattle Price Benchmarks

AMS seeks to identify regulatory changes for "covered packers" with respect to base price formation in formula contracts and related trading practices, transparency in price reporting, and information collection/market monitoring that could ameliorate these problems with minimal adverse consequences for industry stakeholders. "Covered packer," means every packer slaughtering fed steers and heifers as defined in 7 U.S.C. 191(a) that has slaughtered five percent or more of the total fed cattle that were slaughtered nationally in the past five years. There are no covered packers that would be defined as small businesses by the Small Business Administration because all covered packers to which the ANPR applies have more than 1,150 employees. Through this ANPR, AMS seeks feedback on whether the following proposed interventions could mitigate the adverse consequences of AMAs without losing their benefits to covered packers.

A. General Regulatory Options

AMS is first requesting comment on several broader-based regulatory options that would each regulate covered packers' purchases of fed cattle from fed cattle producers. The general regulatory options can be considered individually or in combination with each other. The options may also have associated written documentation requirements (which are discussed in section III.D.). Commenters are invited to comment on whether one or more of the options would help remove barriers to price discovery or market transparency, improve the fair-trading environment in relation to cattle price benchmarks, or otherwise address concerns that producers and market participants may

have with respect to fairness, preferences, competition, or other aspects of the markets, as well as the costs and benefits, obstacles, or other aspects of these options.

1. *Fair Trading in Relation to a Benchmark.* AMS is considering two options (options 1.a. and 1.b.) to address potentially problematic trading practices in relation to the use of a reported cattle benchmark in a base price formula (*i.e.*, when the covered packer uses a reported price as a base price in an AMA). The first option (1.a.) would provide broader, more flexible coverage, and enforcement would heavily depend upon AMS's ability to identify challenges based on the potential documentation requirements set forth in section III.D. below. In the second option (1.b.) described below, AMS would identify more specific practices of concern, thus providing less flexibility but also potentially enhancing enforceability.

Option 1.a. In the first option, AMS would require covered packers that utilize a benchmark in their base price to design and operate their cattle buying operations in such a way that ensures a fair-trading environment in spot cattle markets affected by the benchmark price used in formula pricing agreements. In determining whether regulated entities are in compliance, the Secretary would consider:

i. The extent to which the markets on which a formula pricing agreement is based are robustly competitive.

ii. The reliability of base prices in formula pricing agreements to reflect the competitive market value of fed cattle, their sensitivity to other factors, and the risks of manipulation.

iii. The extent to which the packer has identified and mitigated any risks stemming from the use of the base price in a formula pricing agreement to fair trading practices in relevant fed cattle markets.

Option 1.b. In the second option, AMS would prohibit covered packers from manipulating cattle benchmark prices through one of the following specifically defined means. AMS notes that enforcement of these options present significant evidentiary challenges, but includes them for the purposes of eliciting public comment around their value, workability, and alternatives:

i. Targeting its bidding in the cash market toward lower-value specifications of cattle and avoiding higher-value specifications of cattle, as a practice and pattern without a reasonable business justification. Such a practice may be used to distort base prices used in formula pricing

agreements as most purchases in the cash market would, likely, be for lower-value specifications of cattle within the given market, leading to lower benchmark prices in AMAs than would be the case in a fully competitive market. Targeting would be identified through enhanced monitoring of markets, complaints, and investigations.

ii. Structuring a transaction with the purpose of it being included or excluded from a benchmark price in an AMA, thus preventing that transaction's price from influencing the ordinary supply and demand in the benchmark market.

iii. Holding out or failing to purchase cattle in specific reporting areas for the purpose of reducing or otherwise changing a reported benchmark price.⁷⁸

iv. Using top-of-the-market pricing (TOMP) formulas in which a formula contract base price in a formula pricing agreement is based on the top price reported in the negotiated cash market.⁷⁹

v. Manipulating internal records in any way that affects a price, standard, or threshold referenced in a pricing agreement for cattle or beef.

2. *Exclusivity.* AMS is considering a provision that would discourage a covered packer from requiring exclusivity of a producer in an AMA when it utilizes a spot price cattle benchmark. Whether crafted as a prohibition, a presumption, or through an incentive structure, the packer could not threaten to withdraw an AMA or otherwise prevent a producer in an AMA from selling or seeking to sell a substantial amount of cattle to another packer outside of the AMA, such as through utilizing competitive price discovery tools like cattle exchanges or auctions. The purpose would be to limit both express or implied contractual requirements for exclusivity, as well as informal exclusivity such as threatening or refusing to buy cattle or offering a lower price. The approach could include a requirement for contractual disclosure of the minimum number of cattle that the AMA-holding producer can, of right, market or sell to another packer in the benchmark market. A presumption of compliance could also

encourage certain practices; for example, 20 percent for general cash negotiated trade or 15 percent if a competitive price discovery tool such as a cattle exchange or auction were selected. The producer would not be required to exercise the option, or could opt to take a hybrid approach, for example, by utilizing exchange trading to set a base price but maintaining access to a producer's specialized AMA grid with a packer through exchange trading options available today. AMS notes that producer participation in exchange trading could depend upon support for the exchange's costs, such as through a market-making fee.

AMS is also considering other tools to reduce exclusivity as a barrier to competition between packers bidding on cattle. P&S Act non-discrimination principles may suggest that any producer be offered an AMA or pricing available under an AMA when the producer is able to meet the AMA's terms and conditions, absent a legitimate business justification. Such an approach could potentially be paired with a compliance presumption where the packer engaged in competitive and open exchange trading for a certain portion of their AMA cattle.

3. *Relative Variation Among Cash and Formula Purchases.* AMS is considering prohibiting covered packers from engaging in a pattern of cattle trading in the negotiated benchmark market such that the percentage variation in week-to-week purchases in the benchmark cash market is substantially greater rate than the percentage variation in quantity purchased week-to-week under the formula pricing agreement, absent legitimate business justification—for example, if the packer certified the lack of availability in the benchmark market of the cattle at a given quality level or specification. Such an approach should make AMA contracts bear more of the risk of quantity volatility when relying on the cash market for price discovery purposes. This prohibition could be paired with a presumptively permissible minimum use of a cattle exchange or auction.

4. *Packer Pick-up and Captive Supply.* AMS is considering a provision requiring covered packers to fully compensate sellers for all maintenance costs of the cattle if they fail to pick up cattle purchased in a negotiated transaction during the time period negotiated with the seller or within seven days if not specified in negotiations.

⁷⁸ A small number of packers account for most fed cattle negotiated cash transactions, and spot market prices have a significant impact on formula pricing agreements. Given these facts, strategic behavior by covered packers has the potential to impact fed cattle prices for both negotiated cash transactions and AMA transactions.

⁷⁹ TOMP links the price paid under the formula contract directly to the highest price paid on a one-to-one basis, which has been shown to create adverse market incentives and put downward pressure on market prices. See Xia and Sexton, *op. cit.*

B. Specific Base Price Regulatory Options

AMS is concerned that competitive market conditions within USDA reporting regions may cause certain regional negotiated cash fed cattle prices to be unreliable benchmarks for formula contracts, and that the design of certain AMS reports are not appropriate for use as benchmarks in formula pricing arrangements. As noted above in section II., some regional cash markets are thinly traded with high levels of local packer concentration. Additionally, the use of benchmarks that do not have quality specifications may leave those markets vulnerable to gaming or create obstacles for producers seeking to sell higher quality cattle. To the extent that the use of different benchmarks in formulas (such as the use of quality-specific reports) and different approaches to trading (such as exchanges) can “thicken” the market (*i.e.*, make it more competitive and comparable across different cattle types), the robustness of price discovery would be enhanced.

AMS is requesting comment on several options for regulating the use of regionally reported prices as base prices in formula pricing agreements. Regional prices could only account for more than 50 percent of the value of any formula if one of four conditions is met (options 1, 2, 3, or 4 below). The purpose of the provision would be to utilize benchmark options that offer incrementally greater market thickness and resiliency to external shocks which could otherwise undermine the reliability of using the existing regional average negotiated cash prices as a benchmark.

One way that regional price information could be incorporated as the predominant value in formulas would be if new price series or indices could be developed which were deemed suitable for that purpose. USDA seeks comment on the feasibility and value to the industry of developing and publishing additional market price information made available by publishing new reports under its existing authority. To the extent that industry stakeholders would find this information useful, and that it would mitigate fairness concerns, new price reporting could provide additional options for industry benchmarks.

The specific base price interventions listed below can be considered individually or in combination with each other. The interventions may also have associated written documentation requirements (which are discussed in section III.D. below). Commenters are

invited to comment on the costs and benefits, obstacles, or other aspects of these options. Note that section III.C. below provides a list of benchmarks that may mitigate fairness concerns. Comment is also requested on the list of benchmarks. The following approaches could be utilized to offer incremental improvements to regional price benchmarking:

1. The regional benchmark could reflect all cattle sold on a negotiated cash basis in the relevant market as standardized to a single quality specification. The standardized benchmark would represent a “par lot.” For example, a benchmark could report all fed cattle sales transactions in a given regional market adjusted to a par lot defined as live weight basis, steers, 70 percent choice, Yield Grade 3. Individual sales would continue to transact at whatever value the parties agree given the attributes (quality, yield, other premiums/discounts, etc.) of the particular cattle transacted. Only the benchmark would mathematically translate those actual prices into prices as if the transactions were the par lot, for the purposes of thickening the market for the standard par lot. Again, cattle trade at their own negotiated price. Only the reporting adjusts it so that there is more robust price discovery on an apples-to-apples basis.

This mathematical adjustment could via a third-party developed reference price, a USDA-developed reference price, or it could be based on publicly available information that the packer utilizes to construct its base price formula. The development of the standardized regional benchmark price may require USDA to collect information from packers that it does not currently collect, and this may require changes to USDA information collection forms or separate rulemaking. AMS acknowledges concerns may still exist regarding price discovery and manipulation risks and invites comment on whether there is a minimum level of trade that should serve as a floor in the market before the region could be used as a benchmark even under this approach.

2. The regional benchmark could be a comprehensive fed cattle reported price, which if reported would include negotiated spot transactions comprised of reported negotiated cash live, negotiated cash dressed, and negotiated grid net transactions. This is not currently reported on a regional basis, but AMS Market News is currently looking into whether it has sufficient information to begin reporting regional comprehensive reports in the near future. AMS recognizes that this

approach offers less benefits to price discovery than option 1. above but seeks comment on it given the greater feasibility of operationalizing it.

3. The benchmark could be the five-area regional average reported by AMS Market News at a particular quality grade specification, such as within five or ten percentage point range for Choice grade. AMS recognizes that this approach offers less benefits to price discovery than option 1. above and that packers may retain an ability to place downward pressure on the cash market given that the five-area regional average reflects a composite of local market trading practices. However, AMS seeks comment on this option given the greater feasibility of operationalizing it over other options.

4. Regional cattle prices from a cattle exchange or auction would be standardized to a particular quality grade specification and meet sufficient standards of oversight and competitive trading.

C. Presumptively Permissible Base Price Options

Under any of the specific regulatory options described in section III.B. above, a range of benchmarks would still be presumptively permissible to determine the predominant value of the base price in a formula price agreement. A first set of possible alternative benchmarks could consist of existing market price reports or indices that may be less vulnerable to manipulation or strategic trading choices that have unintended adverse consequences on other producers due in part to the “thickness” of the markets and/or the specificity of the market. These alternative benchmarks include super-regional USDA-reported negotiated cash prices (*i.e.*, the 5-Area Average or National Report) that are “thicker” market indices because they aggregate reported transactions from multiple regions.

Possible benchmark alternatives could also include several proxies for negotiated cash prices. Live cattle futures contracts are derivatives for which fed cattle are the underlying asset, and economic research has consistently shown a connection and flow of information between fed cattle prices and live cattle futures. Moreover, the live cattle futures contract contains specifications relating to the cattle which ground the value of trading in the contract. AMS acknowledges concerns from some producers relating to the potential influence of packers in the futures market. AMS invites comment on whether there are ways to mitigate those concerns, such as with a condition relating to stricter position limits. AMS

also acknowledges that futures contracts are likely to converge with cash prices as delivery approaches, and accordingly, they could suffer from the same substantive manipulation and/or pay suppression as formulary contracts. AMS invites comment on potential solutions to mitigate these concerns.

Other possible benchmarks include indices based on fed cattle input costs (e.g., corn or other inputs) or on downstream output prices for boxed beef. Commenters are invited to comment on the costs and benefits, unintended consequences, risks of manipulation, or other aspects of these options. USDA also seeks comment on how additional existing publicly available market information may also be useful for developing reliable and robust alternative fed cattle contracting benchmarks.

A covered packer could be permitted to use any of the following indices to comprise 50% or more of the base price in a pricing agreement:

1. Regional benchmarks reflecting all cattle purchases on a negotiated basis standardized to a single benchmark quality.
2. AMS Regional Comprehensive fed cattle reported price.
3. 5-Area Average Reported Cattle Prices at a particular quality grade specification (such as within 5 or 10 percentage point range for Choice grade).
4. Boxed Beef Prices.
5. Live Cattle Prices (including live cattle futures prices imputed to different quality specifications).
6. Corn or Other Input Prices.
7. Cattle prices from cattle exchange or auction that meet sufficient standards of oversight and competitive trading.

D. Written Documentation Options

AMS is requesting comment on several potential written documentation requirements for covered packers to allow AMS to determine compliance with the above ANPR options. Commenters can consider the options individually or in combination with each other. Commenters are invited to comment on the costs and benefits, obstacles, or other aspects of these options.

1. *Packer Market Fairness, Price Discovery, and Access Plan.* Covered packers could be required to develop, maintain, and execute a written plan describing their approach to fed cattle price discovery and market access for all sellers, particularly small and mid-sized feeders and producers, in any market which serves as a benchmark in a pricing agreement of the packer or in any market which materially influences

or is materially affected by price discovery in the benchmark market (the Covered Markets). The plans for each calendar year would be provided confidentially to AMS-PSD on an annual basis by the end of January of that year (e.g., a 2025 plan must be submitted by January 31, 2025). Under this option, plans would have to include written processes for:

a. *Price Discovery.* How the covered packer structures market participation and procurement methods in a manner that contributes to price discovery in the Covered Markets. In particular, the plan should describe how the packer strives to facilitate and encourage price discovery in markets where benchmark prices are determined for fed cattle pricing agreements by the packer. The packer's plan for contributing to price discovery might also include voluntarily reporting of additional market pricing information (beyond existing mandatory price reporting requirements) that contributes to price discovery. Such participation could include, but is not limited to, cash negotiated trade, negotiated grid trade, exchange and auction trade, and market-making contributions to a relevant institution such as a cattle exchange in lieu of price discovery. The covered packer would have to explain its analysis relating to Covered Markets.

b. *Market Access.* Describe purchasing strategies and actions to be taken by the covered packer for the purpose of ensuring reasonable market access for sellers. This could include plans for purchasing fed cattle from small feeders, engaging in price discovery mechanisms such as exchange trading, or paying market making contributions to support exchange trading by others. Such strategies and actions should be reasonably designed to mitigate excessive risk of non-placement of cattle or sales below full value by market participants in the benchmark markets used in pricing agreements (i.e., who are taking/absorbing the risk/cost of price discovery).

c. *Base Prices.* For each fed cattle pricing agreement involving a reported market price or any other reference to a value that is expected to change during the term of the agreement, report the pricing agreement describing how the packer will determine final payment for cattle. The report should clearly identify all prices and values in sufficient detail to reproduce the amount paid.

d. *Market Participation.*

i. Describe purchasing strategies and actions to be taken by the covered packer for the purpose of ensuring reasonably consistent and non-manipulative participation in

benchmark markets used in the packer's pricing agreements with respect to quantity and quality purchased of fed cattle.

ii. Provide a target and range for relative coefficients of variation (CV) on weekly quantities of fed cattle procured using spot and formula methods in the benchmark markets of pricing agreements as a measure of risk transfer (specifics of calculations to follow). If those targets were not hit, explain the business justification for why not. AMS also invites comment on the relative value of the CV, and whether other metrics would be more appropriate to identify changes or differences in market access risk.

e. *Fed Cattle Supply and Demand Disruptions.* Explain how the covered packer will maintain adequate price discovery and market participation in benchmark markets used in pricing agreements during periods of significant market disruptions in the supply and/or demand for fed cattle (would include human pandemics, drought, animal disease outbreaks, emergent animal health issues, lengthy plant shutdowns, labor strikes, other beef packing and supply disruptions, events that trigger force majeure in contracts, etc.).

f. *Pickup Practices.*

i. Covered packers would need to describe all policies and procedures for circumstances in which pickup or delivery of negotiated cattle extends beyond seven days or the scheduled (negotiated) number of days after the cattle are traded.

ii. The policies and procedures would need to include when ownership of the cattle will be transferred to the packer and how the packer determines timing, amount, and payment for assuming all expenses of the cattle, including feed, yardage, and death loss.

iii. Policies and procedures would need to describe how the packer will fully compensate fed cattle sellers when pickup exceeds seven days or the time period (number of days) that was negotiated. This should include separate policies and procedures for cattle that are sold on a live weight basis or on a carcass weight basis.

2. *Packer Compliance Report.*

Covered packers would be required to confidentially report on an annual basis to AMS:

a. The actions the covered packer undertook to fulfill each component of their Packer Market Fairness, Price Discovery, and Access Plan. The report would be due to AMS by the end of January for the previous year (e.g., a report on compliance for 2025 must be submitted by January 31, 2026). The compliance report would be required

beginning with the calendar year after the rule implementing the requirement for the plan becomes effective.

b. Each purchase transaction for which cattle were not picked up within seven calendar days or the scheduled (negotiated) number of days and the reason for delayed pickup, measures taken to shorten the pickup time, and how the packer compensated the seller for the delay in pickup.

3. *Internal Review.* The covered packer's CEO would need to review and certify approval of each annual plan and compliance report.

IV. Request for Public Comments

AMS seeks comment on the proposals discussed in this ANPR. Commenters are invited to comment on whether any or all of the proposals would address concerns about the fair functioning of the cattle markets, as well as the costs and benefits, obstacles, and other options commenters want AMS to consider. Commenters may consider each section individually or may consider the ideas together. In addition to inviting general comments, AMS has prepared a list of specific questions. Commenters may answer all, some, or none of these questions as they see fit.

A. General Regulatory Options

1. In what ways does the use of regional price reports as benchmarks in formula contracts influence those regional markets, including the manner or extent of buyer (packer) participation or cattle procurement in the negotiated or spot markets within those same reporting regions?

2. Does the use of regional negotiated price reports as formula contract benchmarks adversely affect buyer demand in negotiated markets? If yes, how? Are these adverse effects stronger for cattle of any particular grade, class, type, etc., or in any specific regions? What could be preferred alternative prices to use as formula contract benchmarks? How should AMS determine whether prices used as benchmarks are competitive or reliable?

3. To what extent would the general regulatory options described in section III.A. above—addressing practices related to fair trading in relation to a benchmark, exclusivity, relative variation among cash and formula purchases, and packer pickup—be useful for clarifying the most problematic purchasing activities that are known or believed to adversely affect fed cattle markets and sellers?

4. Are there other problematic purchasing activities or conduct that are known or believed to adversely affect fed cattle markets and sellers that are

not addressed by the regulatory options described above? If so, what regulatory options are needed to address such issues?

5. Please provide feedback regarding the prevalence of practices addressed in this ANPR or any other related practices as observed by market participants. What actions, specifically, would be most appropriate and effective for AMS to address concerns about potential manipulation or distortion of market prices?

6. Please comment on the effect of market power and industry concentration on producers in regional fed cattle markets. What, if any, relationship does increasing packer concentration have on the use of particular fed cattle pricing methods and prices paid to packers? How has concentration affected the resilience of the regional markets and their ability to respond to market shocks?

7. The DOJ Consent Decree expired in 1981. Were there specific protections or prohibitions in the Consent Decree that would have particular value in today's market? If so, which ones?

8. Top of the Market Pricing (TOMP) refers to pricing agreements that set a formula contract base price based on the top price reported in the negotiated cash market. Please comment about any effects of TOMP on sellers or buyer behavior. Should TOMP be prohibited as a method of base price determination?

9. Formula agreement AMAs may include a wide variety of written, verbal, or implied agreements or expectations between fed cattle buyers and sellers which can differ in the degree to which they limit the seller's (feeders or producers) marketing options. Please provide comment about the extent to which these AMAs constrain marketing options for sellers. Do these AMAs commonly require sellers to deliver all cattle they produce to a single packer (exclusivity)? Are sellers under these AMAs prevented from using other selling methods for some cattle, including cattle exchanges, auctions, or negotiations with other packers?

10. When cattle are purchased through negotiated transactions, there is often some agreement between the parties regarding the time period (number of days) within which the buyer will pick up the cattle and/or compensate the seller for maintenance costs. AMS seeks comment and information about the frequency with which buyers fail to pick up cattle within an agreed-upon time frame. In such cases, are buyers adequately compensated? What is the extent of the

problem, and should AMS consider additional regulation to address it? What would be an appropriate requirement for prompt buyer pickup and seller reimbursement?

11. Do large changes in the numbers of fed cattle that packers purchase each week in the negotiated spot market create undue risk for sellers in those markets? If yes, what percentage change from the previous week do you consider large? Does widespread procurement of cattle through formula pricing agreements cause negotiated markets to be more volatile?

12. What would be an appropriate minimum level of use of a cattle exchange or auction by a packer buyer to qualify for a safe harbor provision in a prohibition against relative variation in quantity purchased week-to-week in the benchmark market changing at a substantially greater rate than the relative variation in quantity purchased week-to-week under the pricing agreement?

13. What motivates sellers to market cattle in the negotiated (cash or spot) market rather than through a formula pricing agreement or other type of AMA?

14. To what extent are formula pricing agreements or other AMAs available to small and medium-sized feedlot sellers and what are their reasons for choosing whether or not to use them? What rules could AMS develop to ensure non-discriminatory access?

15. How do those producer motivations differ by relative size and region, and to what extent to prices in one region follow (or otherwise affect) trading the occurs in another region?

16. How, specifically, do sellers and buyers determine the method by which base prices are determined for formula pricing agreements? To what extent does the buyer and the seller influence the choice of base price? What base price sources (e.g., USDA regional price reports, live cattle futures, etc.) do sellers and buyers prefer? What specific factors and considerations are important to sellers and buyers when choosing a base price?

17. Please describe views that AMS should consider relating to compliance burdens with any of the options presented, generally above or specifically below. Is the definition of "covered packer", which limits certain interventions to larger packers, an appropriate approach to limiting compliance burdens on the industry?

18. To what extent, if at all, would these general regulatory options address other pervasive avenues for manipulation of cattle prices and how

should USDA address any alternative forms of manipulation?

19. Is it necessary and effective for AMS to restrict the proportional use of formula pricing agreements relative to cash trading? If so, under what conditions, and what proportion is necessary and effective and why? Should the level of market concentration be considered in this determination, and why?

20. Does the timing of price setting (after contract formation but on a future price) increases the risk of manipulation of cash markets or other harms?

21. Do specific types of AMAs create more problems than others and should AMS limit the use of some types of contractual provisions in AMAs?

B. Specific Base Price Regulatory Options

1. Please comment about the use of USDA regional price reports (for example, weekly negotiated live or dressed cash steer price for a particular region) as benchmarks (also called base prices or reference prices) in fed cattle formulas. To what extent do available prices accurately reflect competitive market conditions in time periods (*i.e.*, each week) and in regions? Do buyers or sellers have any concerns or evidence that low weekly trading volumes (*i.e.*, few cattle and/or transactions) or small numbers of market participants distort benchmarks based on regional price reports that are used as base prices in formula contracts? If yes, what weekly trading volumes (number of transactions or number of cattle) and/or number of market participants do you consider low?

2. Please comment on the value of using USDA prices based on specific reporting regions rather than more aggregated reports (*i.e.*, 5-Area Average or National Report) as the basis for formula contract benchmarks. Is a prohibition on using more than 50% of a regional price for a base price in a formula agreement appropriate? If not, is there level of partial use that would be appropriate?

3. What problems would buyers and/or sellers encounter if regional prices were no longer available for use as benchmarks to establish base prices in formula contracts? Would no longer using regional benchmarks mitigate some of the market power dynamics between increasingly consolidated packers and producers?

4. Should a contract benchmark be based on a reported price for cattle with specific characteristics (*e.g.*, steers 65–80% choice or 55% prime) or for more general categories (*e.g.*, total of all classes and all grades)?

5. AMS has historically published a National Weekly Fed Cattle Comprehensive report that reports composite net prices paid for cattle purchased using all purchasing methods. Recently, AMS expanded this to include a new Regional Weekly Comprehensive Purchase Type report that provides a composite price for all beef type cattle purchased (including live and dressed basis, FOB and delivered, steers, heifers, and mixed, etc.) for negotiated methods only (negotiated cash and negotiated grid net) and for combined negotiated and formula methods. Please comment on the value of this additional regional market information. Could these Comprehensive regional price series provide a useful alternative formula contract benchmark if currently used regional negotiated cash prices were no longer available?

6. Could alternative compensation structures restore competition and negotiation in cattle payment structures while maintaining the benefits of AMAs? For example, could negotiated grid sales, where the value of the cattle is assessed after slaughter and feeder compensated based on the actual quality of cattle sold, adequately take into account certification and grading?

7. To what extent does benchmarking with respect to live cattle futures solve the problem of suppressed benchmark inputs? How can such a futures benchmark be regulated to prevent manipulation? For example, should a future rulemaking forbid purchasing cattle after the close of mandatory reporting or the exchange day on Friday afternoon, to end the practice of paying certain feedlots a higher price without contribution to the week's average price or to futures prices to which formula and forward contracts are tied?

8. To what extent does pegging benchmarks to inputs (*e.g.*, feed) or outputs (*e.g.*, wholesale boxed beef) mitigate fairness concerns related to packer spread and manipulation of benchmarks?

9. What would be the challenge of requiring that all formula contracts contain a firm negotiated base price that can be equated to a specific dollar amount when the contract is entered into? How could such a contract implement quality adjustments or otherwise contain the efficiency benefits of AMAs without reliance on spot benchmark?

10. Please comment on how information disclosures might address the concerns identified herein.

11. To what extent could nondiscrimination principles be applied to mitigate exclusivity that obstructed

price discovery, competition, and market access?

12. Should AMS incentivize exchange trading as a mechanism to enhance price discovery? If so, how should this be done?

13. Formula cattle selling arrangements enable packers to effectively secure a “captive supply” of cattle by establishing future commitments for future delivery and thereby reduce the need to purchase cattle on the cash market. Please comment on whether and how such arrangements might harm competition or distort fed cattle markets.

14. To what extent would the policy options outlined in this ANPR solve problems related to market power and lack of sufficient price discovery? If there are still gaps, what additional reforms would be necessary to ensure a fair-trading environment for all cattle producers?

C. Presumptively Permissible Base Price Options

1. Is the potential prohibition of regional negotiated cash price benchmarks based on the predominant use (largest component of value, presumptively 50 percent) appropriate? If not, what approach would be most effective and why? Are there additional conditions that would help ensure regionally negotiated cash price benchmarks are sufficiently thick, based on competitive conditions, and not prone to packer manipulation?

2. What criteria, specifically, would be appropriate for AMS to consider when evaluating whether a fed cattle benchmark would serve the needs of industry stakeholders and could function effectively as a means of establishing base prices for formula contracts?

3. What criteria should be applied when evaluating whether reported prices from, for example, a cattle exchange, auction, or negotiated market could appropriately be used as formula contract benchmarks (*i.e.*, to set base prices)? Should it be based on market thickness with consideration for numbers of cattle or transactions? What other factors should be considered?

4. AMS is seeking comment from industry stakeholders about the desirability and feasibility of undertaking proactive efforts to develop new price information and market reporting which, if useful to the industry, could provide additional options for adoption as fed cattle benchmark alternatives. These efforts would seek to develop robust benchmark alternatives that are designed with the realities and

challenges of thinning markets in mind, especially at the regional level. Development could use certain advanced modeling techniques for aggregating and reporting market information. Such models may have the potential to incorporate valuable information related to premiums and discounts paid for fed cattle characteristics. Or, tailored alternative benchmark reports could be designed to enable market participants to develop their own models based on certain consistent widely reported transaction-specific information, as is the case under the FINRA's TRACE System for bonds.

5. What risks might exist during any transition away from the use of existing benchmarks, and in what ways could they be mitigated? Are certain external regulatory regimes valuable for USDA to learn from in this regard, such as how financial regulators handled the transition away from LIBOR, how FINRA implemented the TRACE System, or other models from financial or commodity trading markets?

D. Written Documentation Options

1. Should AMS require covered packers to submit annual documentation to AMS describing how the packer plans to conduct market activities in a fair manner, participate in price discovery for fed cattle, and ensure market access for small and medium-sized feeders?

2. Please comment on how packers should plan to structure market participation and procurement methods to contribute to market price discovery. Provide specific details about actions packers should take to achieve these goals and any market information or data that could be provided to the industry on a voluntary basis to improve market transparency.

3. What role should exchange trading play in considerations of price discovery? For example, for a covered packer to count as contributing to price discovery, would it be useful to establish a presumptive requirement that no less than a certain percentage (e.g., 15% or 30%) of cattle be either exchanged or auction purchased or paid as a market-making fee to the exchange or auction to cover the risks and costs of other producers in those transparent, competitive pricing venues?

4. Please discuss specific problems that feedlot sellers experience with market access and actions that packers could take to improve market access, especially for small and medium-sized producers. For example, would enhanced access to exchange trading be effective in supporting market access,

and could a market-making fee system that supported smaller producers be helpful—for example, from packers that chose to make contributing to such fee one part of their contribution to price discovery under their plan?

5. Please comment about specific concerns related to packer purchasing behavior during periods of supply and demand disruption (i.e., pandemics, disease outbreaks, production disruptions, etc.). What are the important elements of packer plans for maintaining adequate price discovery and market participation during these times?

6. Were AMS to require packers to report to PSD all pricing agreements that describe how base prices are determined for all cattle procured by the packer, describe any specific information or data that should be required for this documentation or otherwise associated to make this documentation more useful for AMS to monitor the market. Should AMS consider any other appropriate documentation requirements of covered packers?

7. In what ways could it be appropriate and useful for AMS to make aspects of the information from these documentation reports available to the public, subject to confidentiality protections? Which ones and why? Would a firm-specific approach, as opposed to an aggregated approach, ever be appropriate for public disclosure?

8. Would it be appropriate and useful for AMS to score or rank covered packers based on their contribution to price discovery, potentially similarly to how FINRA scores broker-dealers on certain metrics?⁸⁰ If so, what metrics would be appropriate for the scoring: cash trade and exchange trading purchases, purchases from smaller producers, or other factors? Should any deductions be taken, such as the use of TOMP contracts or delayed packer pickup? Should scoring be dynamic, such that improvements from year to year are recognized? Would any scoring or ranking be most appropriate and useful if provided confidentially to covered packers, or should any ranking be made available publicly?

V. Conclusions and Next Steps

Given the background, key regulatory challenges, and options for consideration outlined in this ANPR,

⁸⁰ See, e.g., FINRA, "Firm Summary Scorecard," available at <https://www.finra.org/compliance-tools/report-center/equity/firm-summary-scorecard> (last accessed Aug. 2024); "TRACE Quality of Market Report Cards—Treasuries," available at <https://www.finra.org/compliance-tools/report-center/trace/quality-of-markets-treasuries> (last accessed Aug. 2024).

AMS is seeking comment on potential and preferred paths forward. Comments received in response to this ANPR will inform AMS's approach to regulating the Nation's fed cattle markets. Substantive, well-reasoned, constructive comments, including comments that provide data to support views (for example, are based on industry surveys), will assist in identifying if there are unforeseen challenges or viable alternatives before the Agency moves forward. Comments generally in support or opposition to options identified in this ANPR will assist AMS in identifying the acceptability of the presented options in the absence of other alternatives.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2024-23528 Filed 10-10-24; 8:45 am]

BILLING CODE P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 337

RIN 3064-AF99

Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions; Extension of Comment Period

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: On August 23, 2024, the FDIC published in the *Federal Register* a proposed rule that would make revisions to its regulations relating to the brokered deposit restrictions that apply to less than well-capitalized insured depository institutions. The proposed rule provided for a 60-day comment period, which closes on October 22, 2024. The FDIC has determined that an extension of the comment period until November 21, 2024, is appropriate. This action will allow interested parties additional time to analyze the proposal and prepare comments.

DATES: The comment period for the document that published at 89 FR 68244 (August 23, 2024) is extended. Comments must be received on or before November 21, 2024.

ADDRESSES: You may submit comments on this document using any of the following methods:

• **Agency Website:** <https://www.fdic.gov/resources/regulations/>

federal-register-publications/. Follow the instructions for submitting comments on the agency website.

- *Email: comments@fdic.gov*. Include RIN 3064–AF99 in the subject line of the message.

- *Mail: James P. Sheesley, Assistant Executive Secretary, Attention: Comments—RIN 3064–AF99, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.*

- *Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW Building (located on F Street) on business days between 7 a.m. and 5 p.m.*

- *Public Inspection: Comments received, including any personal information provided, may be posted without change to <https://www.fdic.gov/resources/regulations/federal-register-publications/>. Commenters should submit only information that the commenter wishes to make available publicly. The FDIC may review, redact, or refrain from posting all or any portion of any comment that it may deem to be inappropriate for publication, such as irrelevant or obscene material. The FDIC may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. All comments that have been redacted, as well as those that have not been posted, that contain comments on the merits of the notice will be retained in the public comment file and will be considered as required under all applicable laws. All comments may be accessible under the Freedom of Information Act.*

FOR FURTHER INFORMATION CONTACT:

Division of Risk Management Supervision: Thomas F. Lyons, Associate Director, 202–898–6850, TLyons@fdic.gov; Karen J. Currie, Chief, 202–898–3981, KCurrie@fdic.gov; Judy E. Gross, Senior Policy Analyst, 202–898–7047, JuGross@fdic.gov.

Legal Division: Vivek Khare, Senior Counsel, 202–898–6847, VKhare@fdic.gov; Chantal Hernandez, Counsel, 202–898–7388, ChHernandez@fdic.gov; Ryan McCarthy, Counsel, 202–898–7301, RyMcCarthy@fdic.gov.

SUPPLEMENTARY INFORMATION: On August 23, 2024, the FDIC published in the **Federal Register**¹ a proposed rule amending the brokered deposits-related regulations implementing section 29 of the FDI Act.² The proposed rule stated that the comment period would close on

October 22, 2024. However, to provide additional opportunity for the public to prepare comments to address the matters raised by the proposed rule, the FDIC is extending the comment period for the brokered deposits-related proposed rule from October 22, 2024, to November 21, 2024.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 8, 2024.

James P. Sheesley,
Assistant Executive Secretary.

[FR Doc. 2024–23631 Filed 10–10–24; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2024–2055; Airspace Docket No. 22–AWP–56]

RIN 2120–AA66

Modification of Class D Airspace, Establishment of Class E Airspace; San Bernardino International Airport, San Bernardino, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the Class D airspace and establish Class E airspace designated as an extension to a Class D surface area at San Bernardino International Airport, CA (KSBD). Additionally, this action proposes an administrative amendment to update the airport's existing Class D airspace legal description. These actions would support the safety and management of instrument flight rules (IFR) and visual flight rules (VFR) operations at the airport.

DATES: Comments must be received on or before November 25, 2024.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2024–2055 and Airspace Docket No. 22–AWP–56 using any of the following methods:

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

- * *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

- * *Hand Delivery or Courier:* Take comments to Docket Operations in

Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any

¹ 89 FR 68244.

² 12 U.S.C. 1831f.

recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

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

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

Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198.

Incorporation by Reference

Class D and E4 airspace designations are published in paragraphs 5000 and 6004, respectively, 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 proposes to amend the current version of that order, FAA Order JO 7400.11J, dated July 31, 2024 and effective September

15, 2024. These updates would be published in the next update to FAA Order JO 7400.11. That order is publicly available as listed in the **ADDRESSES** section of this document.

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

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 that would modify Class D airspace and establish Class E airspace designated as an extension to a Class D surface area at San Bernardino International Airport, CA.

The ceiling of the KSBD Class D airspace should be raised from 3,200 feet to 3,700 feet mean sea level (MSL). This action would give the airport a ceiling height of 2,500 feet above ground level (AGL), which is recommended for Class D airspace that serves turbojet or turboprop aircraft in a high-density area.

The eastern boundary of the Class D airspace does not fully contain IFR departure operations between the surface and the base of adjacent airspace when departing Runway (RWY) 6 on the Obstacle Departure Procedure (ODP) or the JADKO ONE DEPARTURE (Area Navigation [RNAV]) procedure due to rising terrain north-through-east of the airport. The northeastern lateral boundary should be extended 2.5 miles eastward in the form of a shelf that extends upward from 2,600 feet MSL to and including 3,700 feet MSL. This proposed shelf would better contain the aforementioned departure procedures until reaching the next adjacent airspace while preserving the 1,000-foot AGL traffic patterns at Redlands Municipal Airport, Redlands, CA (4.4 miles away from KSBD).

The western boundary of the Class D airspace does not fully contain the RWY 24 ODP until reaching the base of adjacent airspace, nor does it fully contain IFR arrival operations between the surface and 1,000 feet above the surface when executing the RNAV (Required Navigation Performance [RNP]) X RWY 6 arrival procedure. The lateral boundary of the surface area should be extended a half mile beyond the area's established 4.5-mile radius to meet containment standards for these two procedures.

The northern boundary of the Class D airspace does not fully contain the JADKO ONE DEPARTURE (RNAV) RWY 6 procedure until reaching the next adjacent airspace due to rising terrain north-through-east of KSBD. The northern boundary should be moved .29 miles north to more appropriately contain the procedure's track width. Additionally, this modification would

better align the northern Class D airspace border with the northern border of the proposed Class D shelf, east of the airport.

The eastern lateral boundary of the Class D airspace does not fully contain the RNAV (RNP) RWY 24 arrival procedure while between the surface and 1,000 feet above the surface. A Class E extension to the Class D surface area airspace should be established to contain the arrival procedure more appropriately. This proposed area would extend eastward-then-southward in a "dog-leg" shape to avoid overlying Redlands Municipal Airport, with its southeasternmost point located approximately 8 miles southeast of the airport. This proposed airspace would impose a 500-foot clearance-from-clouds requirement on VFR aircraft operating within the airspace area to support flight safety at KSBD without imposing 2-way radio communication.

Finally, the FAA proposes a modification to the administrative portion of the airport's Class D airspace legal description. The description should be updated to replace the outdated use of the phrases "Notice to Airmen" and "Airport/Facility Directory." These phrases should be amended to read "Notice to Air Missions" and "Chart Supplement," respectively, to align with the FAA's current nomenclature.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 5000 Class D Airspace.

* * * * *

AWP CA D San Bernardino, CA [Amended]

San Bernardino International Airport, CA
(Lat. 34°05'43" N, long. 117°14'06" W)
Ontario International Airport, CA
(Lat. 34°03'22" N, long. 117°36'04" W)

That airspace extending upward from the surface to and including 3,700 feet within a boundary beginning at the airport's 048° bearing at 4.1 miles, then south along Church Street to the 137° bearing at 4.5 miles, then clockwise around the airport's 4.5-mile radius to the 307° bearing, thence to the point of beginning, and within an area 2.1 miles either side of the airport's 250° bearing extending from the 4.5-mile radius to 5 miles west of the airport, excluding that airspace within the Ontario International Airport Class C airspace; that airspace extending upwards from 2,600 feet to and including 3,700 feet within an area 2.8 miles north and 1.1 miles south of the airport's 090° bearing extending from 3 miles east of the airport to the 5.5-mile radius of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E Surface Area.

* * * * *

AWP CA E4 San Bernardino, CA [New]

San Bernardino International Airport, CA
(Lat. 34°05'43" N, long. 117°14'06" W)
Point in Space
(Lat. 34°02'46" N, long. 117°10'03" W)

That airspace extending upward from the surface within a boundary beginning at the airport's 048° bearing at 4.1 miles, then south along Church Street to its intersection with the Point in Space's 2.8-mile radius, thence clockwise via the Point in Space's 2.8-mile radius to its 068° bearing, thence to lat. 34°01'38" N, long. 117°06'56" W, to lat. 34°01'38" N, long. 117°04'17" W, to lat. 34°08'29" N, long. 117°04'17" W, thence to the point of beginning. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

* * * * *

Issued in Des Moines, Washington, on October 7, 2024.

B.G. Chew,

*Group Manager, Operations Support Group,
Western Service Center.*

[FR Doc. 2024–23497 Filed 10–10–24; 8:45 am]

BILLING CODE 4910–13–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**29 CFR Part 1602**

RIN 3046–AB28

Recordkeeping and Reporting Requirements Under Title VII, the ADA, GINA, and the PWFA

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Equal Employment Opportunity Commission (“EEOC” or “Commission”) is proposing to amend its regulations regarding recordkeeping and reporting requirements to delegate authority for making determinations on hardship exemption applications, to set forth the procedure for applying for exemptions, and to provide a non-exhaustive list of criteria for considering exemption applications. These actions are necessary for administrative efficiency and transparency.

DATES: Comments on the notice of proposed rulemaking (hereinafter “NPRM”) must be received on or before December 10, 2024.

ADDRESSES: You may submit comments, identified by RIN Number 3046–AB28, by any of the following methods:

• **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments.

• **Fax:** (202) 663–4114. Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender

may request confirmation of receipt by calling the Executive Secretariat staff at (202) 921–2815 (voice), 1–800–669–6820 (TTY), or 1–844–234–5122 (ASL video phone).

• **Mail:** Ray Windmiller, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

• **Hand Delivery/Courier:** Ray Windmiller, Executive Officer, Executive Secretariat, U.S. Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507.

Instructions: The Commission invites comments from all interested parties. All comment submissions must include the Regulatory Information Number (RIN) for this rulemaking. Comments need to be submitted in only one of the above-listed formats. All comments received will be posted without change to <https://www.regulations.gov>, including any personal information you provide. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

Docket: For access to comments received, go to <https://www.regulations.gov>. Copies of the received comments also will be available for review at the Commission's library, 131 M Street NE, Suite 4NW08R, Washington, DC 20507, between the hours of 9:30 a.m. and 4:30 p.m., from December 10, 2024, until the Commission publishes the rule in final form. Members of the public may schedule a library appointment by sending an email to OEDA@eeoc.gov.

FOR FURTHER INFORMATION CONTACT:

Kathleen Oram, Assistant Legal Counsel, at (202) 921–2665 or Kathleen.Oram@eeoc.gov, or Lynn Dickinson, Senior Attorney, at (202) 921–2559 or Lynn.Dickinson@eeoc.gov, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission. Requests for this document in an alternative format should be made to the EEOC's Office of Communications and Legislative Affairs at (202) 921–3191 (voice), (800) 669–6820 (TTY), or (844) 234–5122 (ASL video phone).

SUPPLEMENTARY INFORMATION: Title VII requires covered entities to “make and keep . . . records relevant to the determinations of whether unlawful

employment practices have been or are being committed.” 42 U.S.C. 2000e–8(c). Pursuant to its rulemaking authority in sections 709(c) and 713(a) of Title VII, *see* 42 U.S.C. 2000e–8(c); 2000e–12(a), in 1966 the EEOC issued regulations requiring covered employers, joint labor-management committees, labor organizations, political jurisdictions, school systems or districts, and institutions of higher education subject to these laws (collectively “filers”) to report specified information to the Commission to aid in the administration and enforcement of federal employment discrimination law. *See* 29 CFR 1602.7 (EEO–1 report), 1602.15 (EEO–2 report), 1602.22 (EEO–3 report), 1602.32 (EEO–4 report), 1602.41 (EEO–5 report), 1602.50 (EEO–6 report).¹ Section 709(c) allows filers to apply to the Commission for an exemption from the reporting requirements if the filers believe application of these requirements would result in undue hardship. Accordingly, the EEOC’s regulations allow filers to apply for exemptions from the reporting requirements. *See* 29 CFR 1602.10 (EEO–1 report exemption), 1602.18 (EEO–2 report exemption), 1602.25 (EEO–3 report exemption), 1602.35 (EEO–4 report exemption), 1602.44 (EEO–5 report exemption), and 1602.53 (EEO–6 report exemption).

The EEOC is issuing this notice of proposed rulemaking (NPRM) to revise 29 CFR part 1602 by creating a new subpart addressing applications for exemptions that will be applicable to all EEO reports. This new subpart would replace the existing separate provisions addressing undue hardship applications for the six EEO reports; therefore, this NPRM also proposes to remove and reserve 29 CFR 1602.10, 1602.18, 1602.25, 1602.35, 1602.44, and 1602.53. Providing a single procedure to address all hardship exemption applications will enhance administrative efficiency and streamline the regulation. This new subpart would apply to all EEO reports as now constituted or subsequently modified.

In addition, the Commission proposes to revise its regulations to: (1) delegate to its Chief Data Officer (CDO) or the CDO’s designee² the authority to make determinations on exemption applications; (2) establish express procedures for exemption applications; and (3) delineate the criteria that are used for assessing exemption applications.

Currently, the Commission’s regulations state that filers may apply to the Commission for an exemption from the reporting requirements. *See* 29 CFR 1602.10, 1602.18, 1602.25, 1602.35, 1602.44, and 1602.53. Filers now submit applications for undue hardship exemptions to the EEOC’s Office of Enterprise Data and Analytics (OEDA), which is led by the CDO, and OEDA prepares each application for submission to the Commission. The Commissioners subsequently review and then vote on each application. The Commission’s determination is returned to OEDA, which then conveys the result to the filer.

The Commission proposes to delegate to the CDO, or the CDO’s designee, authority to make determinations on applications for exemptions from reporting requirements. The CDO, as Director of OEDA, administers the Commission’s EEO data collections, addresses questions and concerns filers raise as they prepare their submissions, and works closely with data collected in EEO reports. Allowing the CDO to consider and make determinations on filers’ exemption applications will allow the CDO to bring this knowledge and information directly to bear in assessing applications and will increase efficiencies for both filers and the Commission.

Section 709(c) of Title VII directs the Commission to accept applications for undue hardship exemptions, and section 713(a), 42 U.S.C. 2000e–12, grants the Commission authority to issue procedural regulations “to carry out the provisions of this subchapter,” which includes section 709. Over the course of the many years during which the Commission has implemented section 709, the Commission has worked with numerous filers and has accepted and decided many applications for undue hardship exemptions. The purpose of this procedural rulemaking is to establish and publicize express procedures and to delineate and publicize the criteria the CDO will follow in making determinations on filers’ hardship exemption applications. The criteria are a necessary component of this procedural regulation and are not new; rather, they are drawn from the Commission’s decades of experience implementing section 709. Finally, publishing the procedures and criteria will provide greater transparency to filers and the public.

The deadlines for requesting exemptions, as well as the steps for submitting exemption applications, are provided in each collection’s

accompanying instructions.³ Upon receipt of an exemption application, the CDO will expeditiously issue a written determination that will notify the filer of the disposition of the application, and in the event the application is denied, the determination will notify the filer of the deadline for filing the report, which shall be at least 30 calendar days following the determination. While an application for exemption is pending before the CDO, the filer must continue diligently to collect and prepare the data required for the report in case the exemption request is denied. A filer’s failure to exercise such diligence is not cause for additional time to file a report if their exemption request is denied.

The regulation identifies a non-exhaustive list of criteria for the CDO, or the CDO’s designee, to consider in making undue hardship determinations, drawn from the Commission’s experience working with filers over many years. These criteria include the nature and extent of the filer’s efforts to collect and retain the required information; the degree to which the filer attempted to anticipate and preempt any problems in collecting and retaining the required information; the filer’s prior data reporting history, including whether the filer previously failed to submit a report or requested an exemption, and if so, whether such exemption was granted; the degree to which the circumstances are beyond the filer’s control or are extraordinary; and, the degree to which compliance has been rendered impracticable or impossible (*e.g.*, due to natural disaster or data loss).

Title VII requires employers to preserve their records. 42 U.S.C. 2000e–8(c). Nevertheless, through the determination criteria, the Commission acknowledges that under certain extreme circumstances, *e.g.*, where a filer, through no fault of its own, loses its data via security breach, natural disaster, or other significant disruption, compliance with the filing requirement may be rendered impossible or impracticable.

Ultimately, the general expectation is compliance with the Commission’s reporting requirements. Exemptions should be needed only in rare, extreme circumstances. The Commission expects filers to comply with Title VII and these regulations by properly maintaining records and submitting the applicable

¹ The EEOC does not currently collect the EEO–2 or EEO–6 reports.

² References to the CDO in this NPRM include the CDO’s designee.

³ At the opening of each specific year’s collection(s), the EEOC provides filers with a web-based “Instruction Booklet” containing the eligibility requirements for the respective collection along with detailed instructions on how to file a report as well as submit a request for an exemption.

EEO reports when required. To that end, the regulation also includes a non-exhaustive list of factors that will *not* serve as a basis for finding that undue hardship exists: A filer's number of establishments alone; lack of knowledge about the reporting requirements; routine or purposeful data expungement by the filer or a third party; and failure to plan for adequate data security, maintenance, or transfer (e.g., data loss due to a change in vendor or employee succession where the filer or vendor failed to back up the data). Permitting filers to avoid submitting data based on these grounds would thwart the statutory purpose of the data collection by incentivizing failure to reasonably maintain employment records.

Regulatory Procedures

Executive Order 12866

The Commission has complied with the principles in section 1(b) of Executive Order 12866, Regulatory Planning and Review. This NPRM is not a "significant regulatory action" under section 3(f) of the order and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) (PRA) applies to rulemakings in which an agency creates a new paperwork burden on regulated entities or modifies an existing burden. This proposed rule imposes no new information collection requirements on the public, and therefore it will create no new paperwork burdens or modifications to existing burdens that are subject to review by the Office of Management and Budget under the PRA.

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this NPRM will not have a significant economic impact on a substantial number of small entities. To the extent that it affects small entities, it merely clarifies the process for requesting exemptions. For this reason, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform Act of 1995

This NPRM will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. To the extent that it may apply to state or local government reporting requirements, it merely clarifies the process for requesting

exemptions. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This NPRM is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996) because, as a proposal submitted for public comment, it is not a "rule" within the definition of 5 U.S.C. 801. The Congressional Review Act only applies to final rules. Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 29 CFR Part 1602

Administrative practice and procedure, Equal employment opportunity, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, the Equal Employment Opportunity Commission proposes to amend 29 CFR part 1602 as follows:

PART 1602—RECORDKEEPING AND REPORTING REQUIREMENTS UNDER TITLE VII, THE ADA, GINA, AND THE PWFA

- 1. The authority citation for 29 CFR part 1602 continues to read as follows:

Authority: 42 U.S.C. 2000e–8, 2000e–12; 44 U.S.C. 3501 *et seq.*; 42 U.S.C. 12117; 42 U.S.C. 2000ff–6; 42 U.S.C. 2000gg–2.

§§ 1602.10, 1602.18, 1602.25, 1602.35, 1602.44, and 1602.53 [Removed and Reserved]

- 2. Remove and reserve §§ 1602.10, 1602.18, 1602.25, 1602.35, 1602.44, and 1602.53.

- 3. Add subpart S, consisting of §§ 1602.57 and 1602.58, to read as follows:

Subpart S—Exemption From Reporting Requirements

Sec.

1602.57 Procedures.

1602.58 Consideration of exemption requests.

Subpart S—Exemption From Reporting Requirements

§ 1602.57 Procedures.

(a) If a filer claims that the preparation or filing of the report would create undue hardship, the filer may apply to the Commission for an exemption from the requirements set forth in this part by submitting a written exemption application according to the applicable collection's accompanying instructions. Filers must demonstrate with specific facts (and supporting

documentation, as appropriate) how preparing or filing the report would create undue hardship.

(b) The Commission hereby delegates to its Chief Data Officer (CDO), or the CDO's designee, authority to make determinations on applications for exemptions under this subpart.

(1) The CDO shall expeditiously issue a written determination notifying the filer of the disposition of the exemption application.

(2) If the CDO denies the application for an exemption, the CDO will notify the filer in writing of the following:

(i) The deadline for filing the report, which will be at least 30 calendar days after the CDO's determination; and

(ii) That the filer may bring a civil action in the United States District Court for the district where the filer's records are kept, pursuant to 42 U.S.C. 2000e–8(c).

(c) While an application is pending, the filer must continue to collect and prepare the data required for the report in case the exemption request is denied.

(d) The CDO will report annually to the Commission the number of exemption applications received and the determinations made on those applications and will make the applications and written determinations available to the Commission.

§ 1602.58 Consideration of exemption requests.

(a) The CDO, or the CDO's designee, will consider the facts and circumstances presented in each application, including but not limited to:

(1) The nature and extent of the filer's efforts to collect and retain the required information;

(2) The degree to which the filer attempted to anticipate and preempt any problems in collecting and retaining the required information;

(3) The filer's prior data reporting history, including whether the filer previously failed to submit a report or requested an exemption, and if so, whether such exemption was granted;

(4) The degree to which the circumstances are beyond the filer's control or are extraordinary; and

(5) The degree to which compliance has been rendered impracticable or impossible (e.g., due to natural disaster or data loss).

(b) The filer bears the burden to demonstrate that the reporting requirement would result in undue hardship.

(c) Circumstances that generally will not form the basis of a finding of undue hardship include, but are not limited to:

(1) A filer's number of establishments alone;

(2) A filer's lack of knowledge about the reporting requirements;

(3) Routine or purposeful data expungement by the filer or a third party; and

(4) A filer's failure to plan for adequate data security, maintenance, or transfer (e.g., data loss due to a change in vendor or employee succession where the filer or vendor failed to back up the data).

Charlotte A. Burrows,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 2024-23327 Filed 10-10-24; 8:45 am]

BILLING CODE 6570-01-P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 380

[Docket No 23-CRB-0012-WR (2026-2030)]

Determination of Rates and Terms for Digital Performance of Sound Recordings and Making of Ephemeral Copies To Facilitate Those Performances (Web VI)

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Proposed rule related to noncommercial educational webcasters.

SUMMARY: The Copyright Royalty Judges are publishing for comment proposed regulations governing the rates and terms for the digital performance of sound recordings by noncommercial educational webcasters and for the making of ephemeral recordings necessary for the facilitation of such transmissions for the period commencing January 1, 2026, and ending on December 31, 2030.

DATES: Comments and objections, if any, are due November 12, 2024.

ADDRESSES: You may submit comments using eCRB, the Copyright Royalty Board's online electronic filing application, at <https://app.crb.gov/>.

Instructions: To send your comment through eCRB, if you don't have a user account, you will first need to register for an account and wait for your registration to be approved. Approval of user accounts is only available during business hours. Once you have an approved account, you can only sign in and file your comment after setting up multi-factor authentication, which can be done at any time of day. All comments must include the Copyright Royalty Board name and the docket number for this proposed rule. All properly filed comments will appear

without change in eCRB at <https://app.crb.gov>, including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/>, and search for docket number 23-CRB-0012-WR (2026-2030).

FOR FURTHER INFORMATION CONTACT:

Anita Brown, CRB Program Specialist, at (202) 707-7658 or crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 114 of the Copyright Act, title 17 of the United States Code, provides a statutory license that allows for the public performance of sound recordings by means of a digital audio transmission by, among others, eligible nonsubscription transmission services. 17 U.S.C. 114(f). For purposes of the section 114 license, an "eligible nonsubscription transmission" is a noninteractive digital audio transmission that does not require a subscription for receiving the transmission. The transmission must also be made as part of a service that provides audio programming consisting in whole or in part of performances of sound recordings the purpose of which is to provide audio or other entertainment programming, but not to sell, advertise, or promote particular goods or services. *See* 17 U.S.C. 114(j)(6).

Services using the section 114 license may need to make one or more temporary or "ephemeral" copies of a sound recording to facilitate the transmission of that recording. The section 112 statutory license allows for the making of these ephemeral reproductions. 17 U.S.C. 112(e).

Chapter 8 of the Copyright Act requires the Judges to conduct proceedings every five years to determine the rates and terms for the sections 114 and 112 statutory licenses. 17 U.S.C. 801(b)(1), 804(b)(3)(A). The current proceeding commenced in January 2024 for rates and terms that will become effective on January 1, 2026, and end on December 31, 2030. Pursuant to section 804(b)(3)(A), the Judges published in the **Federal Register** a notice commencing the proceeding and requesting that interested parties submit their petitions to participate. 89 FR 812 (Jan. 5, 2024). SoundExchange, Inc. ("SoundExchange"), and College Broadcasters, Inc. ("CBI") each filed Petitions to Participate, as did others.

On September 13, 2024, the Copyright Royalty Judges (Judges) received a joint motion from SoundExchange and CBI to adopt a partial settlement of their interests regarding *Web VI* rates and terms for 2026-2030 and seeking approval of that partial settlement. Joint Motion to Adopt Partial Settlement, Docket No. 23-CRB-0012-WR (2026-2030). Their interests concern the rule setting copyright royalty minimum fees and terms that the Judges will establish for compulsory copyright licenses for certain internet transmissions of sound recordings by college radio stations and other noncommercial educational webcasters for the period from January 1, 2026, through December 31, 2030. SoundExchange represents the interests of sound recording copyright owners and performers. CBI represents the interests of users of the copyrighted material which users include college, university, and high school radio and television stations and other electronic media organizations. The Judges hereby publish the proposal and request comments from the public.

Statutory Timing of Adoption of Rates and Terms

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt royalty rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Judges for approval. The Judges must provide "an opportunity to comment on the agreement" to participants and non-participants in the rate proceeding who "would be bound by the terms, rates, or other determination set by any agreement. . . ." 17 U.S.C. 801(b)(7)(A)(i). Participants in the proceeding may also "object to [the agreement's] adoption as a basis for statutory terms and rates." *Id.*

The Judges "may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement," only "if any participant [in the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates." 17 U.S.C. 801(b)(7)(A)(ii), or where the negotiated agreement includes provisions that are contrary to the provisions of the applicable license(s) or otherwise contrary to statutory law. *See* Scope of the Copyright Royalty Judges Authority to Adopt Confidentiality Requirements upon Copyright Owners within a Voluntarily Negotiated License Agreement, 78 FR 47421, 47422 (Aug. 5,

2013), citing 74 FR 4537, 4540 (Jan. 26, 2009).

Any rates and terms adopted pursuant to this provision would be binding on all copyright owners of sound recordings, college radio stations, and other noncommercial educational webcasters performing the sound recordings for the license period 2026–2030.

Proposed Adjustments to Rates and Terms

According to SoundExchange and CBI, the agreement generally continues in effect the current provisions of 37 CFR part 380, subpart C, which were themselves adopted pursuant to 17 U.S.C. 801(b)(7)(A) as part of the *Web V* proceeding, with four primary changes: (1) the minimum fee applicable to noncommercial educational webcasters will increase by \$50 per year throughout the rate period; (2) the threshold for usage covered by the minimum fee is increased from 159,140 Aggregate Tuning Hours (“ATH”) to 160,000 ATH; (3) the reporting and payment period applicable in the event a Noncommercial Educational Webcaster makes total transmissions in excess of 160,000 ATH in a given month is reduced from 45 days to 30 days; and (4) a clarification concerning the counting of channels and stations has been added. Joint Motion at 6.

Those who would be bound by the terms, rates, or other determination set by the agreement may comment on, and proceeding participants may object to, any or all of the proposed regulations contained in this document. Such comments and objections must be submitted no later than November 12, 2024.

List of Subjects in 37 CFR Part 380

Copyright, Sound recordings, Webcasters.

Proposed Regulations

For the reasons set forth in the preamble, the Copyright Royalty Judges propose to amend 37 CFR part 380 as follows:

PART 380—RATES AND TERMS FOR TRANSMISSIONS BY ELIGIBLE NONSUBSCRIPTION SERVICES AND NEW SUBSCRIPTION SERVICES AND FOR THE MAKING OF EPHEMERAL REPRODUCTIONS TO FACILITATE THOSE TRANSMISSIONS

■ 1. The authority citation for part 380 continues to read as follows:

Authority: 17 U.S.C. 112(e), 114(f), 804(b)(3).

■ 2. Revise subpart C to read as follows:

Subpart C—Noncommercial Educational Webcasters

Sec.

380.20 Definitions.

380.21 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

380.22 Terms for making payment of royalty fees and statements of account.

§ 380.20 Definitions.

For purposes of this subpart, the following definitions apply, as well as those set forth in subpart A of this part:

Educational Transmission means an eligible nonsubscription transmission (as defined in 17 U.S.C. 114(j)(6)) made by a Noncommercial Educational Webcaster over the internet.

Noncommercial Educational Webcaster means a noncommercial webcaster (as defined in 17 U.S.C. 114(f)(4)(E)(i)) that:

(1) Has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Educational Transmissions and related Ephemeral Recordings;

(2) Complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations in 37 CFR part 380;

(3) Is directly operated by, or is affiliated with and officially sanctioned by, and the digital audio transmission operations of which are staffed substantially by students enrolled at, a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution;

(4) Is not a “public broadcasting entity” (as defined in 17 U.S.C. 118(f)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to its criteria; and

(5) Takes affirmative steps not to make total transmissions in excess of 160,000 Aggregate Tuning Hours (ATH) on any individual channel or station in any month, if in any previous calendar year it has made total transmissions in excess of 160,000 ATH on any individual channel or station in any month.

§ 380.21 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Minimum fee for eligible Noncommercial Educational Webcasters.* Each Noncommercial Educational Webcaster that did not exceed 160,000 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and does not expect to make total transmissions in excess of 160,000 ATH on any individual channel or station in

any calendar month during the applicable calendar year shall pay an annual, nonrefundable minimum fee in the amount set forth in paragraphs (a)(1) through (5) of this section (the “Minimum Fee”) for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Educational Transmissions, for each calendar year it makes Educational Transmissions subject to this subpart. For clarity, each individual stream (e.g., HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate Minimum Fee. However, all of the streams of Digital Audio Transmissions of music programming by a Noncommercial Educational Webcaster, or by a group of affiliated Noncommercial Educational Webcasters, that are the same or have only immaterial variations (e.g., differences in station identification, acknowledgement of sponsors or occasional substitute programming) shall be treated as part of one channel or station for purposes of this section. For this purpose, two Noncommercial Educational Webcasters shall be considered affiliates if one is controlling, controlled by, or under common control with the other. This principle applies whether the streams are offered from only a single outlet or through multiple outlets (e.g., websites, broadcast radio station simulcasts, aggregators, mobile applications or other online locations where listeners can access music streaming). The Minimum Fee shall constitute the annual per channel or per station royalty for all Educational Transmissions totaling not more than 160,000 ATH in a month on any individual channel or station, and for Ephemeral Recordings to enable such Educational Transmissions. In addition, a Noncommercial Educational Webcaster electing the reporting waiver described in § 380.22(d)(1) shall pay a \$100 annual fee (the “Proxy Fee”) to the Collective (for purposes of this subpart, the term “Collective” refers to SoundExchange, Inc.). The Minimum Fee for each year of the royalty period is:

- (1) 2026: \$800;
- (2) 2027: \$850;
- (3) 2028: \$900;
- (4) 2029: \$950; and
- (5) 2030: \$1,000.

(b) *Consequences of unexpectedly exceeding the ATH cap.* In the case of a Noncommercial Educational Webcaster eligible to pay royalties under paragraph (a) of this section that unexpectedly makes total transmissions

in excess of 160,000 ATH on any individual channel or station in any calendar month during the applicable calendar year:

(1) The Noncommercial Educational Webcaster shall, for such month and the remainder of the calendar year in which such month occurs, pay royalties in accordance, and otherwise comply, with the provisions of subpart B of this part applicable to Noncommercial Webcasters;

(2) The Minimum Fee paid by the Noncommercial Educational Webcaster for such calendar year will be credited to the amounts payable under the provisions of subpart B of this part applicable to Noncommercial Webcasters; and

(3) The Noncommercial Educational Webcaster shall, within 30 days after the end of each month, notify the Collective if it has made total transmissions in excess of 160,000 ATH on a channel or station during that month; pay the Collective any amounts due under the provisions of subpart B of this part applicable to Noncommercial Webcasters; and provide the Collective a statement of account pursuant to subpart A of this part.

(c) *Royalties for other Noncommercial Educational Webcasters.* A Noncommercial Educational Webcaster that is not eligible to pay royalties under paragraph (a) of this section shall pay royalties in accordance, and otherwise comply, with the provisions of subpart B of this part applicable to Noncommercial Webcasters.

(d) *Estimation of performances.* In the case of a Noncommercial Educational Webcaster that is required to pay royalties under paragraph (b) or (c) of this section on a per-Performance basis, that is unable to calculate actual total Performances, and that is not required to report actual total performances under § 380.22(d)(3), the Noncommercial Educational Webcaster may pay its applicable royalties on an ATH basis, provided that the Noncommercial Educational Webcaster shall calculate such royalties at the applicable per-Performance rates based on the assumption that the number of sound recordings performed is 12 per hour. The Collective may distribute royalties paid on the basis of ATH hereunder in accordance with its generally applicable methodology for distributing royalties paid on such basis. In addition, and for the avoidance of doubt, a Noncommercial Educational Webcaster offering more than one channel or station shall pay per-Performance royalties on a per-channel or -station basis.

(e) *Allocation between ephemeral recordings and performance royalty fees.* The Collective must credit 5% of all royalty payments as payment for Ephemeral Recordings and credit the remaining 95% to section 114 royalties. All Ephemeral Recordings that a Licensee makes which are necessary and commercially reasonable for making Educational Transmissions are included in the 5%.

§ 380.22 Terms for making payment of royalty fees and statements of account.

(a) *Payment to the Collective.* A Noncommercial Educational Webcaster shall make the royalty payments due under § 380.21 to the Collective.

(b) *Minimum fee.* Noncommercial Educational Webcasters shall submit the Minimum Fee, and Proxy Fee if applicable (see paragraph (d) of this section), accompanied by a statement of account, by January 31st of each calendar year, except that payment of the Minimum Fee, and Proxy Fee if applicable, by a Noncommercial Educational Webcaster that was not making Educational Transmissions or Ephemeral Recordings pursuant to the licenses in 17 U.S.C. 114 and/or 17 U.S.C. 112(e) as of January 31st of each calendar year but begins doing so thereafter shall be due by the 30th day after the end of the month in which the Noncommercial Educational Webcaster commences doing so. At the same time the Noncommercial Educational Webcaster must identify all its stations making Educational Transmissions and identify which of the reporting options set forth in paragraph (d) of this section it elects for the relevant year (provided that it must be eligible for the option it elects).

(c) *Statements of account.* Any payment due under paragraph (a) of this section shall be accompanied by a corresponding statement of account on a form provided by the Collective. A statement of account shall contain the following information:

(1) The name of the Noncommercial Educational Webcaster, exactly as it appears on the notice of use, and if the statement of account covers a single station only, the call letters or name of the station;

(2) The name, address, business title, telephone number, facsimile number (if any), electronic mail address (if any) and other contact information of the person to be contacted for information or questions concerning the content of the statement of account;

(3) The signature of a duly authorized representative of the applicable educational institution;

(4) The printed or typewritten name of the person signing the statement of account;

(5) The date of signature;

(6) The title or official position held by the person signing the statement of account;

(7) A certification of the capacity of the person signing; and

(8) A statement to the following effect:

“I, the undersigned duly authorized representative of the applicable educational institution, have examined this statement of account; hereby state that it is true, accurate, and complete to my knowledge after reasonable due diligence; and further certify that the licensee entity named herein qualifies as a Noncommercial Educational Webcaster for the relevant year, and did not exceed 160,000 total ATH in any month of the prior year for which the Noncommercial Educational Webcaster did not submit a statement of account and pay any required additional royalties.”

(d) *Reporting by Noncommercial Educational Webcasters in general—(1) Reporting waiver.* In light of the unique business and operational circumstances with respect to Noncommercial Educational Webcasters, and for the purposes of this subpart only, a Noncommercial Educational Webcaster that did not exceed 80,000 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 80,000 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to pay to the Collective a nonrefundable, annual Proxy Fee of \$100 in lieu of providing reports of use for the calendar year pursuant to the regulations at § 370.4 of this chapter. In addition, a Noncommercial Educational Webcaster that unexpectedly exceeded 80,000 total ATH on one or more channels or stations for more than one month during the immediately preceding calendar year may elect to pay the Proxy Fee and receive the reporting waiver described in this paragraph (d)(1) during a calendar year, if it implements measures reasonably calculated to ensure that it will not make Educational Transmissions exceeding 80,000 total ATH during any month of that calendar year. The Proxy Fee is intended to defray the Collective's costs associated with the reporting waiver in this paragraph (d)(1), including development of proxy usage data. The Proxy Fee shall be paid by the date specified in paragraph (b) of this section for paying the Minimum Fee for the applicable calendar year and

shall be accompanied by a certification on a form provided by the Collective, signed by a duly authorized representative of the applicable educational institution, stating that the Noncommercial Educational Webcaster is eligible for the Proxy Fee option because of its past and expected future usage and, if applicable, has implemented measures to ensure that it will not make excess Educational Transmissions in the future.

(2) *Sample-basis reports.* A Noncommercial Educational Webcaster that did not exceed 160,000 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year and that does not expect to exceed 160,000 total ATH for any individual channel or station for any calendar month during the applicable calendar year may elect to provide reports of use on a sample basis (two weeks per calendar quarter) in accordance with the regulations at § 370.4 of this chapter, except that, notwithstanding § 370.4(d)(2)(vi) of this chapter, such an electing Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances and may in lieu thereof provide channel or station name and play frequency. Notwithstanding the preceding sentence, a Noncommercial Educational Webcaster that is able to report ATH or actual total performances is encouraged to do so. These reports of use shall be submitted to the Collective no later than January 31st of the year immediately following the year to which they pertain.

(3) *Census-basis reports.* (i) If any of the conditions in paragraphs (d)(3)(i)(A) through (C) of this section is satisfied, a Noncommercial Educational Webcaster must report pursuant to paragraph (d)(3) of this section:

(A) The Noncommercial Educational Webcaster exceeded 160,000 total ATH for any individual channel or station for more than one calendar month in the immediately preceding calendar year;

(B) The Noncommercial Educational Webcaster expects to exceed 160,000 total ATH for any individual channel or station for any calendar month in the applicable calendar year; or

(C) The Noncommercial Educational Webcaster otherwise does not elect to be subject to paragraph (d)(1) or (2) of this section.

(ii) A Noncommercial Educational Webcaster required to report pursuant to paragraph (d)(3)(i) of this section shall provide reports of use to the Collective quarterly on a census reporting basis in accordance with § 370.4 of this chapter, except that, notwithstanding

§ 370.4(d)(2), such a Noncommercial Educational Webcaster shall not be required to include ATH or actual total performances, and may in lieu thereof provide channel or station name and play frequency, during the first calendar year it reports in accordance with this paragraph (d)(3). For the avoidance of doubt, after a Noncommercial Educational Webcaster has been required to report in accordance with paragraph (d)(3)(i) of this section for a full calendar year, it must thereafter include ATH or actual total Performances in its reports of use. All reports of use under paragraph (d)(3)(i) of this section shall be submitted to the Collective no later than the 30th day after the end of each calendar quarter.

(e) *Server logs.* Noncommercial Educational Webcasters shall retain for a period of no less than three full calendar years server logs sufficient to substantiate all information relevant to eligibility, rate calculation and reporting under this subpart. To the extent that a third-party Web hosting or service provider maintains equipment or software for a Noncommercial Educational Webcaster and/or such third party creates, maintains, or can reasonably create such server logs, the Noncommercial Educational Webcaster shall direct that such server logs be created and maintained by said third party for a period of no less than three full calendar years and/or that such server logs be provided to, and maintained by, the Noncommercial Educational Webcaster.

(f) *Terms in general.* Subject to the provisions of this subpart, terms governing late fees, distribution of royalties by the Collective, unclaimed funds, record retention requirements, treatment of Licensees' confidential information, audit of royalty payments and distributions, and any definitions for applicable terms not defined in this subpart shall be those set forth in subpart A of this part.

Dated October 4, 2024.

David P. Shaw,

Chief Copyright Royalty Judge.

[FR Doc. 2024-23426 Filed 10-10-24; 8:45 am]

BILLING CODE 1410-72-P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 14

RIN 2900-AR94

Improving Accreditation Process and Strengthening Legal Education Requirements for Accredited Agents and Attorneys

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations concerning accreditation of agents (also referred to as "claims agents") and attorneys authorized to assist claimants with the preparation presentation and prosecution of claims for VA benefits to strengthen initial and continuing legal education (CLE) requirements for accredited agents and attorneys and to improve the efficiency of VA's process of accrediting agents and attorneys and the administration of the accreditation program.

DATES: Comments must be received on or before December 10, 2024.

ADDRESSES: Comments must be submitted through www.regulations.gov. Except as provided below, comments received before the close of the comment period will be available at www.regulations.gov for public viewing, inspection, or copying, including any personally identifiable or confidential business information that is included in a comment. We post the comments received before the close of the comment period on www.regulations.gov as soon as possible after they have been received. VA will not post on Regulations.gov public comments that make threats to individuals or institutions or suggest that the commenter will take actions to harm an individual. VA encourages individuals not to submit duplicative comments; however, we will post comments from multiple unique commenters even if the content is identical or nearly identical to other comments. Any public comment received after the comment period's closing date is considered late and will not be considered in the final rulemaking. In accordance with the Providing Accountability Through Transparency Act of 2023, a plain language summary (not more than 100 words in length) of this proposed rule is available at www.regulations.gov, under RIN 2900-AR94.

FOR FURTHER INFORMATION CONTACT:

Jonathan Taylor, Office of the General Counsel, (022D), Department of

Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 461-7699. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. chapter 59, the Secretary of Veterans Affairs has authority to recognize attorneys, agents, and Veterans Service Organization (VSO) representatives for the preparation, presentation, and prosecution of benefit claims, regulate fees charged by accredited attorneys and agents, and prescribe the rules of conduct applicable while providing claims assistance. More specifically, 38 U.S.C. 5904(a)(2) requires the Secretary of Veterans Affairs to establish regulations governing the qualifications and standards of conduct for agents and attorneys. Section 5904(a)(2) sets forth minimum qualifications and standards to be included in VA regulations, serving as a floor on top of which VA may prescribe additional conditions, qualifications, and standards of conduct.

On May 22, 2008, following the enactment of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Pub. L. 109-461), VA published a final rule in the **Federal Register** (73 FR 29852) that addressed accreditation of individuals, standards of conduct for all individuals authorized to assist claimants before VA, and attorneys' and agents' fees. That rule, in pertinent part, established the initial accreditation requirements for attorneys and agents as well as the ongoing CLE requirement in 38 CFR 14.629(b). Under the current regulation, as part of their initial accreditation requirements, attorneys must have a law degree, be a member in good standing of a State bar, and during the first 12-month period following initial accreditation, complete 3 hours of State-bar approved CLE training covering Veterans benefits law and procedure. As part of their initial accreditation requirements, agents must pass a written examination administered by VA, which covers a wide range of topics covering the applicant's knowledge of VA benefits and the VA claims adjudication process, and complete the same CLE training as attorneys. Both agents and attorneys must complete 3 hours of additional CLE training every 2 years.

This rulemaking would require applicants seeking accreditation as an agent or attorney to complete 3 hours of qualifying CLE before they become accredited and require accredited agents and attorneys to annually complete 3 hours of qualifying CLE. The intended

effect of this proposed rule is to strengthen the current CLE requirements to ensure that attorneys and agents representing claimants and appellants for VA benefits are better qualified to provide such representation.

Since the 2008 final rule, VA's Office of the General Counsel (OGC) has continued to develop and fine-tune the accreditation process and the monitoring of accredited representatives. OGC's experience in administering the accreditation program over the past 16 years has highlighted the need to bolster the CLE requirements for accredited agents and attorneys as well as ensure that these individuals have already received CLE regarding Veterans law at the time of their accreditation.

In its August 2013 report, "VA Benefits: Improvements Needed to Ensure Claimants Receive Appropriate Representation," GAO-13-643, the Government Accountability Office (GAO) concluded, among other things, that current VA regulations do not sufficiently ensure that accredited representatives have adequate program knowledge to effectively assist clients. GAO recommended that VA "explore options and take steps to strengthen initial and continuing knowledge requirements for accreditation for all types of representatives." In response to and following our own independent consideration of this recommendation, we are proposing to require applicants for accreditation to take 3 hours of CLE before applying for accreditation, and accredited attorneys and agents to take an additional 3 hours of CLE annually. This proposed rule would amend 38 CFR 14.629(b)(1)(iii) to require applicants for accreditation to complete 3 hours of CLE within 6 months prior to submitting their application and amend 38 CFR 14.629(b)(1)(iv) to require that agents and attorneys complete an additional 3 hours of qualifying CLE on Veterans benefits law and procedure not later than 1 year from the date of initial accreditation and every 1 year thereafter.

In addition, the proposed rule will specifically require that the initial CLE include instruction on the VA standards of conduct contained in 38 CFR 14.632. Section 14.629(b)(1)(iii) provides that the qualifying CLE attended taken during the first year after accreditation "at a minimum, must cover the following topics: representation before VA, claims procedures, basic eligibility for VA benefits, right to appeal, disability compensation (38 U.S.C. Chapter 11), dependency and indemnity compensation (38 U.S.C. Chapter 13), and pension (38 U.S.C. Chapter 15)." In

revising this section, we propose to add a parenthetical explanation that the topic representation before VA includes the VA standards of conduct contained in 38 CFR 14.632. This proposed revision is not a substantive change, but rather a change to emphasize the importance of this topic for accredited individuals.

Based on our experience in administering the accreditation program, we believe the proposed changes to § 14.629(b)(1)(iii) and (iv) would help ensure that claimants for VA benefits are represented by qualified individuals.

The next proposed change would improve the administration of the accreditation program. Current VA regulations already impose various certification, notification, and self-reporting requirements on accredited agents and attorneys, either on an annual basis or within 30 days of certain specific events. VA believes that requiring accredited agents and attorneys to provide notice of changes in contact information is necessary to efficiently administer the accreditation program. Therefore, VA is proposing to add 38 CFR 14.629(b)(1)(v), requiring that agents and attorneys notify the Office of the General Counsel within 30 days, of any changes in contact information.

To improve the efficiency of VA's process of accrediting agents and attorneys, VA is proposing to modify the information that it collects during the application process to include email addresses for character references. VA proposes to amend 38 CFR 14.629(b)(2)(viii) to add email addresses as part of the information necessary for the applicant's three character references. Additionally, VA proposes to eliminate requiring the phone numbers for the applicant's three character references.

Next, VA is proposing two changes to more accurately reflect the accreditation process. First, VA is proposing to revise 38 CFR 14.629(b)(2)(v), the information that it collects about an applicant's mental health, to match the information requested on the application form and to clarify that this inquiry is focused on current conditions and disabilities. Current section 14.629(b)(2)(v) requires "[i]nformation concerning whether the applicant has ever been determined mentally incompetent or hospitalized as a result of a mental disease or disability, or is currently under treatment for a mental disease or disability"; however, the information requested on the application is whether the applicant has any condition or impairment (such as substance abuse, alcohol abuse, or a

mental, emotional, nervous, or behavioral disorder or condition) that in any way currently affects, or, if untreated or not otherwise actively managed, could affect the applicant's ability to represent claimants in a competent and professional manner. Second, VA proposes to amend § 14.629(b)(2)(ix), which refers to the claims agent examination being administered by the District Chief Counsels in the Office of the General Counsel. Because the examination is now administered centrally, the proposed rule would simply refer to the examination being "administered under the supervision of the Office of the General Counsel."

To become an accredited agent, an applicant must demonstrate character and fitness, and sufficient knowledge of VA benefits law. Character and fitness is determined by VA after conducting an extensive review, and knowledge is demonstrated by achieving a passing score on a written examination administered by VA. Under current regulations, VA must first make an affirmative determination of character and fitness before applicants may sit for the examination. Inefficiencies arise under the current process whenever VA conducts a character and fitness review for an applicant who subsequently fails the examination. To improve the efficiency of the accreditation process, we propose to reverse the current order of events by administering the claims agent examination prior to conducting the character and fitness review. Reviewing character and fitness for only those applicants who have first passed the claims agent examination will ensure a more efficient allocation of VA time and resources.

This proposed sequence of events is similar to how most States process applications to become a licensed attorney and is necessary because under the current process, VA is experiencing difficulty keeping pace with the rapidly growing pool of applicants seeking accreditation as claims agents. Accordingly, we propose to amend 38 CFR 14.629(b)(6) to require that an applicant for accreditation as a claims agent first pass the written examination before VA conducts its character and fitness review, and, in conjunction, provide that no applicant shall be allowed to sit for the examination more than twice in any 1-year period and that the Office of the General Counsel may offer the claims agent examination a minimum of twice per calendar year.

Executive Orders 12866, 13563, and 14094

Executive Order 12866 (Regulatory Planning and Review) directs agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 14094 (Executive Order on Modernizing Regulatory Review) supplements and reaffirms the principles, structures, and definitions governing contemporary regulatory review established in Executive Order 12866 of September 30, 1993 (Regulatory Planning and Review), and Executive Order 13563 of January 18, 2011 (Improving Regulation and Regulatory Review). The Office of Information and Regulatory Affairs has determined that this rulemaking is not a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at www.regulations.gov.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The factual basis for this certification is the fact that the proposed rule would generally be small business neutral as it applies only to applying for and maintaining accreditation to represent claimants for VA benefits. At a minimum, this proposed rule would affect the approximately 6,200 attorneys and 520 agents currently accredited by VA. However, it would not have a significant economic impact on these individuals because it would impose only a requirement for accreditation of completing 3 hours of CLE before applying and an additional 3 hours of CLE annually, the costs of which would not be significant. VA estimates the cost to an individual attorney or agent to be less than \$300.00 on average. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any 1 year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This proposed rule includes provisions constituting a revision to a current/valid collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The revision also requires approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking action to OMB for review and approval.

Comments on the new collection of information contained in this rulemaking should be submitted through www.regulations.gov. Comments should be sent within 60 days of publication of this rulemaking. The collection of information associated with this rulemaking can be viewed at: www.reginfo.gov/public/do/PRAMain.

OMB is required to make a decision concerning the collection of information contained in this rulemaking between 30 and 60 days after publication of this rulemaking in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the provisions of this rulemaking.

The Department considers comments by the public on a new collection of information in—

- Evaluating whether the new collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the new collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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 revised collection of information associated with this rulemaking contained in 38 CFR 14.629 is described immediately following this paragraph, under its respective title.

Title: Application for Accreditation as a Claims Agent or Attorney, Filing of Representatives' Fee Agreements and Motions for Review of Such Fee Agreements.

OMB Control No: 2900–0605.

CFR Provision: 38 CFR 14.629.

• *Summary of collection of information:*

(1) Applicants seeking accreditation as claims agents or attorneys to represent benefits claimants before VA must file VA Form 21a with OGC. The information requested in VA Form 21a includes basic identifying information, as well as certain information concerning training and experience, military service, and employment. Along with the VA Form 21a, applicants for accreditation must also file a certification that they have completed a CLE requirement. *See* 38 U.S.C. 5901; 38 CFR 14.629(b).

(2) If accredited agents and attorneys wish to maintain accreditation, they must file recertifications with OGC that they have completed CLE requirements and are in good standing with other courts, bars, and Federal and State agencies. *See* 38 U.S.C. 5904(a)(2)–(3); 38 CFR 14.629(b).

(3) Accredited agents and attorneys must file with VA any agreement for the payment of fees charged for representing claimants before VA. 38 U.S.C. 5904(c)(2); 38 CFR 14.636(g).

(4) Claimants, accredited agents, or accredited attorneys may request an OGC determination on a reasonable fee allocation in a given case. If they do, OGC will solicit (optional) responses from the other parties in the case. 38 U.S.C. 5904(c)(3); 38 CFR 14.636(i).

• *Description of need for information and proposed use of information:*

(1) The information in the VA Form 21a and the initial CLE certification are used by OGC to determine the applicant's eligibility for accreditation as a claims agent or attorney. More specifically, it is used to evaluate qualifications, ensure against conflicts of interest, and to establish that statutory and regulatory eligibility requirements, e.g., good character and reputation, are met.

(2) The information in recertifications is used by OGC to monitor whether accredited attorneys and agents continue to have appropriate character and reputation and whether they remain fit to prepare, present, and prosecute VA benefit claims.

(3) The information in a fee agreement is used by the Veterans Benefits Administration (VBA) to associate the fee agreement with the claimant's claims file, to potentially determine the attorney or agent's fee eligibility, and to potentially process direct payment of a fee from the claimant's past-due benefits. It is used by OGC to monitor whether the agreement is in compliance with laws governing paid representation, and to potentially review fee reasonableness.

(4) The information in a request for OGC fee review, or a response to such request, is used by OGC to determine the agents' or attorneys' contribution to and responsibility for the ultimate outcome of the claimant's claim, so that

a determination on reasonable fees can be rendered.

• *Description of likely respondents:* Claimants, Attorneys, Agents.

• *Estimated number of respondents:* 34,695.

(1) For VA Form 21a applications, 2,280.

(2) For recertifications, 4,860.

(3) For fee agreements, 27,250 (750 first time filers and 26,500 repeat filers).

(4) For requests for OGC fee review, 305.

Total estimated number of respondents (2,280, 4,860, 27,250, 305 = 34,695).

• *Estimated frequency of responses:* One time.

• *Estimated Completion Time:* Varies as specified below

(1) For VA Form 21a applications, 45 minutes.

(2) For recertifications, 10 minutes.

(3) For fee agreements, 1 hour for first time filers and 10 minutes for repeat filers.

(4) For requests for OGC fee review, 2 hours.

• *Total Annual Burden Hours:* 8,297 hours.

(1) For VA Form 21a applications, 1,710 hours.

(2) For recertifications, 810 hours.

(3) For fee agreements, 5,167 hours (750 hours for first time filers and 4,417 hours for repeat filers).

(4) For requests for OGC fee review, 610 hours.

Total estimated annual burden (1,710 hours, 810, hours, 5,167 hours, 610 hours = 8,297 hours).

• *Estimated cost to respondents per year:* \$633,349.

(1) For VA Form 21a applications, \$79,845 (\$41,360 + \$22,666 + \$15,819).

650 initial responses by attorneys	\$84.84 × 487.5 hours (650 × 45 minutes/response)	\$41,360.00
960 initial responses by non-attorneys	\$31.48 × 720 hours (960 × 45 minutes/response)	22,666.00
670 follow-up responses by non-attorneys	\$31.48 × 502.5 hours (670 × 45 minutes/response)	15,819.00

(2) For recertifications, \$68,720 (810 hours × \$84.84).

(3) For fee agreements, \$438,368 (5,167 hours × \$84.84).

(4) For requests for OGC fee review, \$46,416 (\$43,268 + \$3,148).

255 responses by non-claimants	\$84.84 × 510 hours (255 × 120 minutes/response)	\$43,268.00
50 responses by claimants	\$31.48 × 100 hours (50 × 120 minutes/response)	3,148.00

Total estimated cost to respondents per year: (\$79,845, \$68,720, \$438,368, \$46,416 = \$633,349).

* To estimate the total information collection burden cost, VA used the May 2023 Bureau of Labor Statistics (BLS) average hourly wage codes of 23–1011: Lawyers (\$84.84) and 00–0000: All Occupations (\$31.48) to derive

Paperwork Reduction Act estimates. This information is available at https://www.bls.gov/oes/current/oes_nat.htm. Please note numbers are subject to rounding for VA estimates.

List of Subjects in 38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign

relations, Government employees, Lawyers, Legal services, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on October 2, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons set out in the preamble, the Department of Veterans Affairs proposes to amend 38 CFR part 14 as follows:

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

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

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5901–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

■ 2. Amend § 14.629 by:

- a. Revising paragraphs (b)(1)(i) through (iv).
- b. Adding paragraph (b)(1)(v).
- c. Revising paragraphs (b)(2)(v), (viii), and (ix) and (b)(6).

The revisions and addition read as follows:

§ 14.629 Requirements for accreditation of service organization representatives; agents; and attorneys.

* * * * *

(b) * * *

(1) * * *

(i) For agents, the initial accreditation process consists of application to the Office of the General Counsel, self-certification of admission information concerning practice before any other court, bar, or State or Federal agency, self-certification of completion of the continuing legal education (CLE) requirement of paragraph (b)(1)(iii) of this section, an affirmative determination of character and fitness by VA, and a written examination.

(ii) For attorneys, the initial accreditation process consists of application to the Office of the General Counsel, self-certification of admission information concerning practice before any other court, bar, or State or Federal agency, self-certification of completion of the CLE requirement of paragraph (b)(1)(iii) of this section, and a determination of character and fitness. The Office of the General Counsel will presume an attorney's character and

fitness to practice before VA based on State bar membership in good standing unless the Office of the General Counsel receives credible information to the contrary.

(iii) As a condition of initial accreditation, both agents and attorneys are required to complete 3 hours of qualifying CLE during the 6-month period preceding their application for accreditation. To qualify under this paragraph (b)(1)(iii), a CLE course must be approved for a minimum of 3 hours of CLE credit by any State bar association and, at a minimum, must cover the following topics: representation before VA (including VA's standards of conduct contained in § 14.632), claims procedures, basic eligibility for VA benefits, right to appeal, disability compensation (38 U.S.C. chapter 11), dependency and indemnity compensation (38 U.S.C. chapter 13), and pension (38 U.S.C. chapter 15). Upon completion of the initial CLE requirement, agents and attorneys shall certify to the Office of the General Counsel in writing that they have completed qualifying CLE. Such certification shall include the title of the CLE, date and time of the CLE, and identification of the CLE provider, and shall be submitted to VA as part of the initial application.

(iv) To maintain accreditation, agents and attorneys are required to complete an additional 3 hours of qualifying CLE on veterans benefits law and procedure not later than 1 year from the date of initial accreditation and every 1 year thereafter. To qualify under this paragraph (b)(1)(iv), a CLE course must be approved for a minimum of 3 hours of CLE credit by any State bar association. Upon completion of the post-accreditation CLE requirement, agents and attorneys shall certify to the Office of the General Counsel in writing that they have completed qualifying CLE. Such certification shall include the title of the CLE, date and time of the CLE, and identification of the CLE provider, and shall be submitted to VA as part of the annual certification prescribed by paragraph (b)(4) of this section.

(v) As a further condition of initial and continued accreditation, agents and attorneys are required to notify the Office of the General Counsel within 30 days of any changes in contact information.

(2) * * *

(v) Information concerning whether the applicant has any condition or impairment (such as substance abuse, alcohol abuse, or a mental, emotional, nervous, or behavioral disorder or condition) that in any way currently

affects, or, if untreated or not otherwise actively managed, could affect the applicant's ability to represent claimants in a competent and professional manner;

* * * * *

(viii) The names, addresses, and email addresses of three character references;

(ix) Information relevant to whether the applicant for accreditation as an agent has any physical limitations that would interfere with the completion of a comprehensive written examination administered under the supervision of the Office of the General Counsel (agents only); and

* * * * *

(6) Applicants for accreditation as a claims agent must achieve a score of 75 percent or more on a written examination administered by the Office of the General Counsel as a prerequisite to accreditation. No applicant shall be allowed to sit for the examination more than two times in any 1-year period. The Office of the General Counsel may offer the examination a minimum of twice per calendar year. An applicant must achieve a passing score on the examination before the Office of the General Counsel will begin reviewing the applicant's character and fitness for practice before the Department.

* * * * *

[FR Doc. 2024–23610 Filed 10–10–24; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2023–0647; FRL–12276–01–R6]

Air Plan Approval; Texas; Vehicle Inspection and Maintenance Plan for Bexar County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is proposing to approve revisions to the Texas State Implementation Plan (SIP) submitted to the EPA by the Texas Commission on Environmental Quality (TCEQ or State) on December 18, 2023. The SIP revisions address Control of Air Pollution from Motor Vehicles and establish a Motor Vehicle Inspection and Maintenance (I/M) program for the San Antonio ozone nonattainment area. The revisions also update definitions and address options for displaying a

vehicle's registration as proof of compliance with I/M requirements.

DATES: Written comments must be received on or before November 12, 2024.

ADDRESSES: Submit your comments, identified by Docket ID EPA-R06-OAR-2023-0647, at <https://www.regulations.gov> or via email to steib.clovis@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Clovis Steib, 214-665-7566, steib.clovis@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

DOCKET: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Clovis Steib, EPA Region 6 Office, Infrastructure and Ozone Section, 214-665-7566, steib.clovis@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>.

Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION: Throughout this document “we” and “our” means the EPA.

I. Background

Ground-level ozone, also known as “tropospheric ozone” or “smog,” is created when emissions of the ozone precursors, oxides of nitrogen (NO_x) and volatile organic compounds (VOCs), react in the presence of sunlight and heat. EPA has established the ozone

National Ambient Air Quality Standards (NAAQS) to protect public health, including the health of at-risk populations, with an adequate margin of safety. On October 1, 2015, EPA revised the ozone NAAQS to a level of 0.070 parts per million (ppm) (computed based on the annual fourth highest daily maximum 8-hour average concentration, averaged over 3 years).¹ The revised 2015 ozone NAAQS provide greater protection of public health and the environment than the previous ozone NAAQS of 0.075 ppm, set in 2008. Although the 2015 ozone NAAQS retain the same general form and averaging time as the NAAQS set in 2008, the lower level is more protective.

Effective September 24, 2018, Bexar County was designated as the San Antonio, Texas, nonattainment area² and classified as a Marginal nonattainment area for the 2015 ozone NAAQS with an attainment deadline of September 24, 2021 (83 FR 35136, July 25, 2018).

On March 30, 2022, TCEQ adopted revisions to their SIP (Rule Project No. 2021-029-114-AI) that implement applicable sections of Senate Bill (SB) 604, 86th legislature 2019. The revisions expanded the compliance options for the display of vehicle registration insignia and incorporated minor changes to 30 Texas Administrative Code (TAC) chapter 114, *Control of Air Pollution from Motor Vehicles*, to comply with the Texas Transportation Code, chapter 504.

On October 7, 2022, EPA reclassified the San Antonio area from Marginal to Moderate effective November 7, 2022 (87 FR 60897). The CAA section 182(b)(4) and title 40 of the Code of Federal Regulations (CFR), part 51, subpart S, require the implementation of a Basic vehicle emissions I/M program³

¹ See 80 FR 65296, October 26, 2015; and 40 CFR part 50, appendix U, for more information on the revised 2015 ozone NAAQS, including a detailed explanation of the calculation of the 3-year 8-hour average.

² The “San Antonio nonattainment area” may also be referred to as the “Bexar County nonattainment area” and includes all of Bexar County. The surrounding counties in the San Antonio area: Atascosa, Bandera, Comal, Guadalupe, Kendall, Medina, and Wilson Counties are designated as attainment/unclassifiable.

³ The performance standard for Basic I/M programs in areas designated nonattainment for the 2015 ozone NAAQS includes, among other things, annual inspections of light-duty vehicles in a centralized test program by conducting idle testing of 1968–2000 Model Year (MY) subject vehicles and on-board diagnostics (OBD) checks on 2001 and newer subject vehicles (see 40 CFR 51.352(e)). An I/M performance standard is a collection of program design elements which defines a benchmark program to which a state's proposed program is compared in terms of its potential to reduce emissions of the ozone precursors, VOC, and NO_x.

in certain urbanized ozone nonattainment areas classified as Moderate. The State is therefore required to implement an I/M program in Bexar County by November 7, 2026.⁴

On November 29, 2023, TCEQ adopted the Bexar County I/M SIP Revision (Non-Rule Project No. 2022-027-SIP-NR) and the associated revisions to 30 TAC Chapter 114 (Rule Project No. 2022-026-114-AI).

II. The Submitted SIP Revisions

On December 18, 2023, the TCEQ submitted an I/M Program plan (Non-Rule Project No. 2022-027-SIP-NR) and rulemaking revisions (Rule Project No. 2022-026-114-AI) that would ensure the State's implementation of the vehicle I/M program in the San Antonio nonattainment area by no later than November 1, 2026. The submitted revisions expand the State's existing I/M program into Bexar County. Additionally, the submitted revisions also incorporate minor changes from a prior 30 TAC chapter 114 rulemaking (Rule Project No. 2021-029-114-AI) that expand the options for displaying a vehicle's registration insignia to include digital license plates.

EPA determined on March 11, 2024, that the three submitted revisions addressed herein meet the SIP completeness criteria found in 40 CFR part 51, appendix V.⁵

III. The EPA's Evaluation

A. Analysis of Submitted Bexar County I/M SIP Revision and Associated Revisions to 30 TAC Chapter 114

The submitted SIP revisions (Non-Rule Project No. 2022-027-SIP-NR) expand the State's I/M program into Bexar County and implement on-board diagnostics (OBD) inspections for vehicles subject to I/M program requirements beginning November 1, 2026. All vehicle emissions inspection stations in Bexar County will be required to offer the OBD inspections.

The submitted revisions (Rule Project No. 2022-026-114-AI and Rule Project No. 2021-029-114-AI) address 30 TAC chapter 114, subchapters A, C, and H. An analysis of the submitted revisions to chapter 114 are covered in detail in our Technical Support Document (TSD) included in the docket for this action. A

Per the SIP, the Texas I/M program requires the annual OBD testing of gasoline-powered vehicles between 2–24 years old in the affected counties.

⁴ To satisfy the requirements of 40 CFR part 51, subpart S, § 51.350(a)(4).

⁵ Letter from Mr. David F. Garcia, Air and Radiation Division Director, EPA Region 6 to Mr. Jon Niermann, Chairman, Texas Commission on Environmental Quality (March 11, 2024), included in the docket for this action.

summary of the revisions to 30 TAC chapter 114 grouped by subchapter is provided:

Subchapter A:

- The revisions to section 114.1 and 114.2 remove obsolete definitions and update the mail code in the Texas I/M SIP.⁶

Subchapter C:

- The revisions to sections 114.50 and 114.53, implement a new Bexar County I/M program, specifies the program start date and the model year vehicles to be tested, require that all vehicle emissions testing stations offer OBD tests, and establish fees.⁷
- The revisions to section 114.82 expand the options for proof of compliance with I/M requirements for motorists. It adds language to allow for different forms of proof of compliance with I/M requirements provided by the DPS and the DMV. The revisions allow for the display of a vehicle's registration insignia for certain commercial fleet or governmental entity vehicles on a digital license plate in lieu of attaching the registration insignia to the vehicle's windshield.

This action does not address the submitted revisions to subchapter H (30 TAC 114.309)—the State's Low RVP Program (Rule Project No. 2022–026–114–A1).⁸ These submitted revisions are severable and will be addressed in a future, separate EPA action.

B. Analysis of Bexar County 2015 Ozone Nonattainment Area Performance Standard Modeling (PSM)

As mentioned previously, the San Antonio ozone nonattainment area was reclassified as Moderate under the 2015 standard, and therefore, must demonstrate through modeling that the area meets the Basic I/M requirements.⁹ PSM is a SIP submission requirement per the I/M rule at 40 CFR 51.372(a)(2). This rule requires states to provide a demonstration that the proposed vehicle emissions I/M program for a newly designated or reclassified ozone nonattainment area meets the emissions reduction benchmarks specified for the area's ozone NAAQS classification level. A PSM analysis is conducted to evaluate whether a proposed I/M program meets the applicable performance standard. The performance standards establish the level of emission reductions that mandatory I/M programs must meet or exceed. The TCEQ performed the required PSM analysis of the proposed Bexar County area I/M program¹⁰ following the procedures in the EPA guidance document *Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model* (EPA–420–B–22–034, October 2022). For the benchmark or model program to which Bexar County's proposed Basic I/M program will be

compared, TCEQ correctly selected the Basic performance standard for areas designated nonattainment for the 8-hour ozone standard detailed in 40 CFR 51.352(e). TCEQ used EPA's Mobile Vehicle Emissions Simulator, version 3.1 (MOVES3.1)¹¹ to conduct the analyses in March 2023, using 2026 as the analysis year—the Bexar County program implementation year under the 2015 ozone NAAQS. The documentation of the PSM assessments is provided in attachment B, chapter 2 of the State's December 18, 2023, submittal, and a summary of the results are provided in attachment B, chapter 3 of the submittal. Copies of the modeling summary are included in the docket¹² for this action. After reviewing TCEQ's PSM analysis, EPA concludes that TCEQ has demonstrated that the Basic I/M performance standard is met in the Bexar County subject I/M area and that the analysis was completed consistent with EPA's 2022 PSM guidance.

Table 1 below presents mass unit modeling results (in tons per day or tpd) of TCEQ's PSM comparison of the proposed Bexar County area's I/M program to the benchmark program of the Basic performance standard. The emission levels (in tpd) of the ozone precursors, NO_x and VOC, for the proposed I/M program are lower than the emissions from the benchmark program for the Basic I/M performance standard.

TABLE 1—SUMMARY OF 2026 PERFORMANCE STANDARD EVALUATION FOR THE BEXAR COUNTY 2015 OZONE NAAQS NONATTAINMENT AREA NEW I/M PROGRAM

[Tons per day]¹³

Pollutant	New I/M program emissions	Performance standard benchmark basic I/M program emissions	Does new program meet I/M performance standard?
NO _x	15.01	15.16	Yes.
VOC	8.85	9.41	Yes.

Therefore, we are proposing that the Bexar County I/M program be approved into the SIP because the proposed I/M program meets the Basic I/M

performance standard for the 2015 ozone NAAQS.

IV. Proposed Action

EPA is proposing to approve the following revisions to the Texas SIP, submitted to the EPA on December 18,

⁶ The definitions are listed in the TSD in the docket for this proposed action.

⁷ The revisions establish the maximum fee of \$11.50 that Bexar County program area emissions inspection stations may charge for the OBD test. The adopted revisions would also require affected vehicle owners to remit \$2.50 to the Texas Department of Motor Vehicles (DMV) or county tax assessor-collector at the time of annual vehicle registration as part of the vehicle emissions inspection fee to cover the costs to implement,

maintain, administer, and enforce the required vehicle I/M program in Bexar County.

⁸ These are the State's rules addressing gasoline with low Reid Vapor Pressure (RVP). For information on gasoline Reid vapor pressure, please visit <https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure>.

⁹ 87 FR 60897.

¹⁰ See Attachment B: Inspection and Maintenance (I/M) Program Performance Standard Modeling (PSM) for the New I/M Program in the Bexar County

2015 Ozone Nonattainment Area of the State's December 18, 2023, submittal package.

¹¹ MOVES 3.1 was the most current version available to TCEQ in March 2023 (released 12/9/2022). It's successor, MOVES4, was released in September of 2023.

¹² See Docket EPA–R06–OAR–2023–0647.

¹³ See Table 3–1: Summary of 2026 Performance Standard Evaluation for the Bexar County 2015 Ozone NAAQS Nonattainment Area Proposed I/M Program (tons per day) on page 12 of the TCEQ summary document.

2023: 30 TAC chapter 114, subchapter A, sections 114.1 and 114.2, and subchapter C, sections 114.50, 114.53, and 114.82. The submitted revisions describe and demonstrate how CAA requirements for a Basic vehicle I/M program (CAA section 182(b)(4) and 40 CFR part 51, subpart S) meets the requirements for 2015 ozone NAAQS for the San Antonio ozone nonattainment area; and incorporates minor changes for the display of a vehicle's registration insignia. This proposed action is being taken pursuant to section 110 and part D of the CAA.

V. Environmental Justice Considerations

For this proposed action, The EPA conducted screening analyses using the EPA's Environmental Justice (EJ) screening tool (EJScreen tool, version 2.2).¹⁴ The EPA reviewed environmental and demographic data of the populations living within the San Antonio area. The EPA then compared these data to the national average for each of the environmental and demographic groups. The results of this analysis are being provided for informational and transparency purposes.

Review of the environmental analyses indicate that the San Antonio ozone nonattainment area is above the 80th percentile for Particulate Matter 2.5, Ozone, and Superfund Proximity. A detailed description of the EJ considerations and the EJScreen analysis reports are available in the docket for this rulemaking.

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions

of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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

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

This proposed action would strengthen measures in the current SIP by implementing a vehicle inspection and maintenance program in the San Antonio area. As such, at a minimum, this action would not worsen any existing air quality and is expected to ensure that the San Antonio nonattainment area is meeting requirements to attain and/or maintain air quality standards. Further, there is no information in the record indicating this action is expected to have

disproportionately high or adverse human health or environmental effects on a particular group of people. The EPA performed an environmental justice analysis, as described earlier in this action under “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this proposal to the public, not as a basis of the action.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: October 3, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–23340 Filed 10–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2024–0370; FRL–12152–01–R9]

Approval and Promulgation of Implementation Plans; California; California Mobile Source Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the California State Implementation Plan (SIP) consisting of California regulations and related test procedures that were adopted as part of California's Advanced Clean Cars I program and that establish standards and other requirements relating to the control of emissions of greenhouse gases from new passenger cars, light-duty trucks, and medium-duty vehicles. The standards and other requirements relate to 2017 and subsequent model-year passenger cars, light-duty trucks, and medium-duty vehicles. The EPA is proposing to approve the SIP revision

¹⁴ See <https://www.epa.gov/ejscreen>.

because the regulations and related test procedures meet the applicable requirements of the Clean Air Act. If finalized, approval of the regulations and related test procedures as part of the California SIP will make them federally enforceable.

DATES: Comments must be received on or before November 12, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2024-0370 at <https://www.regulations.gov>. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Jeffrey Buss, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947-4152 or by email at buss.jeffrey@epa.gov.

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

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I. Background

Under the Clean Air Act (CAA or “Act”), the EPA establishes national ambient air quality standards (NAAQS) to protect public health and welfare. The EPA has established NAAQS for a number of pervasive air pollutants including ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, lead and particulate matter, which are referred to as “criteria air pollutants.” Under section 110(a)(1) of the CAA, states must submit plans that provide for the implementation, maintenance, and enforcement of the NAAQS within each state. Such plans are referred to as State Implementation Plans (SIPs) and revisions to those plans are referred to as SIP revisions. Section 110(a)(2) of the CAA sets forth the content requirements for SIPs. Among the various requirements, SIPs must include enforceable emission limitations and other control measures, means, or techniques that may be necessary or appropriate to meet the applicable requirements of the CAA. *See* CAA section 110(a)(2)(A).

Emissions sources contributing to ambient air pollution levels can be divided into two basic categories: Stationary emissions sources and mobile emissions sources. With certain exceptions, such as the EPA’s authorities under CAA sections 111 and 112, the CAA assigns stationary source regulation to the states through title I of the Act and assigns mobile source regulation to the EPA through title II of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines) and section 209(e) (preemption of state emissions standards for new and non-new nonroad vehicles and engines).¹

Under California law, the California Air Resources Board (CARB) is the State agency responsible for adopting and submitting the California SIP and SIP revisions to the EPA for approval. Over the years, CARB has submitted, and the EPA has approved, many county and regional air district rules regulating stationary source emissions as part of the California SIP. *See generally* 40 CFR 52.220(c).

¹ EPA regulations refer to “nonroad” vehicles and engines whereas California regulations refer to “off-road” vehicles and engines. These terms refer to the same types of vehicles and engines.

With respect to mobile sources that are specifically preempted under the CAA, CARB must request a waiver (for motor vehicles and engines) or authorization (for nonroad engines and vehicles) in order to enforce standards relating to the control of emissions and accompanying enforcement procedures for these types of mobile sources. *See* CAA sections 209(b) (new motor vehicles) and 209(e)(2) (most categories of new and non-new nonroad engines and vehicle vehicles). Over the years, CARB has submitted many requests for waiver or authorization of its standards and other requirements relating to the control of emissions from new motor vehicles and engines and new and non-new nonroad vehicles and engines, and the EPA has granted many such requests.²

Once the EPA grants the request for waiver or authorization, CARB may enforce the corresponding mobile source regulations. In recent years, CARB has submitted as revisions to the California SIP, and the EPA has approved, various CARB mobile source regulations that establish standards and other requirements for the control of emissions from new motor vehicles and engines and new and non-new nonroad vehicles and engines for which the EPA has issued waivers or authorizations.³

CARB and the air districts rely on these county, regional, and State stationary and mobile source regulations to meet various CAA requirements and include the corresponding emissions reductions of criteria air pollutants or their precursors in the various regional air quality plans developed to attain and maintain the NAAQS. Precursors for criteria air pollutants include oxides of nitrogen (NO_x) and volatile organic compounds (VOCs) for ozone and particulate matter (PM). The EPA generally allows California to take credit

² For example, the EPA has granted waivers for CARB’s Advanced Clean Cars I program (this program includes California’s Low Emission Vehicle (LEV III) criteria and greenhouse gas pollutant standards for light- and medium-duty vehicles, and a ZEV sales mandate). *See* 78 FR 2112 (January 9, 2013) (Advanced Clean Cars program); 84 FR 51310 (September 27, 2019) (partial withdrawal of 2013 waiver for Advanced Clean Cars program); 87 FR 14332 (March 14, 2022) (reinstatement of 2013 waiver for Advanced Clean Cars program).

³ 81 FR 39424 (June 16, 2016), 82 FR 14446 (March 21, 2017), and 83 FR 23232 (May 18, 2018). The Advanced Clean Cars I program includes LEV III criteria pollutant and greenhouse gas emissions standards for light- and medium-duty vehicles and a Zero-Emission Vehicle (ZEV) sales mandate. The EPA’s June 16, 2016 SIP approval included the LEV III criteria pollutant emissions standards, and the ZEV sales mandate, but not the LEV III greenhouse gas emissions standards. We are proposing approval of the LEV III greenhouse gas emissions standards in this document.

for the corresponding emissions reductions relied upon in the various regional air quality plans because, among other reasons, the regulations are approved as part of the SIP and are thereby federally enforceable as required under CAA section 110(a)(2)(A).

One of the SIP revisions that included CARB mobile source regulations for which the EPA has granted waivers or authorizations under CAA section 209 was a SIP revision that CARB submitted to the EPA on August 14, 2015. CARB's August 14, 2015 SIP revision submission included, among other regulations, a set of state regulations referred to as the Advanced Clean Cars (herein, "ACC I") program, which was adopted by CARB in 2012.⁴ The ACC I program, which includes CARB's Low-Emission Vehicle III (LEV III) and zero-emission vehicle (ZEV) regulations, provides a single coordinated package of requirements for controlling criteria air pollutants or their precursors and greenhouse gas (GHG) emissions for Model Year (MY) 2015 through 2025 passenger cars, light-duty trucks, and medium-duty passenger vehicles.⁵

Through CARB Resolution 15–40, the CARB Board approved the ACC I program for inclusion in the California SIP along with many other CARB measures for which the EPA had issued waivers or authorizations, for which EPA waivers/authorizations were pending, and for which CARB had not

yet submitted waiver/authorization requests, and it authorized the CARB Executive Officer to determine which of the measures were appropriate for submission to the EPA as part of the SIP.⁶ Under the authority granted in Resolution 15–40, the CARB Executive Officer included the ACC I program along with many other CARB regulations in the August 14, 2015 SIP submission for which the EPA had issued waivers or authorizations, but he did not include the GHG-related provisions of the ACC I program. In 2016, the EPA finalized approval of CARB's August 14, 2015 SIP submission as submitted by CARB into the State's SIP.⁷

On December 7, 2016, the CARB Executive Officer submitted a second set of regulations that had been approved for submission as part of the SIP through CARB Resolution 15–40. The second set of regulations consists of regulations for which the EPA had granted waivers or authorizations between August 2015 and December 2016.⁸ On June 15, 2017, the CARB Executive Officer submitted a third set of regulations, those for which the EPA had granted waivers or authorizations between December 2016 and June 2017.⁹

On July 3, 2021, CARB submitted the GHG-related provisions from the ACC I program to the EPA as a SIP revision. As noted previously, these provisions had not been included in the August 14,

2015 SIP submission. In this action, the EPA is proposing approval of the regulations and related test procedures included in CARB's July 3, 2021 SIP submission.

II. The State's Submission

A. What regulations did the State submit?

On July 3, 2021, CARB submitted a SIP revision that included certain State mobile source GHG emission regulations that had not been included in CARB's August 14, 2015 SIP revision submission that had included other elements of its ACC I program.¹⁰ The SIP submission package consists of the regulations and related test procedures comprising the SIP revision itself as well as estimates of the emissions reductions associated with the GHG-related portions of the ACC I program and documentation of the public process conducted by CARB in approving the regulations (including related test procedures) as part of the California SIP.

Table 1 lists the specific sections of the California Code of Regulations (CCR) that are included in the July 3, 2021 SIP revision along with the corresponding date of CARB's Board hearing during which the regulations or amendments were adopted, the state rules' effective dates, and a description of the submitted regulations.

TABLE 1—REGULATIONS SUBMITTED FOR APPROVAL ON JULY 3, 2021

Section No. 13 CCR	Rule title	Relevant CARB hearing date(s)	State effective date(s)	Description of the submitted regulations
1961.1	Greenhouse Gas Exhaust Emission Standards and Test Procedures—2009 through 2016 Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	01/26/2012	08/07/2012	Amends existing regulation to account for adoption of a new section 1961.3 and updates certain citations and references.
1961.2	Exhaust Emission Standards and Test Procedures—2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles.	09/28/2018	12/12/2018	Updates test procedure reference.

⁴ The ACC program adopted by CARB in 2012 is now referred to as "ACC I" to distinguish it from CARB's newly adopted Advanced Clean Cars II ("ACC II") program.

⁵ CARB, Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Public Hearing to Consider the "LEV III" Amendments to the California Greenhouse Gas and Criteria Pollutant Exhaust and Evaporative Emission Standards and Test Procedures and to the On-Board Diagnostic System Requirements for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, and to the Evaporative Emission Requirements for Heavy-Duty Vehicles, Release Date: December 7, 2011, page ES–3. See, also 78 FR 2112 (January 9, 2013).

⁶ CARB, Resolution 15–40, July 23, 2015. Resolution 15–40 includes Attachment A ("Waiver/Authorization List included as set forth in the Appendix A to the Staff Report, released June 19, 2015"), that identifies the regulations covered by the resolution.

⁷ 81 FR 39124 (June 16, 2016).

⁸ The EPA approved the second set of regulations at 82 FR 14446 (March 21, 2017). The regulations included in the second set included regulations establishing emission standard requirements for Large Spark-Ignition (LSI) engines and Small Off-Road Equipment (SORE) and on-board diagnostic (OBD) system requirements for passenger cars,

light-duty trucks, medium-duty vehicles and heavy-duty vehicles.

⁹ The EPA approved the third set of regulations at 83 FR 23232 (May 18, 2018). The regulations included in the third set included regulations establishing emission standard requirements for commercial harbor craft (CHC), in-use diesel-fueled transport refrigeration units (TRUs), on-road heavy-duty diesel engines and off-highway recreational vehicles.

¹⁰ CARB submitted the SIP revision electronically on July 3, 2021, as attachments to a letter dated July 2, 2021 from Richard W. Cory, Executive Officer, CARB, to Deborah Jordan, EPA Region IX Acting Regional Administrator.

TABLE 1—REGULATIONS SUBMITTED FOR APPROVAL ON JULY 3, 2021—Continued

Section No. 13 CCR	Rule title	Relevant CARB hearing date(s)	State effective date(s)	Description of the submitted regulations
1961.3	Greenhouse Gas Exhaust Emission Standards and Test Procedures—2017 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Passenger Vehicles.	01/26/2012, 09/28/2012.	08/08/2012, 12/12/2018.	Establishes fleet average carbon dioxide emissions standards for MY 2017 and subsequent MY passenger cars, light-duty trucks, and medium-duty vehicles. Establishes nitrous oxide and methane exhaust emissions standards for the same classification of vehicles. Other subsections establish an optional compliance approach and calculation procedures for credits and identify test procedures, among other requirements.
1962.2(g)(6)	Use of ZEV Credits	01/26/2012, 11/15/2012.	08/07/2012, 12/31/2012.	Provides for the use of ZEV credits, and other types of credits, by manufacturers. Provides for “GHG–ZEV Over Compliance Credits” and establishes requirements relating to applications, credit generation and calculation, use, and reporting.

The regulations submitted by CARB and listed in Table 1 incorporate by reference documents that establish test

procedures, among other requirements, that CARB submitted as part of the July 3, 2021 SIP revision. Table 2 lists the

incorporated documents included in the July 3, 2021 SIP revision.

TABLE 2—DOCUMENTS INCORPORATED BY REFERENCE IN CARB REGULATIONS LISTED IN TABLE 1 AND SUBMITTED AS PART OF THE SIP REVISION

California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended March 22, 2012 (GHG-related provisions).

California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, adopted March 22, 2012 (GHG-related provisions).

California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as amended September 28, 2018.

California Exhaust Emission Standards and Test Procedures for 2009 through 2017 Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, as last amended March 22, 2012 (GHG-related provisions).

California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Electric Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted March 22, 2012 (GHG-related provisions).

California 2015 and Subsequent Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2017 and Subsequent Model Greenhouse Gas Exhaust Emission Standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012 (GHG-related provisions).

California 2001 through 2014 Model Criteria Pollutant Exhaust Emission Standards and Test Procedures and 2009 through 2016 Model Greenhouse Gas Exhaust Emission standards and Test Procedures for Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles, as last amended December 6, 2012 (GHG-related provisions).

California Exhaust Emission Standards and Test Procedures for 2018 and Subsequent Model Zero-Emission Vehicles and Hybrid Vehicles, in the Passenger Car, Light-Duty Truck, and Medium-Duty Vehicle Classes, adopted December 6, 2012 (GHG-related provisions).

B. Would these regulations be new to the SIP?

The regulations included in the July 3, 2021 SIP revision would be new to the California SIP with the exception of 13 CCR 1961.2 (“Exhaust Emission Standards and Test Procedures—2015 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles”). We approved a previous version of 13 CCR 1961.2 in 2016.¹¹ The amendment to 13 CCR 1961.2 that was submitted on July 3, 2021, updates the test procedures (incorporated by reference through 13 CCR 1961.2(d)) to conform to the 2018 amendments that CARB made to 13 CCR 1961.3.

¹¹ 81 FR 39424 (June 16, 2016).

C. What is the purpose of the submitted regulations?

California continues to experience some of the most severe and persistent air pollution problems in the country. Under the CAA, based on ambient data collected at numerous sites throughout the State, the EPA has designated areas within California as nonattainment areas for the ozone NAAQS and the particulate matter (PM) NAAQS, which includes both coarse and fine particulate (*i.e.*, PM₁₀ and PM_{2.5}).¹² See, generally, 40 CFR 81.305. California also

¹² PM₁₀ refers to particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers, and PM_{2.5} refers to particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers.

includes a number of areas that had been previously designated as nonattainment areas for the carbon monoxide NAAQS that the EPA has since redesignated as attainment areas because they have attained the standard; these areas are subject to an approved maintenance plan demonstrating how they will maintain the carbon monoxide standard into the future.

Mobile source emissions constitute a significant portion of overall emissions of criteria air pollutants or their precursors, including carbon monoxide, VOCs, NO_x, sulfur dioxide (SO₂), and PM in the various air quality nonattainment or maintenance planning areas within California, and thus, the purpose of CARB’s mobile source regulations is to reduce these emissions

and thereby help reduce ambient concentrations of criteria pollutants or their precursors to the level needed to attain and maintain the NAAQS throughout California.¹³ As noted previously, NO_x and VOCs are precursor emissions for both ozone and PM. At elevated levels, ozone and PM harm human health and the environment by contributing to premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. The purpose of incorporating CARB's mobile source regulations into the SIP is to make them federally enforceable and to allow CARB and local air districts to rely on the related emissions reductions in preparing air quality plans needed to meet CAA SIP requirements.¹⁴

As noted previously, CARB's ACC I program, which includes CARB's LEV III criteria pollutant standards and the ZEV regulations (and LEV III GHG emission standards that commenced in the 2017 MY), provides a single coordinated package of requirements for controlling criteria air pollutants or their precursors and greenhouse gas (GHG) emissions from passenger cars, light-duty trucks, and medium-duty passenger vehicles. The EPA previously approved the LEV III criteria pollutant standards and ZEV regulations of the ACC I program as revisions to the California SIP.¹⁵ The GHG emission standards within the ACC I program achieve additional criteria pollutant emission reductions beyond those produced by the LEV III criteria pollutant standards and ZEV regulations within ACC I, and as part of the July 3, 2021 SIP submission package, CARB provided estimates of emissions reductions resulting from the GHG-related portions of the ACC I program.¹⁶

In so doing, CARB evaluated motor vehicle emissions comprehensively by calculating both "downstream" emissions associated with operation of the motor vehicle itself, *i.e.*, "Tank-to-Wheel" (TTW), such as tailpipe emissions and evaporative losses from a vehicle's fuel system, and "upstream" emissions associated with fuel

extraction, processing and production, and distribution to refueling stations for consumers, *i.e.*, "Well-to-Tank" (WTT) emissions.¹⁷ With respect to criteria air pollutants, CARB estimated reductions for the WTT portion of the emissions profile for, among other years, the three analysis years that are the most relevant from the standpoint of ozone NAAQS attainment planning for the South Coast Air Basin—*i.e.*, 2023, 2031, and 2037.¹⁸ CARB estimates that the GHG-related portions of the ACC I program will result in a statewide decrease of upstream NO_x emissions of 51 tons per year (tpy) in 2023, 297 tpy in 2031, and 404 tpy in 2037.¹⁹ The corresponding estimated statewide emissions reductions of PM_{2.5} will be 7 tpy in 2023, 52 tpy in 2031, and 72 tpy in 2037.²⁰

III. EPA's Evaluation and Proposed Action

A. How is the EPA evaluating the regulations?

The EPA has evaluated the submitted regulations and amendments listed in Table 1 against the applicable procedural and substantive requirements of the CAA for SIPs and SIP revisions and has concluded that they meet all the applicable requirements. Generally, SIPs must provide for the implementation, maintenance, and enforcement of the NAAQS (*see* CAA section 110(a)(1)); must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, as may be necessary to meet the requirements of the Act (*see* CAA section 110(a)(2)(A)); must provide necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out such SIPs (and is not prohibited by any provision of Federal or state law from carrying out such SIPs) (*see* CAA section 110(a)(2)(E)); must be adopted by a state after reasonable notice and public hearing (*see* CAA section 110(l)); and must not interfere with any applicable requirement concerning attainment, reasonable further progress

(RFP), or any other applicable requirement of the Act (*see* CAA section 110(l)).²¹

B. Do the State regulations meet CAA SIP evaluation criteria?

1. Did the State provide adequate public notification and comment periods?

Under CAA sections 110(a)(2) and 110(l), SIP revisions must be adopted by the state, and the state must provide for reasonable public notice and hearing prior to adoption. In 40 CFR 51.102(d), we specify that reasonable public notice in this context refers to at least 30 days.

All the submitted regulations have gone through extensive public comment processes including CARB's workshop and hearing processes prior to CARB adoption, and CARB has provided documentation of these processes as part of CARB's July 3, 2021 SIP submission.

In addition, on June 19, 2015, CARB published a notice of public hearing to be held on July 23, 2015, to consider adoption and submission of certain adopted regulations, including the GHG-related provisions of the ACC I program, as a revision to the California SIP. CARB held the public hearing on July 23, 2015. No written comments were submitted to CARB in connection with the proposed SIP revision, and no public comments were made at the public hearing. At the July 23, 2015 Board Hearing, the CARB Board approved various mobile source regulations for which the EPA had issued waivers or authorizations or for which waiver or authorization requests were pending for inclusion in the SIP, with the specific portions of those regulations required for SIP submission to be determined by the CARB Executive Officer.²² Subsequently, the CARB Executive Officer submitted certain mobile source regulations to the EPA as attachments to a letter dated August 14, 2015, along with evidence of the public process conducted by CARB in approving the regulations for inclusion in the SIP.²³ CARB included

¹³ VOC and NO_x are precursors responsible for the formation of ozone, and NO_x and SO₂ are precursors for PM_{2.5}. SO₂ belongs to a family of compounds referred to as sulfur oxides. PM_{2.5} precursors also include VOC and ammonia. *See* 40 CFR 51.1000.

¹⁴ *See Committee for a Better Arvin v. EPA*, 786 F.3d 1169 (9th Cir. 2015).

¹⁵ 81 FR 39424 (June 16, 2016).

¹⁶ CARB, Staff Report, Attachment B to Executive Order S-21-010 ("Emissions Benefits of California's Passenger Vehicle GHG Standards"), dated July 2, 2021.

¹⁷ *Id.*, page 2.

¹⁸ 2023, 2031 and 2037 correspond to the "Extreme" area "attainment year ozone season" for the 1997, 2008 and 2015 ozone NAAQS, respectively, in the South Coast Air Basin nonattainment area. *See* 40 CFR 51.900(g), 51.1100(h), and 51.1300(g) for the definition of "attainment year ozone season."

¹⁹ CARB, Staff Report, Attachment B to Executive Order S-21-010 ("Emissions Benefits of California's Passenger Vehicle GHG Standards"), dated July 2, 2021, page 11, table 5.

²⁰ *Id.*

²¹ CAA section 193, which prohibits any pre-1990 SIP control requirement relating to nonattainment pollutants in nonattainment areas from being modified unless the SIP is revised to ensure equivalent or greater emission reductions of such air pollutants, does not apply to these regulations or amendments because they are new regulations or amend regulations previously approved in the California SIP in 2016, and thus, do not constitute an amendment to a pre-1990 SIP control requirement.

²² CARB Resolution 15-40, July 23, 2015.

²³ Letter dated August 14, 2015 from Richard W. Corey, Executive Officer, CARB, to Jared Blumenfeld, EPA Region IX Regional Administrator.

public participation documentation from the earlier (August 14, 2015) SIP submission as part of July 3, 2021 SIP submission.

With respect to the 2018 amendments to the GHG-related provisions of the ACC I program, CARB posted notice on August 7, 2018, of a public hearing that was held on September 27–28, 2018, along with related material.²⁴ The notice provided six weeks for submission of written comments. The CARB Board adopted the amendments on September 28, 2018.²⁵ CARB finalized the rulemaking package, including responses to public comments on the amendments, in November 2018.²⁶

As noted previously, the CARB Executive Officer did not include the GHG-related provisions of the ACC I program in the August 14, 2015 SIP submission, but he has included those provisions, along with the 2018 amendments, in the July 3, 2021 SIP submission that is the subject of this proposed action. The CARB Executive Officer submitted the 2012 and 2018 GHG-related provisions of the ACC I program to the EPA as a revision to the California SIP through CARB Executive Order S–21–010 (dated July 2, 2021).

Upon review of the public participation processes that CARB has undertaken and documented in the July 3, 2021, SIP submission, we conclude that CARB's July 3, 2021, SIP submission of the GHG-related portions of the ACC I program meets the applicable procedural requirements for SIP revisions under the CAA sections 110(a)(2) and 110(l) and 40 CFR 51.102.

2. Is the SIP revision appropriate for inclusion in the SIP?

CAA section 110(a)(1) requires that SIPs provide for the implementation, maintenance, and enforcement of the NAAQS. The types of air pollution and WTT emission benefits that have been identified by CARB as derived from its passenger vehicle GHG emission standards (within the ACC I program) have a connection to a number of NAAQS, including the PM and ozone NAAQS.²⁷ The State of California

contains several nonattainment areas for several iterations of the PM and ozone NAAQS.²⁸ As explained previously, NO_x is a precursor of both ozone and PM, and reductions in NO_x emissions can therefore decrease the concentration of these criteria pollutants. The GHG emissions standards that we are proposing to approve into the State's SIP will decrease NO_x emissions as well as direct PM emissions, which, along with other emission control measures in the SIP, will assist the State in achieving the emissions reductions needed to comply with the various nonattainment planning requirements of the CAA. As described previously, adoption of these GHG emissions standards is estimated to result in NO_x emissions reductions of 51 tpy in 2023, 297 tpy in 2031, and 404 tpy in 2037. The corresponding estimated statewide emissions reductions of PM_{2.5} are 7 tpy in 2023, 52 tpy in 2031, and 72 tpy in 2037. We have reviewed these emission reduction estimates and find they are reasonable and adequately supported.²⁹ As such, we believe that inclusion of the GHG-ports of the ACC I program in the California SIP is appropriate under CAA section 110(a)(1).

3. Does the State have adequate legal authority to implement the regulations?

The California Legislature has granted CARB both general and specific authority under the California Health & Safety Code (H&SC) to adopt and implement these regulations. California H&SC sections 39600 ("Acts required") and 39601 ("Adoption of regulation; Conformance to federal law") confer on CARB the general authority and obligation to adopt regulations and measures necessary to execute CARB's powers and duties imposed by State law. California H&SC sections 43013(a) and 43018 provide broad authority to achieve the maximum feasible and cost-effective emission reductions from all mobile source categories.

As a general matter, as noted previously, the CAA assigns mobile source regulation to the EPA through title II of the Act and assigns, with certain exceptions, stationary source

regulation to the states through title I of the Act. In so doing, the CAA preempts various types of state regulation of mobile sources as set forth in section 209(a) (preemption of state emissions standards for new motor vehicles and engines), section 209(e) (preemption of state emissions standards for new and in-use nonroad vehicles and engines), and section 211(c)(4)(A) (preemption of state fuel requirements for motor vehicles, *i.e.*, other than California's motor vehicle fuel requirements for motor vehicle emission control—section 211(c)(4)(B)). For certain types of mobile source standards, the State of California may request a waiver (for motor vehicles) or authorization (for nonroad vehicles or engines) for standards relating to the control of emissions and accompanying enforcement procedures. *See* CAA sections 209(b) (new motor vehicles) and 209(e)(2) (most categories of new and in-use nonroad vehicles).

The mobile source regulations that are the subject of this proposed action were submitted by CARB under CAA section 209 with a request for waiver that the EPA ultimately granted. More specifically, the EPA granted the waiver for the GHG-related portions of the ACC I program in 2013,³⁰ withdrew the waiver in 2019,³¹ and reinstated the waiver in 2022.³²

Thus, the regulations proposed for approval in this action are covered by an EPA waiver of preemption under the requirements of section 209(b) of the CAA and thus are no longer preempted under section 209(a) of the CAA.

In addition, the EPA is unaware of any non-CAA legal obstacle to CARB's enforcement of the regulations and thus we conclude that the State has provided the necessary assurances that the State has adequate authority under State law to carry out the SIP revision (and is not prohibited by any provision of Federal or State law from carrying out such SIP) and thereby meets the requirements of CAA section 110(a)(2)(E) with respect to legal authority.

4. Are the regulations enforceable as required under CAA section 110(a)(2)?

We have evaluated the enforceability of the mobile source regulations included in the July 3, 2021 SIP submission with respect to applicability and exemptions; standard of conduct and compliance dates; sunset provisions; discretionary provisions; and test methods, recordkeeping and

²⁴ CARB, Notice of Public Hearing to Consider Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation, August 6, 2018.

²⁵ CARB Resolution 18–35, September 28, 2018.

²⁶ The final rulemaking package consisted of, among other things, CARB's "Final Statement of Reasons: Amendments to the Low-Emission Vehicle III Greenhouse Gas Emission Regulation, November 2018" (FSOR). Chapter IV of the FSOR provides the summary of comments and CARB responses.

²⁷ *See* CARB, Staff Report, Attachment B to Executive Order S–21–010 ("Emissions Benefits of California's Passenger Vehicle GHG Standards"), dated July 2, 2021.

²⁸ For example, the EPA has designated the Los Angeles-South Coast Air Basin as an Extreme nonattainment area for the 1-hour average ozone NAAQS and the 1997, 2008 and 2015 8-hour average ozone NAAQS, and the EPA has designated the San Joaquin Valley as a Serious nonattainment area for the 1997 24-hour and annual, 2006 24-hour and 2012 annual PM_{2.5} NAAQS. *See*, generally, 40 CFR 81.305.

²⁹ *See* Memorandum to Docket EPA–R09–OAR–2024–0370, "Evaluation of CARB's Criteria Pollutant Emissions Estimates from the Greenhouse Gas Related Provisions of the Advanced Clean Cars Program," Jeffrey Buss, EPA Region 9, August 2, 2024.

³⁰ 78 FR 2111 (January 9, 2013).

³¹ 84 FR 51310 (September 27, 2019).

³² 87 FR 14332 (March 14, 2022).

reporting,³³ and we have concluded for the reasons given in the following paragraphs that the regulations are enforceable for the purposes of CAA section 110(a)(2).

First, with respect to applicability, we find that the GHG-related provisions of the ACC I program are sufficiently clear as to which entities and which vehicles or engines are affected by the regulations. *See, e.g.*, 13 CCR section 1961.3 (introduction section describing applicability and exemptions).

Second, we find that the regulations are sufficiently specific so that the entities affected by the regulations are fairly on notice as to what the requirements and related compliance dates are. For instance, see the GHG emission requirements in 13 CCR section 1961.3(a).

Third, none of the submitted regulations contain sunset provisions that automatically repeal the emissions limits by a given date or upon the occurrence of a particular event, such as the change in the designation of an area from nonattainment to attainment.

Fourth, a number of the regulations contain provisions that allow for discretion by CARB's Executive Officer. Such "director's discretion" provisions can undermine enforceability of a SIP regulation and thus may prevent full approval by the EPA. However, in the instances of "director's discretion" in the submitted regulations, the discretion that can be exercised by the CARB Executive Officer is reasonably limited under the terms of the regulations. For instance, under 13 CCR section 1961.3(a)(3), manufacturers with limited U.S. sales may request that the Executive Officer establish alternative fleet average CO₂ standards that would apply instead of the standards that would otherwise apply under 13 CCR 1961.3(a)(1). However, the regulation includes specific limits on eligibility³⁴ and requires a technology review, among other content requirements, as part of the application for an alternative standard.³⁵ With such constraints on discretion, the "director's discretion" contained in the regulations would not significantly undermine enforceability of the rules by citizens or the EPA.

Lastly, the regulations identify appropriate test methods and include adequate recordkeeping and reporting requirements sufficient to ensure

compliance with the applicable requirements.³⁶

5. Do the regulations interfere with RFP and attainment or any other applicable requirement of the Act?

All the State's RFP, attainment, and maintenance plans rely to some extent on the emission reductions from CARB's mobile source program. In this instance, CARB has provided criteria air pollutant or precursor reduction estimates for the GHG-related provisions in the ACC I program as part of the July 3, 2021 SIP submission package. CARB's estimates show a net reduction in statewide NO_x and PM_{2.5} emissions, taking into account the emissions reductions associated with avoided production and delivery of gasoline and the emissions increases associated with increased production of electricity and hydrogen to fuel ZEVs that can be part of manufacturers' demonstrations of compliance with the GHG standards.³⁷ Given the net reduction in criteria air pollutant or precursor emissions expected to result from the GHG-related portions of the ACC I program, we find that approving the mobile source regulations and amendments submitted on July 3, 2021, as a revision to the California SIP, along with other emission control measures in the SIP, will assist the State in achieving the emissions reductions needed to comply with the various nonattainment planning requirements of the CAA, such as RFP requirements and other requirements associated with attainment and maintenance plans for the NAAQS. Therefore, approval of the mobile source regulations and amendments submitted on July 3, 2021, would not interfere with RFP or attainment or any other applicable requirement of the CAA for the purposes of CAA section 110(l).

6. Will the State have adequate personnel and funding for the regulations?

In its SIP revision submission dated August 14, 2015, CARB refers to the annual approval by the California Legislature of funding and staff resources for carrying out CAA-related responsibilities and notes that a large portion of CARB's budget has gone toward meeting CAA mandates.³⁸ CARB indicates that a majority of CARB's

funding comes from dedicated fees collected from regulated emission sources and other sources such as vehicle registration fees and vehicles license plate fees and that these funds can only be used for air pollution control activities.³⁹ For the 2024–2025 budget cycle, CARB has over 1,100 positions and almost \$560 million dedicated for the mobile source program developing and enforcing regulations.⁴⁰ Given the longstanding nature of CARB's mobile source program and its documented effectiveness at achieving significant reductions from mobile sources, we find that CARB has provided necessary assurances that the State has adequate personnel and funding to carry out the mobile source regulations and amendments submitted for approval on July 3, 2021.

7. EPA's Evaluation Conclusion

Based on the discussion presented in the previous paragraphs, we are proposing to find that these regulations are consistent with relevant CAA requirements, EPA policies, and guidance.

C. Proposed Action and Public Comment

Under section 110(k)(3) of the CAA, and for the reasons given above, we are proposing to approve a SIP revision submitted by CARB on July 3, 2021, that includes certain California regulations and related test procedures that were adopted as part of California's Advanced Clean Cars I program and that establish standards and other requirements relating to the control of emissions of greenhouse gases from new passenger cars, light-duty trucks, and medium-duty vehicles. The standards and other requirements relate to 2017 and subsequent model-year passenger cars, light-duty trucks, and medium-duty vehicles. We are proposing to approve these regulations as part of the California SIP because our analysis indicates they fulfill all relevant CAA requirements. If finalized, approval of the regulations and related test procedures as part of the California SIP will make them federally enforceable. We will accept comments from the public on this proposal until November 12, 2024.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with

³³ These concepts are discussed in detail in an EPA memorandum from J. Craig Potter, EPA Assistant Administrator for Air and Radiation, *et al.*, titled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency," dated September 23, 1987.

³⁴ See 13 CCR section 1961.3(a)(3)(A) and (B).

³⁵ See 13 CCR section 1961.3(a)(3)(C) and (D).

³⁶ These requirements are set forth in the test procedures incorporated by reference in the regulations and included in the SIP.

³⁷ CARB, Staff Report, Attachment B to Executive Order S–21–010 ("Emissions Benefits of California's Passenger Vehicle GHG Standards"), dated July 2, 2021, page 6.

³⁸ Letter from Richard W. Corey, Executive Officer, CARB, to Jared Blumenfeld, Regional Administrator, EPA Region IX, August 14, 2015.

³⁹ *Id.*

⁴⁰ California Department of Finance, 2024–25 State Budget, Department Report, 3900 State Air Resources Board, enacted June 26, 2024.

requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference certain sections of title 13 of the California Code of Regulations that establish standards and other requirements relating to the control of emissions of greenhouse gases from new passenger cars, light-duty trucks, and medium-duty vehicles and the related test procedures, as described in section II of this preamble. The EPA has made, and will continue to make, these materials available through www.regulations.gov and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act.

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

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping

requirements, Volatile organic compounds.

Dated: October 2, 2024.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2024–23270 Filed 10–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2021–0480; FRL–10676–02–R6]

Air Plan Approval; Texas; New Source Review Updates for Project Emissions Accounting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is supplementing a proposed approval published on March 6, 2023 (“March 2023 proposal”), for revisions to the Texas State Implementation Plan (SIP) that updates the Texas Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) permitting programs to incorporate Federal New Source Review (NSR) regulations for Project Emissions Accounting (PEA). This proposal supplements the March 2023 proposal with respect to the EPA's evaluation of the Texas SIP submittal and the anti-backsliding requirements of the Clean Air Act (CAA) sections 110(l) and 193. The EPA is providing an opportunity for public comment on this supplemental proposal. The EPA is not reopening for comment the March 2023 proposal. Comments received on the March 2023 proposal and this supplemental proposal will be addressed in a final rule.

DATES: Written comments must be received on or before November 12, 2024.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2021–0480 at <https://www.regulations.gov> or via email to wiley.adina@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia

submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact Adina Wiley, 214-665-2115, wiley.adina@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov. While all documents in the docket are listed in the index, some information may not be publicly available due to docket file size restrictions or content (*e.g.*, CBI).

FOR FURTHER INFORMATION CONTACT:

Adina Wiley, EPA Region 6 Office, Air Permits Section, 214-665-2115, wiley.adina@epa.gov. We encourage the public to submit comments via <https://www.regulations.gov>. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. Background

On July 9, 2021, the Texas Commission on Environmental Quality (TCEQ) submitted to the EPA revisions to the Texas SIP that update the Texas PSD and NNSR programs to allow for PEA consistent with the EPA’s November 24, 2020, final rule at 85 FR 74890. The July 9, 2021, submittal also included the repeal of obsolete provisions from the Texas permitting program; the EPA addressed the repeal of obsolete provisions in a separate final action on August 24, 2023, at 88 FR 57882.

In our March 2023 proposal (88 FR 13752), we provided information on how the Texas SIP revision was evaluated and found to be consistent with the Federal NSR program requirements for PEA. Comments on our March 2023 proposal were due by April 5, 2023. We received relevant adverse comments on our proposal that included, among other comments, that our proposal did not provide an air quality analysis demonstrating that the Texas SIP revision will not violate the

anti-backsliding requirements of section 110(l) and section 193 of the CAA. Thus, we are providing our evaluation of the Texas SIP revision under CAA sections 110(l) and 193 in this supplemental proposal action. All comments received on our March 2023 proposal and this supplemental proposal will be addressed in the final action.

II. The EPA’s Evaluation

Section 110(l) of the CAA requires that (1) each revision to a SIP must be adopted by the State after reasonable notice and public hearing, and (2) the EPA cannot approve a plan revision “if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this Act.”

The July 9, 2021, Texas SIP submittal included evidence that the public was provided notice of the proposed SIP revisions in three newspapers on December 18, 2020: *Austin American-Statesman*, *Dallas Morning News*, and *Houston Chronicle*. The TCEQ published the proposed revisions and the notice of public hearing in the Texas Register on January 1, 2021, at 46 TexReg 123 and 46 TexReg 219, respectively. The EPA finds that the TCEQ submitted the July 9, 2021, SIP revision after reasonable notice and public hearing. The submittal therefore satisfies the first requirement of CAA section 110(l).

As to the second requirement of CAA section 110(l), for over 15 years, the EPA has interpreted section 110(l) as permitting approval of a SIP revision so long as “emissions in the air are not increased,” thereby preserving “status quo air quality.”¹ According to the plain meaning of the word “interfere,” a SIP revision satisfies section 110(l) if it does not hamper, frustrate, hinder, or impede any applicable CAA requirements.² EPA’s 110(l) analysis is not a one-size-fits all provision and the variables that must be analyzed depend on the particular interference the SIP revision poses.³ To demonstrate noninterference, a state may either: (1)

offset any expected increases with equivalent or greater emissions reductions, thereby maintaining status quo air quality; or (2) submit an air quality analysis showing that the SIP revision will not interfere with applicable requirements.

The July 9, 2021, Texas SIP submittal argued that a project that is not permitted through major NSR (PSD and/or NNSR) would still be permitted through the Texas minor NSR program. The EPA evaluated whether the existing Texas minor NSR program requirements are an acceptable substitute measure in the event a modification uses PEA and is no longer subject to the requirements of the Texas PSD and NNSR programs. Our evaluation presented below analyzes whether the Texas minor NSR program requirements preserve the air quality status quo and benefits of the Texas NSR permit program.

In the July 9, 2021, SIP submittal, the TCEQ identified the possibility that a portion of projects that would otherwise have been subject to the Texas PSD and NNSR requirements under 30 TAC chapter 116, may instead use PEA to proceed as a minor NSR permitting action under the SIP-approved Texas minor NSR requirements. The TCEQ stated in the final preamble “. . . the commission emphasizes that the adopted changes are not expected to significantly affect human health or ambient air quality, due to the requirements for minor NSR in Texas.” See 46 TexReg 3925, June 25, 2021. The July 9, 2021, SIP submittal does not relieve the owner/operator of a source from the obligation to obtain a preconstruction permit. The owner or operator would still be responsible for obtaining a valid permit through the Texas minor NSR program.

The purpose of the NSR permitting program (PSD, NNSR, and minor NSR) is to protect human health and the environment while providing for industrial growth. Preconstruction permitting programs, including minor NSR, establish legally and practicably enforceable emission limits for the subject facilities. The Texas SIP includes several mechanisms for evaluating and authorizing minor NSR actions. Each mechanism has been separately evaluated and approved by the EPA as consistent with minor NSR requirements and protective of human health and the environment to satisfy the requirements at 40 CFR 51.160 through 51.164. Existing PSD or NNSR permitted facilities in Texas may use PEA to determine, consistent with the Federal regulations, that a project at an existing major stationary source does not qualify as a major modification and

¹ *Ky. Res. Council, Inc. v. EPA*, 467 F.3d 986, 991 (6th Cir. 2006); see also *Indiana v. EPA*, 796 F.3d 803, 806 (7th Cir. 2015); *Ala. Env’t Council v. EPA*, 711 F.3d 1277, 1292–93 (11th Cir. 2013); *Galveston-Houston Ass’n for Smog Prevention v. EPA*, 289 F. App’x 745, 754 (5th Cir. 2008).

² Bryan A. Garner, *Garner’s Dictionary of Legal Usage* 570 (3d ed. 2011); see also Merriam-Webster’s Collegiate Dictionary 652 (11th ed. 2005) (“to interpose in a way that hinders or impedes”); Webster’s New World Dictionary Third College Edition 704 (1988) (defining “interfere with” as “to hinder”).

³ *Center for Biological Diversity v. EPA*, 75 F.4th 174, 181 (3rd Cir. 2023).

thus is not subject to the requirements for major PSD modifications at 30 TAC section 116.160 or major NNSR modifications at 30 TAC section 116.150 or 116.151. Modifications to facilities in Texas that will be permitted via minor NSR mechanisms because of the application of PEA will still be protective of human health and the environment because these modifications are permitted via SIP-approved minor NSR mechanisms that establish legally and practicably enforceable emission limits. We briefly describe each of the Texas SIP-approved minor NSR mechanisms below.

The Texas SIP at 30 TAC section 116.110(b) requires that modifications to existing permitted facilities be addressed through an amendment to an existing permit. Permit amendments are SIP-approved at 30 TAC section 116.116(b). *See* 85 FR 64968, October 14, 2020. Permit amendments are used if the modification results in (1) a change in the method of control of emissions, (2) a change in the character of the emissions, or (3) an increase in the emission rate of any air contaminant. Applications for permit amendments are subject to the SIP-approved public notice provisions at 30 TAC chapter 39 and must satisfy the general application requirements at 30 TAC section 116.111, including the requirement at 30 TAC section 116.111(a)(2)(C) for the application of Texas best available control technology (BACT) to determine the applicable control technology requirements. Texas explains in the final preamble that “Sources undergoing construction or modification which are not subject to PSD best available control technology (BACT) or lowest achievable emission rate (LAER) under major NSR requirements must still comply with Texas’ BACT requirements in § 116.111(a)(2)(C). Every permit amendment, including non-major permit amendments, undergoes a review process to evaluate the impact of the project on human health and evaluate compliance with ambient air quality standards. Even non-major permitting projects are evaluated to ensure that they do not cause or contribute to an exceedance of the NAAQS and meet any applicable state property line standards. This evaluation may consist of both air dispersion modeling predictions and ambient monitoring data.” *See* 46 TexReg 3925 and 3926, June 25, 2021.

The Texas SIP at 30 TAC section 116.110(d) provides that a Permit by Rule (PBR) can be used in lieu of a permit amendment. The Texas PBR program is SIP-approved at 30 TAC

chapter 106.⁴ The Texas PBR program is an alternative process for approving the construction of new and modified facilities or changes within facilities. Pursuant to 30 TAC sections 106.1 and 106.2, the TCEQ develops a PBR applicable to certain types of facilities or changes within facilities the TCEQ has determined will not make a significant contribution of air contaminants. The PBR must satisfy the general requirements at 30 TAC section 106.4, including establishing enforceable limits on actual emissions, and the TCEQ provides for public notice and comment of the PBR through 30 TAC chapter 39.

The Texas SIP at 30 TAC section 116.615(3) provides that standard permits can be used in lieu of permit amendments. The Texas Standard Permit program is SIP-approved at 30 TAC chapter 116, subchapter F, and provides a streamlined, alternative mechanism to approve the construction of certain new and modified sources within categories which contain numerous similar sources where the TCEQ has adopted a standard permit.⁵ Individual standard permits are developed by the TCEQ using a 30-day public notice and comment process as provided in 30 TAC section 116.603. Standard permits generally require the application of BACT and will also contain registration of emission requirements to limit a source’s potential to emit and sufficient recordkeeping requirements to demonstrate compliance. Standard permits cannot be used by new major stationary sources or major modifications that are subject to the requirements of PSD or NNSR permitting.

The EPA finds that the argument presented by the State—specifically that a project that would not result in a significant emissions increase when considering the overall effect of the change on emissions, *i.e.*, considering both increases and decreases in emissions that result from the project as provided for with PEA—is an acceptable use of the substitute measure approach under section 110(l). The Texas minor NSR permitting program functions as a backstop to preserve the status quo air

quality and protect human health and the environment in the event a modification is determined to be non-major in accordance with the revised regulations. Each of the available minor NSR options for permitting non-major modifications have been previously reviewed and approved by the EPA as protective of human health and the environment. Each minor NSR option provides for public comment on the permit and establishes enforceable emission limitations that have been demonstrated as protective of air quality. Additionally, the reliance on minor NSR in the event a project uses PEA is consistent with the intent outlined in the EPA’s final rule for PEA where we explain that projects that may not be subject to major NSR modification requirements may still be subject to applicable minor NSR program permitting requirements.⁶ The application of PEA in Texas is also likely to incentivize energy efficiency and/or other environmentally beneficial projects that may have been foregone because of the perceived complexity of major NSR permitting requirements.^{7 8} The EPA therefore proposes to find that the July 9, 2021, Texas SIP submittal satisfies the second requirement of CAA section 110(l) because the Texas SIP-approved minor NSR program will preserve the air quality status quo and benefits of the Texas SIP-approved NSR program.

Section 193 of the CAA, the “General Savings Clause”, provides that control measures in effect or required to be adopted in nonattainment areas by an order, settlement agreement, or plan in effect before the 1990 CAA amendments in nonattainment areas may not be removed or modified absent a SIP revision that ensures equivalent or greater emissions reductions.

The July 9, 2021, Texas SIP revision ensures that modifications that are not subject to the requirements of major NNSR permitting because of the application of PEA must still be permitted through the SIP-approved minor NSR program. Each of these minor NSR mechanisms has been separately evaluated and approved as discussed above. The EPA therefore proposes to find that the July 9, 2021, Texas SIP submittal satisfies the

⁴ The Texas Permits by Rule (PBR) program was initially SIP-approved on November 1, 2003. *See* 68 FR 64548. The EPA approved revisions to the Texas PBR program on November 10, 2014. *See* 79 FR 66626.

⁵ The Texas Standard Permit Program was initially SIP-approved on November 14, 2003. *See* 68 FR 64543. The EPA has approved several revisions to the Standard Permit program since our initial program approval. The most recent EPA action was taken on February 13, 2020. *See* 85 FR 8185.

⁶ *See* 85 FR 75890, 74896.

⁷ *See* 85 FR 74890, 74896.

⁸ *See* the Qualitative Environmental Impacts Analysis of the Final Project Emissions Accounting Rule presented on page 122 of “EPA’s Response to Comments Document on Proposed Rule: “Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR): Project Emissions Accounting”—84 FR 39244, August 9, 2019” available at <https://www.regulations.gov/document/EPA-HQ-OAR-2022-0381-0013>.

requirements of CAA section 193 because the modification will still be subject to SIP-approved NSR program requirements, including public notice and the establishment of enforceable emission limits that have been demonstrated as protective of air quality.

III. Supplemental Proposed Action

The EPA is supplementing our March 2023 proposal addressing revisions to the Texas SIP to update the Texas PSD and NNSR permitting programs to provide for PEA consistent with Federal NSR requirements. In this supplemental proposal, we are proposing to approve the Texas SIP revisions submitted July 9, 2021, as consistent with the requirements of CAA sections 110(l) and 193. Our analysis found that the submitted revisions are consistent with the CAA and the EPA's regulations, policy and guidance for permitting SIP requirements. The EPA is proposing approval of the following revisions adopted on June 9, 2021, effective on July 1, 2021, submitted to the EPA on July 9, 2021:

- Revisions to 30 TAC section 116.12—Nonattainment and Prevention of Significant Deterioration Review Definitions,
- Revisions to 30 TAC section 116.150—New Major Source or Major Modification in Ozone Nonattainment Areas,
- Revisions to 30 TAC section 116.151—New Major Source or Major Modification in Nonattainment Area Other than Ozone, and
- Revisions to 30 TAC section 116.160—Prevention of Significant Deterioration.

The EPA is providing an opportunity for public comment on this supplemental proposal. However, we are not reopening for comment our March 2023 proposal. The EPA will address all comments received on our March 2023 proposal and on this supplemental proposal in our final action.

IV. Environmental Justice Considerations

Please see the March 6, 2023, proposal at 88 FR 13752, 13754.

V. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to the Texas regulations as described in section III of this preamble, Supplemental Proposed Action. We

have made, and will continue to make, these documents generally available electronically through www.regulations.gov (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 14094 (88 FR 21879, April 11, 2023);
 - Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
 - Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
 - Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
 - Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
 - Is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it approves a state program;
 - Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
 - Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.
- Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address “disproportionately high and adverse human health or environmental effects” of their actions on communities with

environmental justice (EJ) concerns to the greatest extent practicable and permitted by law. The EPA defines EJ as “the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The EPA further defines the term fair treatment to mean that “no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.”

The air agency did not evaluate EJ considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA performed an EJ analysis, as is described above in the section titled “Environmental Justice Considerations.” The analysis was done for the purpose of providing additional context and information about this rulemaking to the public, not as a basis of the action. In addition, there is no information in the record upon which this decision is based inconsistent with the stated goal of E.O. 12898 of achieving EJ for communities with EJ concerns.

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

List of Subjects in 40 CFR Part 52

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

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

Dated: September 27, 2024.

Earthea Nance,

Regional Administrator, Region 6.

[FR Doc. 2024–23282 Filed 10–10–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 62**

[EPA–R01–OAR–2024–0462; FRL–12317–02–R1]

Approval and Promulgation of State Plans (Negative Declarations) for Designated Facilities and Pollutants: Maine and Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve negative declarations in lieu of State plans to satisfy the requirements in the Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste Incineration Units for the State of Maine and the Commonwealth of Massachusetts. The negative declarations certify the states do not have any existing sources within their jurisdictions that must comply with the rule.

DATES: Written comments must be received on or before November 12, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2024–0462 at <https://www.regulations.gov>, or via email to kilpatrick.jessica@epa.gov. For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment.

The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Jessica Kilpatrick, Air Permits, Toxics, and Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 5–MI, Boston, MA, 02109–0287. Telephone: 617–918–1652. Fax: 617–918–0652 Email: kilpatrick.jessica@epa.gov.

SUPPLEMENTARY INFORMATION: In the Rules and Regulations section of this **Federal Register**, EPA is approving negative declarations for the State of Maine and the Commonwealth of Massachusetts, submitted in accordance with 40 CFR 60.23(b) and 62.06, to satisfy the requirements in the Emission Guidelines and Compliance Times for Commercial and Industrial Solid Waste

Incineration Units (CISWI Emission Guidelines). Since this action is considered noncontroversial and there are no anticipated adverse comments, the Agency is concurrently publishing it as a proposed rule (allowing opportunity for public comment) and a direct final rule. See CISWI Emission Guidelines amended by 78 FR 9112 (February 7, 2013) and 84 FR 15846 (Apr. 16, 2019). A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules and Regulations Section of this issue of the **Federal Register**.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Industrial facilities, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: October 2, 2024.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2024–23173 Filed 10–10–24; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 89, No. 198

Friday, October 11, 2024

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (Committee) will meet on Tuesday, October 29, 2024, at 1 p.m.–3:30 p.m., eastern daylight time in the Herbert C. Hoover Building, Room 3884, 1401 Constitution Avenue NW, Washington, DC (enter through Main Entrance on 14th Street between Constitution and Pennsylvania Avenues). The Committee advises and assists the Secretary of Commerce (Secretary) and other Federal officials and agencies with respect to actions designed to carry out the policy set forth in section 1752(1)(A) of the Export Control Reform Act. The purpose of the meeting is to have Committee members and U.S. Government representatives mutually review updated technical data and policy-driving information that has been gathered.

Agenda

Open Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the open meeting and public participation requirements found in sections 1009(a)(1) and 1009(a)(3) of the Federal Advisory Committee Act (FACA) (5 U.S.C. 1001–1014). The exemption is authorized by section 1009(d) of the FACA, which permits the closure of advisory committee meetings, or portions thereof, if the head of the agency to which the advisory committee reports determines such meetings may

be closed to the public in accordance with subsection (c) of the Government in the Sunshine Act (5 U.S.C. 552b(c)). In this case, the applicable provisions of 5 U.S.C. 552b(c) are subsection 552b(c)(4), which permits closure to protect trade secrets and commercial or financial information that is privileged or confidential, and subsection 552b(c)(9)(B), which permits closure to protect information that would be likely to significantly frustrate implementation of a proposed agency action were it to be disclosed prematurely. The closed session of the meeting will involve committee discussions and guidance regarding U.S. Government strategies and policies.

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at Yvette.Springer@bis.doc.gov.

A limited number of seats will be available for members of the public to attend the open session in person. Reservations are not accepted.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Ms. Yvette Springer no later than Tuesday, October 25, 2024, so that appropriate arrangements can be made.

To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of materials to the Committee members, the Committee suggests that members of the public forward their materials prior to the meeting to Ms. Springer via email. Material submitted by the public will be made public and therefore should not contain confidential information. Meeting materials from the public session will be accessible via the Technical Advisory Committee (TAC) site at <https://tac.bis.gov>, within 30-days after the meeting.

The Deputy Assistant Secretary for Administration, performing the non-exclusive functions and duties of the Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on April 9, 2024, pursuant to 5 U.S.C. 1009(d), that the portion of the meeting dealing with pre-decisional changes to the Commerce Control List and the U.S.

export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. 1009(a)(1) and 1009(a)(3). The remaining portions of the meeting will be open to the public.

Meeting cancellation: If the meeting is cancelled, a cancellation notice will be posted on the TAC website at <https://tac.bis.doc.gov>.

For more information, contact Ms. Springer.

Yvette Springer,
Committee Liaison Officer.

[FR Doc. 2024–23524 Filed 10–10–24; 8:45 am]

BILLING CODE 3510-JT-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–923]

Raw Flexible Magnets From the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Countervailing Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on raw flexible magnets from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the “Final Results of the Sunset Review” section of this notice.

DATES: Applicable October 11, 2024.

FOR FURTHER INFORMATION CONTACT: Peter Zukowski, 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) 482–0189.

SUPPLEMENTARY INFORMATION:

Background

On September 17, 2008, Commerce published the CVD order on raw flexible magnets from China.¹ On June 3, 2024, Commerce published the notice of initiation of the third sunset review of

¹ See *Raw Flexible Magnets from the People's Republic of China: Countervailing Duty Order*, 73 FR 53849 (September 17, 2008) (*Order*).

the *Order*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).² On June 14, 2024, Commerce received a notice of intent to participate from Magnum Magnetics Corporation (the domestic interested party), within the deadline specified in 19 CFR 351.218(d)(1)(i).³ The domestic interested party claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of the domestic like product.⁴

On June 28, 2024, Commerce received an adequate substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).⁵ Commerce did not receive a substantive response from any other interested party in this proceeding, and no party requested a hearing. On July 23, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties.⁶ As a result, Commerce conducted an expedited (120-day) sunset review of the *Order*, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁷ The deadline for the final results is now October 8, 2024.

Scope of the Order

The merchandise covered by this order is raw flexible magnets. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.⁸

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of countervailable subsidies in the event of revocation of the *Order* and the countervailable subsidy rates likely to prevail if the *Order* were

revoked, is provided in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(b) of the Act, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidies at the following net countervailable subsidy rates:

Producers/exporters	Net countervailable subsidy rate (percent <i>ad valorem</i>)
China Ningbo Cixi Import Export Corporation	109.95
Polyflex Magnets Ltd	109.95
All Others	109.95

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely 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

Commerce is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: October 7, 2024.

Dawn Shackleford,
Executive Director for Trade Agreements Policy and Negotiations.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the *Order*
- IV. History of the *Order*
- V. Legal Framework
- VI. Discussion of the Issues
 - 1. Likelihood of Continuation or Recurrence of a Countervailable Subsidy
 - 2. Net Countervailable Subsidy Rates Likely to Prevail
 - 3. Nature of the Subsidies
- VII. Final Results of Sunset Review
- VIII. Recommendation

[FR Doc. 2024–23567 Filed 10–10–24; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE
International Trade Administration

[C–580–882]

Certain Cold-Rolled Steel Flat Products From the Republic of Korea: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review; 2022

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies were provided to producers and exporters of certain cold-rolled steel flat products (cold-rolled steel) from the Republic of Korea (Korea). The period of review (POR) is January 1, 2022, through December 31, 2022. In addition, Commerce is rescinding the review, in part, with respect to 45 companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable October 11, 2024.

FOR FURTHER INFORMATION CONTACT: Samuel Evans, AD/CVD Operations, Office IX, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2420.

SUPPLEMENTARY INFORMATION:

Background

On November 15, 2023, based on timely requests for review, Commerce initiated this administrative review of the countervailing duty (CVD) order on

² See *Initiation of Five-Year (Sunset) Reviews*, 89 FR 47525 (June 3, 2024).
³ See Domestic Interested Party’s Letter, “Notice of Intent to Participate,” dated June 14, 2024.
⁴ *Id.* at 2.
⁵ See Domestic Interested Party’s Letter, “Domestic Industry Substantive Response,” dated June 28, 2024.
⁶ See Commerce’s Letter, “Sunset Reviews Initiated on June 3, 2024,” dated July 23, 2024.
⁷ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.
⁸ See Memorandum, “Issues and Decision Memorandum for the Final Results of the Expedited Third Sunset Review of the Countervailing Duty Order on Raw Flexible Magnets from the People’s Republic of China,” dated concurrently with, and adopted by, this notice (Issues and Decision Memorandum).

cold-rolled steel from Korea.¹ On December 18, 2023, Commerce selected Hyundai Steel Company (Hyundai Steel) and POSCO/POSCO International Corporation (POSCO) as the mandatory respondents in this review.² On May 9, 2024, Commerce extended the deadline for the preliminary results of this review.³ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceedings by seven days.⁴ The deadline for the preliminary results is now October 4, 2024.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.⁵ A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://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>.

Scope of the Order⁶

The merchandise covered by the Order is cold-rolled steel from Korea. For a complete description of the scope of the Order, *see* the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

In accordance with 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if a party who requested the review withdraws the request within 90 days of the date of publication of the notice of

initiation of the requested review in the **Federal Register**. On February 13, 2024, the petitioners withdrew their requests for review by the 90-day withdrawal deadline for the companies identified in Appendix II.⁷ Because the petitioners timely withdrew their requests for a review of these companies, and no other party requested a review of them, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review, in part, with respect to these companies.

Furthermore, pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no entries of subject merchandise during the POR for which liquidation is suspended.⁸ Normally, upon completion of an administrative review, the suspended entries are liquidated at the antidumping duty assessment rate calculated for the review period.⁹ Therefore, for an administrative review of a company to be conducted, there must be a suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the antidumping duty assessment rate calculated for the POR.¹⁰

On December 20, 2023, we notified parties, and invited comment, of our intent to rescind this administrative review with respect to certain companies because there were no suspended entries of subject merchandise produced or exported by these companies during the POR.¹¹ No party commented on the Intent to Rescind Memorandum. Therefore, in the absence of any suspended entries of subject merchandise from the three companies identified in Appendix II, we are rescinding the administrative review for the three companies in accordance with 19 CFR 351.213(d)(3).

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial

contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.¹² For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rate for Non-Examined Company

The Act and Commerce's regulations do not address the establishment of a rate to apply to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. Generally, Commerce looks to section 705(c)(5) of the Act, which provides instructions for calculating the all-others rate in a CVD investigation, for guidance when determining the rate for companies which were not selected for individual examination in an administrative review. Section 777A(e)(2) of the Act provides that "the individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 705(c)(5) [of the Act]." Section 705(c)(5)(A) of the Act states that for companies not investigated, in general, we will determine an all-others rate by weight averaging the countervailable subsidy rates established for each of the companies individually investigated, excluding zero and *de minimis* rates or any rates based entirely on facts available.

Accordingly, to determine the rate for companies not selected for individual examination, Commerce's practice is to weight average the net subsidy rates for the selected mandatory respondents, excluding rates that are zero, *de minimis*, or based entirely on facts available.¹³ In this administrative review, Commerce calculated preliminary individual estimated countervailable subsidy rates for Hyundai Steel and POSCO that are not zero, *de minimis*, or based entirely on facts otherwise available. Therefore, Commerce preliminarily calculated the rate assigned to KG Dongbu Steel Co., Ltd. using a weighted average of the individual estimated subsidy rates calculated for the examined respondents using each company's public ranged

¹ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 78308 (November 15, 2023).

² See Memorandum, "Respondent Selection," dated December 18, 2023.

³ See Memorandum, "Extension of Deadline for Preliminary Results of 2022 Countervailing Duty Administrative Review," dated May 9, 2024.

⁴ See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings," dated July 22, 2024.

⁵ See Memorandum, "Decision Memorandum for the Preliminary Results of the Countervailing Duty Administrative Review; 2022: Certain Cold-Rolled Steel Flat Products from the Republic of Korea," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁶ See *Certain Cold-Rolled Steel Flat Products from Brazil, India, and the Republic of Korea: Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (the Republic of Korea) and Countervailing Duty Orders (Brazil and India)*, 81 FR 64436 (September 20, 2016) (Order).

⁷ See Petitioner's Letter, "Partial Withdrawal of Request for Administrative Review," dated February 13, 2024, at 1–3.

⁸ See, e.g., *Diocetyl Terephthalate from the Republic of Korea: Rescission of Antidumping Administrative Review; 2021–2022*, 88 FR 24758 (April 24, 2023); *see also Certain Carbon and Alloy Steel Cut-to Length Plate from the Federal Republic of Germany: Rescission of Antidumping Administrative Review; 2020–2021*, 88 FR 4157 (January 24, 2023).

⁹ See 19 CFR 351.212(b)(2).

¹⁰ See 19 CFR 351.213(d)(3).

¹¹ See Memorandum, "Notice of Intent to Rescind Review, In Part," dated December 20, 2023 (Intent to Rescind Memorandum).

¹² See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

¹³ See, e.g., *Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review*, 75 FR 37386, 37387 (June 29, 2010).

values for the merchandise under consideration.¹⁴

Preliminary Results of Review

As a result of this review, we preliminarily determine the net countervailable subsidy rates for the period January 1, 2022, through December 31, 2022, to be:

Company	Subsidy rate (percent <i>ad valorem</i>)
POSCO/POSCO International Corporation ¹⁵	1.48
Hyundai Steel Company ¹⁶ ...	2.21
KG Dongbu Steel Co., Ltd ...	1.73

Disclosure and Public Comment

Commerce intends to disclose its calculations and analysis performed to interested parties for these preliminary results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs

to Commerce 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 five days after the date for filing case briefs.¹⁷ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹⁸

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁹ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).²⁰

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce will inform parties of the scheduled date for the hearing.²¹

Unless the deadline is extended, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h), we intend to issue the final results of this administrative review, including the

results of our analysis of the issues raised by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results in the **Federal Register**.

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon issuance of the final results, Commerce shall determine, and CBP shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount indicated above with regard to shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, 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 deposit instructions, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

We are issuing and publishing these preliminary results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: October 4, 2024.

Ryan Majerus,
Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the 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. Subsidies Valuation Information
- V. Benchmarks and Interest Rates
- VI. Analysis of Programs
- VII. Recommendation

¹⁴ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. *See, e.g., Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the review-specific rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, *see* Memorandum, "Calculation of Subsidy Rate for Company Not Selected for Individual Examination," dated concurrently with this notice.

¹⁵ As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with POSCO: POSCO Chemical Co., Ltd., POSCO M-Tech, Pohang Scrap Recycling Distribution Center Co., Ltd., POSCO Nippon Steel RHF Joint Venture Co., Ltd., POSCO Holdings, and POSCO Mobility Solutions. We note that POSCO has an affiliated trading company through which it exported certain subject merchandise, POSCO International Corporation (POSCO International). POSCO International was not selected as a mandatory respondent but was examined in the context of POSCO and POSCO International's subsidies are accounted for in POSCO's total subsidy rate.

¹⁶ As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Hyundai Steel: Hyundai Green Power Co., Ltd. and Hyundai ITC Co., Ltd.

¹⁷ *See* 19 CFR 351.309(d); *see also Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹⁸ *See* 19 CFR 351.309(c)(2) and (d)(2).

¹⁹ We use the term "issue" here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

²⁰ *See APO and Service Procedures*.

²¹ *See* 19 CFR 351.310(d).

Appendix II

Rescission Based on Withdrawal of Review Requests

1. AJU Steel Co., Ltd.
2. Amerisource Korea
3. Amerisource International
4. BC Trade
5. Busung Steel Co., Ltd.
6. Cenit Co., Ltd.
7. Daewoo Logistics Corp.
8. Dai Yang Metal Co., Ltd.
9. DK GNS Co., Ltd.
10. Dongbu Incheon Steel Co., Ltd.
11. Dongbu Steel Co., Ltd.
12. Dong Jin Machinery
13. Dongkuk Industries Co., Ltd.
14. Dongkuk Steel Mill Co., Ltd.
15. Eunsan Shipping and Air Cargo Co., Ltd.
16. Euro Line Global Co., Ltd.
17. Golden State Corp.
18. GS Global Corp.
19. Hanawell Co., Ltd.
20. Hankum Co., Ltd.
21. Hyosung TNC Corp.
22. Hyuk San Profile Co., Ltd.
23. Iljin NTS Co., Ltd.
24. Iljin Steel Corp.
25. Jeon Pung Industrial Co., Ltd.
26. JS Steel Co., Ltd.
27. JT Solution
28. Kolon Global Corporation.
29. Nauri Logistics Co., Ltd.
30. Okaya (Korea) Co., Ltd.
31. PL Special Steel Co., Ltd.
32. Samsung C&T Corp.
33. Samsung STS Co., Ltd.
34. SeAH Steel Corp.
35. SM Automotive Ltd.
36. SK Networks Co., Ltd.
37. Taihan Electric Wire Co., Ltd.
38. TGS Pipe Co., Ltd.
39. TI Automotive Ltd.
40. Topco Global Co., Ltd.
41. Xeno Energy
42. Young Steel Co., Ltd.

Rescission Based on No Suspended Entries

43. Hyundai Group;
44. POSCO C&C Co., Ltd.;
45. POSCO Daewoo Corp.

[FR Doc. 2024-23565 Filed 10-10-24; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-533-843]

Certain Lined Paper Products From India: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review; 2022–2023

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that certain lined paper products (lined paper) from India are not being sold in the United States at

below normal value during the period of review (POR), September 1, 2022, through August 31, 2023. Additionally, Commerce is rescinding this administrative review with respect to certain companies. We invite interested parties to comment on these preliminary results.

DATES: Applicable October 11, 2024.

FOR FURTHER INFORMATION CONTACT: Patrick Barton, 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) 482-0012.

SUPPLEMENTARY INFORMATION:

Background

On September 28, 2006, Commerce published the antidumping duty order on lined paper from India.¹ On September 6, 2023, we published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order*.² On November 15, 2023, pursuant to section 751(a)(1) of the Tariff Act of 1930, as amended (the Act), Commerce initiated an administrative review of the *Order* covering 11 entities.³ On May 28, 2024, Commerce extended the deadline for the preliminary results until September 27, 2024.⁴ On July 22, 2024, Commerce tolled certain deadlines in this administrative proceeding by seven days.⁵ The deadline for the preliminary results is now October 4, 2024.

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.⁶ A list of topics discussed in the Preliminary Decision

¹ See *Notice of Amended Final Determination of Sales at Less Than Fair Value: Certain Lined Paper Products from the People's Republic of China; Notice of Antidumping Duty Orders: Certain Lined Paper Products from India, Indonesia and the People's Republic of China; and Notice of Countervailing Duty Orders: Certain Lined Paper Products from India and Indonesia*, 71 FR 56949 (September 28, 2006) (*Order*).

² See *Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List*, 88 FR 60923 (September 6, 2023).

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 78298 (November 15, 2023) (*Initiation Notice*).

⁴ See Memorandum, “Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review,” dated May 28, 2024.

⁵ See Memorandum, “Tolling of Deadlines for Antidumping and Countervailing Duty Proceedings,” dated July 22, 2024.

⁶ See Memorandum, “Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Certain Lined Paper Products from India; 2022–2023,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Memorandum is attached as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Scope of the Order

The products covered by this *Order* are lined paper from India. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.

Rescission of Review, in Part

As noted above, we initiated this review with respect to 11 companies.⁷ During the course of the review, we selected two mandatory respondents, ITC Limited⁸ and Navneet Education Ltd. (Navneet).⁹ As a consequence, there are nine companies upon which a review was requested and which were not selected for individual examination.

Pursuant to 19 CFR 351.213(d)(3), Commerce will rescind an administrative review when there are no reviewable suspended entries. Based on our analysis of U.S. Customs and Border Protection (CBP) information, three companies listed in the *Initiation Notice* had no entries of subject merchandise during the POR. On March 21, 2024, we notified parties of our intent to rescind this administrative review with respect to the three companies that had no reviewable suspended entries during the POR.¹⁰ No party to the proceeding provided comments on our Intent to Rescind Memorandum. As a result, we are rescinding this review, in part, with respect to the three entities which had no entries in the POR and for which withdrawal requests were not previously received from all parties

⁷ See *Initiation Notice*, 88 FR at 78300.

⁸ The correct name of the company is ITC Limited, whereas the *Initiation Notice* uses the name “ITC Limited-Education and Stationary Products Business,” which is a division of ITC Limited, and not a legal entity. See *Certain Lined Paper Products from India: Amended Final Results of Antidumping Duty Administrative Review; 2020–2021*, 88 FR 28493, 28494 (May 4, 2023); see also Memorandum, “Respondent Selection,” dated February 23, 2024 (Respondent Selection Memorandum).

⁹ See Respondent Selection Memorandum at 2, n.6.

¹⁰ See Memorandum, “Notice of Intent to Rescind Review, In Part,” dated March 21, 2024 (Intent to Rescind Memorandum).

requesting review.¹¹ Therefore, we are rescinding this review, in part, with respect to a total of three companies.¹²

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. Export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Rate for Non-Examined Companies

The Act and Commerce’s regulations do not directly address the establishment of a rate to be applied to individual companies not selected for 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 market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review 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}.” Section 735(c)(5)(B) of the Act provides that, where all rates are zero, *de minimis*, or based entirely on facts available, Commerce may use “any reasonable method” for assigning the rate to all other respondents.

In this administrative review, we preliminarily calculated a zero or *de minimis* dumping margin for ITC Limited and Navneet. Thus, in accordance with section 735(c)(5)(B) of the Act, we are preliminarily assigning to the companies not individually examined a *de minimis* margin of 0.04 percent, which is the weighted average of the weighted-average dumping margins calculated for ITC Limited and Navneet based on publicly ranged U.S. sales values.¹³ The companies not

selected for individual examination are listed in Appendix III.

Preliminary Results of Review

As a result of this review, we preliminarily determine the following estimated weighted-average dumping margins exist for the period September 1, 2022, through August 31, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
ITC Limited	* 0.08
Navneet Education Ltd	0.00
Non-Individually Examined Companies ¹⁴	* 0.04

* *De minimis*.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice, in accordance with 19 CFR 351.224(b).¹⁵

Interested parties may submit case briefs no later than 30 days after the date of publication of this notice.¹⁶ Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.¹⁷ Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and, (2) a table of authorities.¹⁸

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged

of the estimated weighted-average dumping margins calculated for the examined respondents using each company’s publicly-ranged U.S. sales values for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, e.g., *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662 (September 1, 2010), and accompanying Issues and Decision Memorandum at Comment 1. As complete publicly ranged sales data were available, Commerce based the rate for the non-examined companies on the publicly ranged sales data of the mandatory respondents. See Preliminary Decision Memorandum at “Companies Not Selected For Individual Examination;” see also Memorandum, “Calculation of Margin for Respondents Not Selected for Individual Examination,” dated concurrently with this notice.

¹⁴ See Appendix III.

¹⁵ See 19 CFR 351.224(b).

¹⁶ See 19 CFR 351.309(c)(1)(ii).

¹⁷ See 19 CFR 351.309(d); see also *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings*, 88 FR 67069, 67077 (September 29, 2023) (*APO and Service Procedures*).

¹⁸ See 19 CFR 351.309(c)(2) and (d)(2).

interested parties to provide an executive summary of their briefs that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁹ Further, we request that interested parties limit their public executive summary of each issue to no more than 450 words, not including citations. We intend to use the public executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the public executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).²⁰

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance’s ACCESS system within 30 days of publication of this notice.²¹ Requests should contain the party’s name, address, and telephone number, the number of participants, and a list of the issues to be discussed. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. If a request for a hearing is made, we will inform parties of the scheduled date for the hearing at a time and location to be determined.²² Parties should confirm by telephone the date, time, and location of the hearing no fewer than two days before the scheduled date. Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date.

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce will issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in their case briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

¹⁹ We use the term “issue” here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

²⁰ See *APO and Service Procedures*.

²¹ See 19 CFR 351.310(c).

²² See 19 CFR 351.310.

¹¹ See Appendix II.

¹² *Id.*

¹³ With two respondents under examination, Commerce normally calculates: (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. 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.²³ 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).

If the respective weighted-average dumping margins are above *de minimis* (*i.e.*, 0.50 percent) in the final results of this review, we will calculate importer-specific *ad valorem* antidumping duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).²⁴ If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those sales. Where either the respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

In accordance with Commerce's "automatic assessment" practice, for entries of subject merchandise during the POR produced by the respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate entries not reviewed at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.

For the companies which were not selected for individual examination, we will instruct CBP to assess antidumping

duties at an *ad valorem* assessment rate equal to the company-specific weighted-average dumping margin determined in these final results. For the companies for which the administrative review is rescinded, antidumping duties shall be assessed at a rate equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). Commerce intends to issue these rescission instructions to CBP no earlier than 35 days after the date of publication of this notice in the **Federal Register**.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of the final results of the administrative review for all shipments of lined paper from India entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results, as provided by section 751(a)(2) of the Act: (1) the cash deposit rate for each company listed above will be equal to the dumping margins established in the final results of this review, except if the ultimate rate is *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 3.91 percent, the all-others rate established in the antidumping duty investigation.²⁵ These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the

relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing 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, 19 CFR 351.213(h)(2), and 19 CFR 351.221(b)(4).

Dated: October 4, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the 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. Rescission of Review, In Part
- V. Companies Not Selected for Individual Examination
- VI. Discussion of Methodology
- VII. Currency Conversion
- VIII. Recommendation

Appendix II

Companies Rescinded From Administrative Review

1. JC Stationery (P) Ltd
2. M/s. Bhaskar Paper Products
3. Magic International Pvt. Ltd.

Appendix III

Non-Individually Examined Companies Receiving a Review-Specific Rate

1. Cellpage Ventures Private Limited
2. Dinakar Process Private Limited
3. Lotus Global Private Limited
4. Pioneer Stationery Private Limited
5. PP Bafna Ventures Private Limited
6. SGM Paper Products

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²³ See section 751(a)(2)(C) of the Act.

²⁴ In these preliminary results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

²⁵ See *Order*, 71 FR at 56952.

DEPARTMENT OF COMMERCE**International Trade Administration**

[A–201–820]

Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes From Mexico; Preliminary Results of 2022–2023 Administrative Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that a respondent selected for individual examination, Bioparques de Occidente, S.A. de C.V. (Bioparques), complied with the Agreement Suspending the Antidumping Duty Investigation on Fresh Tomatoes from Mexico (*2019 Agreement*), for the period of review (POR) September 1, 2022, through August 31, 2023. Commerce also preliminarily determines that another respondent selected for individual examination, Agricola Globalmex, S.A. de C.V. (Globalmex), complied with certain requirements of the *2019 Agreement* during the POR. Additionally, Commerce preliminarily determines that the *2019 Agreement* functioned as intended and continued to meet the statutory requirements under sections 734(c) and (d) of the Tariff Act of 1930, as amended (the Act) during the POR. Commerce requires additional information from two respondents, Globalmex and NatureSweet Invernaderos S. de R.L. de C.V./NatureSweet Comercializadora, S. de R.L. de C.V. (collectively, NatureSweet). We intend to examine the additional requested information in a post-preliminary determination.

DATES: Applicable October 11, 2024.

FOR FURTHER INFORMATION CONTACT: David Cordell or Walter Schaub, Enforcement & Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–0408 or (202) 482–0907, respectively.

SUPPLEMENTARY INFORMATION:**Background**

On September 19, 2019, Commerce signed an agreement under section 734(c) of the Act, with representatives of Mexican fresh tomato producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico,¹ suspending the antidumping

duty investigation on fresh tomatoes from Mexico.²

On September 28, 2023, the Florida Tomato Exchange (FTE), a member of the U.S. petitioning industry, filed a request for an administrative review of the *2019 Agreement*.³ Commerce published notice of its initiation of the administrative review of the *2019 Agreement* on November 15, 2023.⁴ On January 23, 2024, Commerce selected three companies as mandatory respondents, listed in alphabetical order: Globalmex; Bioparques; and NatureSweet.⁵ On the same day, Commerce issued questionnaires to each of the selected respondents.⁶

Scope of the 2019 Agreement

Merchandise covered by the *2019 Agreement* is typically classified under the following subheading of the Harmonized Tariff Schedule of the United States (HTSUS), according to the season of importation: 0702. The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of this *2019 Agreement* is dispositive.⁷

Methodology and Preliminary Results

Commerce is conducting this review in accordance with section 751(a)(1)(C) of the Act, which specifies that Commerce shall “review the current status of, and compliance with, any agreement by reason of which an investigation was suspended.” In this

case, Commerce and representatives of the Mexican tomato producers/exporters accounting for substantially all imports of fresh tomatoes from Mexico signed the *2019 Agreement*, which suspended the underlying antidumping duty investigation, on September 19, 2019. Pursuant to the *2019 Agreement*, the Mexican Signatories agreed to sell subject merchandise at or above certain minimum reference prices, and that their pricing would eliminate at least 85 percent of the dumping determined in the antidumping duty investigation.⁸ The Mexican signatories also agreed to other conditions, including quarterly audits,⁹ near-the-border inspections by the U.S. Department of Agriculture on all Round and Roma tomatoes and certain other types of tomatoes beginning on April 4, 2020,¹⁰ and limits to adjustments to the sales price due to certain changes in condition and quality after shipment.¹¹

After reviewing the information received to date from the mandatory respondents in the initial and supplemental questionnaire responses, we preliminarily determine that one respondent, Bioparques, has complied with the requirements of the *2019 Agreement*. We also preliminarily determine based on the available information that another respondent, Globalmex, has adhered to certain compliance requirements of the *2019 Agreement*. Finally, we preliminarily determine that the *2019 Agreement* functioned as intended and that the *2019 Agreement* continued to meet the statutory requirements under sections 734(c) and (d) of the Act during the POR.

We find that we require additional information to complete our examination of two respondents, Globalmex and NatureSweet, with regards to their compliance with the *2019 Agreement*. We are issuing supplemental questionnaires to solicit additional information and we intend to address NatureSweet’s compliance with all of the requirements of the *2019 Agreement*, and Globalmex’s compliance with certain remaining requirements of the *2019 Agreement*, in a post-preliminary analysis.

For a full description of the analysis underlying our conclusions, see the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is

de Sinaloa, A.C., Consejo Agrícola de Baja California, Asociación de Productores de Hortalizas del Yaqui y Mayo and Sistema Producto Tomate (collectively, Mexican Growers Associations). Members of the Mexican Grower Associations are Signatories to the 2019 Agreement (Mexican Signatories).

² See *Fresh Tomatoes from Mexico: Suspension of Antidumping Duty Investigation*, 84 FR 49987 (September 24, 2019) (*2019 Agreement*).

³ See FTE’s Letter, “Request for Administrative Review,” dated September 28, 2023.

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 88 FR 78298 (November 15, 2023).

⁵ See Memorandum, “Respondent Selection,” dated January 23, 2024 (Respondent Selection Memorandum).

⁶ See Commerce’s Letter, “Request for Information: Agricola Globalmex, S.A. de C.V. and Bioparques de Occidente SA de C.V.,” dated January 23, 2024 (Bioparques and Globalmex Request for Information); Commerce’s Letter, “Request for Information: NatureSweet Invernaderos S. de R.L. de C.V./NatureSweet Comercializadora, S. de R.L. de C.V.,” dated January 23, 2024 (NatureSweet Request for Information).

⁷ For a complete description of the Scope of the 2019 Agreement, see Memorandum, “Decision Memorandum for the Preliminary Results of the 2021–2022 Administrative Review: Fresh Tomatoes from Mexico,” dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

⁸ See *2019 Agreement* at Section VI.

⁹ *Id.* at Section VII.B.7.

¹⁰ *Id.* at Section VII.C; see also Memorandum, “Frequently Asked Questions Regarding Inspections,” dated March 17, 2020.

¹¹ See *2019 Agreement*, 84 FR 49996, at Appendix D.

¹ The Mexican Grower Associations include: Confederación de Asociaciones Agrícolas del Esta

included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

Case briefs may be submitted no later than seven days after the date on which the last verification report is issued in this review. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.¹² Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.¹³

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this review, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.¹⁴ Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final results in this administrative review. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).¹⁵

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case briefs. An electronically filed hearing request must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time within 30 days after the date of publication of this notice.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act, unless extended.

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.

Dated: October 7, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Scope of the 2019 Agreement
- III. Background
- IV. Preliminary Results of Review
- V. Discussion of the Issues
- VI. Recommendation

[FR Doc. 2024–23566 Filed 10–10–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE370]

Endangered and Threatened Species; File No. 27106

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that the North Carolina Department of

Marine Fisheries (NCDMF) has been issued a permit for the incidental take of Endangered Species Act listed sea turtles and sturgeon associated with the otherwise lawful commercial inshore gillnet fishery in North Carolina.

ADDRESSES: The incidental take permit, final environmental assessment, and other related documents are available on the NMFS Office of Protected Resources website at <https://www.fisheries.noaa.gov/action/incidental-take-permit-north-carolina-division-marine-fisheries-sea-turtles-and-sturgeon>.

FOR FURTHER INFORMATION CONTACT: Celeste Stout, NMFS, Office of Protected Resources at celeste.stout@noaa.gov, 301–427–8403.

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibit the ‘taking’ of a species listed as endangered or threatened. The ESA defines ‘take’ to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides a mechanism for authorizing incidental take of listed species. NMFS regulations governing permits for threatened and endangered species are located in 50 CFR 222.307.

Species Covered in This Permit

Kemp's ridley (*Lepidochelys kempii*), hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*) sea turtles; North Atlantic and South Atlantic distinct population segments (DPSs) of green (*Chelonia mydas*) sea turtles; Northwest Atlantic Ocean DPS of loggerhead (*Caretta caretta*) sea turtles; New York Bight, Chesapeake, Carolina, and South Atlantic DPSs of Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*); and shortnose sturgeon (*Acipenser brevirostrum*).

Background

NMFS received a draft permit application and conservation plan from NCDMF on June 22, 2022. Based on our review of the draft application, we requested further information and clarification on their minimization, monitoring, and mitigation measures and take requests. After several draft submissions and reviews, on December 2, 2022, NCDMF submitted a complete revised application for the incidental take of ESA-listed sea turtles and sturgeon. On December 22, 2022, we published a notice of receipt (87 FR 78659) of application and conservation

¹² See 19 CFR 351.309(d)(1).

¹³ See 19 CFR 351.309(c)(2) and (d)(2).

¹⁴ We use the term ‘issue’ here to describe an argument that Commerce would normally address in a comment of the Issues and Decision Memorandum.

¹⁵ See *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule*, 88 FR 67069 (September 29, 2023).

plan from NCDMF for an incidental take permit. In that notice, we made the Incidental Take Permit (ITP) application and associated conservation plan available for public comment during a 30-day public comment period. Subsequently, we received a request to extend the public comment period. NMFS provided a 30-day extension (88 FR 3971, January 23, 2023) to the comment period, which closed on February 22, 2023. We received 231 comments on the application and conservation plan and responses to these comments are available in the draft Environmental Assessment (EA).

On August 10, 2023, a **Federal Register** notice was published to inform the public of the availability of, and request comments on, the draft EA (88

FR 54303). The public comment period ended on September 11, 2023, and 22 comments were received. The comments received and their accompanying responses are located in appendix D of the final EA. Comments received were considered and any revisions needed to address comments were incorporated in the final EA and NCDMF's final ITP application and conservation plan.

NMFS has issued the requested incidental take permit under the authority of the ESA of 1973, as amended (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).

Incidental takes by species in rolling 2-year (ITP year) intervals or ITP

duration that are authorized under the permit were based on annual take values from model predictions or observed counts based on previous interaction data for the duration of requested ITP (10 years; Please see section 7.A.2 Estimation of Incidental Takes of the conservation plan). Authorized takes include the total number of predicted takes across the fishery whenever possible; otherwise takes are based on counts of observed takes. Takes are either combined or separate for mesh-size category and disposition of the incidentally captured animals. Mesh-size categories are large (≥5 Inches Stretched Mesh (ISM), ≥12.7 Centimeters Stretched Mesh (CSM) and small (<5 ISM, <12.7 CSM).

TABLE 1—AUTHORIZED TAKES UNDER PERMIT NO. 27106

Species	Mesh-size category	Disposition	Predicted or observed takes	Requested 2-year rolling take
Atlantic Sturgeon	Large & Small	Live	Predicted	436
	Large & Small	Dead	Observed	6
Green sea turtle (North and South Atlantic DPSs).	Large & Small	Live	Predicted	542
	Large & Small	Dead	Predicted	170
Kemp's ridley sea turtle	Large	Live	Observed	10
	Large	Dead	Observed	4
	Small	Live or Dead	Observed	4
	Large & Small	Live or Dead	Observed	4
Loggerhead sea turtle (Northwest Atlantic Ocean DPS).				
Species	Mesh-size category	Disposition	Predicted or observed takes	Total take over 10-year permit
Shortnose sturgeon	Large & Small	Live or Dead	Observed	4
Hawksbill sea turtle	Large & Small	Live or Dead	Observed	2
Leatherback sea turtle	Large & Small	Live or Dead	Observed	2

Below we describes the approximate assignment of DPS from the predicted number and observed count of Atlantic sturgeon take by live or dead status across the 10 years of the requested ITP. Individuals <500 mm total length (TL) and ≥1,500 mm TL are assumed to belong to the DPS where they were collected (ASMFC 2017) because individuals of these sizes are generally regarded as juveniles natal to those locations but not large enough to leave the river or adults that are most likely

returning to their natal rivers to reproduce. Thus, based on previous interactions, 13.1 percent of total bycatch could be assigned to the Carolina DPS without further evaluation, but the correct DPS for the remaining portion of bycatch is unknown. For the remaining 86.8 percent of the predicted numbers, DPS assignment was based on proportions provided in Kazyk *et al.* (2021) for the geographic area “Mid Riverine/ Estuarine”.

Approximate assignment of DPS from the predicted number and observed count of Atlantic sturgeon takes by live or dead status across the 10 years of the ITP are indicated in the table below. Take of Atlantic sturgeon will affect four DPSs, at a total rate up to 15.9 percent New York Bight DPS, 4.2 percent Chesapeake Bay DPS, 66.2 percent Carolina DPS, and 13.8 percent South Atlantic DPS.

TABLE 2—APPROXIMATE ASSIGNMENT OF DPS OD ATLANTIC STURGON TAKES

Atlantic sturgeon disposition	Predicted or observed counts	Takes across 10 years	New York Bight DPS	Chesapeake DPS	Carolina DPS	South atlantic DPS
Live	Predicted	2,180	346	91	1,443	300
Dead	Observed Counts	30	5	1	20	4

Due to uncertainty about the exact proportion of each DPS in the inshore waters of North Carolina, the above breakdown may not perfectly represent the actual proportion of each DPS. This expected variation is influenced by natural seasonal and annual fluctuations in the proportions of each DPS. Therefore, the take estimates provided for each DPS do not aim to precisely estimate the proportion of each DPS to be taken.

Conservation Plan

NCDMF's conservation plan includes measures to minimize, monitor, and mitigate the incidental take of ESA-listed sea turtles and sturgeon. The conservation plan addresses gill net fisheries operating in estuarine waters and deploying anchored gill nets as regulated through fisheries rules adopted by the North Carolina Marine Fisheries Commission and proclamations issued by the NCDMF director. Regulations include mandatory attendance, yardage limits, mesh size restrictions, a minimum distance between fishing operations, gear marking requirements, soak-time restrictions, net shot limits, net height tie-down requirements, closed areas, and monitoring and reporting requirements. The conservation plan includes an adaptive management and monitoring program, fisheries reduction, outreach, and timely response to "hotspots" where sturgeon and/or sea turtle interactions are unusually high.

Additionally, NCDMF will commit funds of up to \$2,000 per year to purchase Passive Integrated Transponder (PIT) tags, which equates to approximately 100 PIT tags per year. As part of their Observer Program sampling protocol, fin clips are taken from live and dead sturgeon. These samples are stored until they can be submitted for genetic analysis and included in the Atlantic Coast Sturgeon Tissue Research Repository (ACSTRR) housed at the United States Geological Survey, Leetown Science Center. The NCDMF will commit up to \$3,000 per year to fund genetic analysis; at approximately \$100 per sample, this funding provides for the analysis of approximately 30 fin clips per year. The NCDMF will consult with NMFS to ensure samples collected during the current ITP and future samples collected under the requested ITP are appropriately selected based on criteria such as sturgeon length, location, and season. Should fewer than 30 fin clips be collected for a given year, any funds not expended from this allocation could be used for analysis of historical samples provided by NCDMF.

NCDMF's monitoring program is funded by the North Carolina Commercial Research is also a valuable tool to address data gaps and inform management decisions. The assistance and cooperation of commercial fishery stakeholders in the research can greatly benefit scientific understanding of the species. The NCDMF will continue to support and assist research efforts and facilitate the establishment of relationships with the commercial fishing industry. Also, the NCDMF will help, to the extent possible, respond to sea turtle cold-stun events, which occur in NC with some regularity (Niemuth *et al.* 2020). During future cold-stun events, the NCDMF will help provide transportation of staff, supplies, and turtles using Observer Program resources. The NCDMF will communicate with the North Carolina Wildlife Resources Commission (NCWRC) about this commitment to ensure they reach out for assistance when needed.

Fishing Resource Fund (G.S. 113–173.1) state appropriations and is supplemented through other sources such as the Atlantic Coastal Cooperative Statistics Program and the National Fish and Wildlife Foundation.

Criteria for Issuing an Incidental Take Permit

Issuance criteria are described in ESA section 10(a)(2)(B) and associated implementing regulations (50 CFR 222.307(c)(2)). Under section 10(a)(2)(B) of the ESA, NMFS shall issue the requested incidental take permit, if NMFS finds that the following criteria are met:

- (i) The taking will be incidental;
- (ii) The applicant will, to the maximum extent practicable, monitor, minimize, and mitigate the impacts of such taking;
- (iii) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild;
- (iv) The applicant has amended the conservation plan to include any measures (not originally proposed by the applicant) that the Assistant Administrator determines are necessary or appropriate; and
- (v) There are adequate assurances that the conservation plan will be funded and implemented, including any measures required by the Assistant Administrator.

NMFS found that NCDMF met the criteria for the issuance of an incidental take permit, and as such, NMFS issued an incidental take permit to NCDMF for the incidental take of ESA-Listed sea turtles and sturgeon associated with the

otherwise lawful commercial inshore gillnet fishery in North Carolina.

Dated: October 4, 2024.

Lisa Manning,

Acting Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2024–23559 Filed 10–10–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Request for Public Comment on the Draft National Coral Reef Resilience Strategy

AGENCY: The Coral Reef Conservation Program, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Request for written comments.

SUMMARY: NOAA announces the request for written public comments on the draft National Coral Reef Resilience Strategy (National Strategy) in accordance with the Coral Reef Conservation Act of 2000 (CRCA), as reauthorized and amended by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023. NOAA administers the Coral Reef Conservation Program (CRCP), which is implemented in the coastal areas and marine waters of Florida, Puerto Rico, the U.S. Virgin Islands, Gulf of Mexico, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the U.S. Pacific Remote Island Area, and targeted international regions, including the wider Caribbean, the Coral Triangle, the South Pacific, and Micronesia. The reauthorized CRCA directs NOAA to develop the National Strategy within two years of enactment. The National Strategy will replace the existing CRCP Strategic Plan (2018). The intended effect of this notice is to initiate a period of public review and comment on the National Strategy.

DATES: NOAA will consider all relevant written comments by November 25, 2024.

ADDRESSES: Copies of the draft National Strategy may be found on www.regulations.gov (search for NOAA–NOS–2024–0121). Comments may be submitted by the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov/NOAA-NOS-2024-0121> Click the “Comment Now!” icon, complete the required

fields, and enter or attach your comments.

- **Email:** Please direct written comments via email to uscrf.crca@noaa.gov. In the subject heading of your email, please include “Written comments draft National Coral Reef Resilience Strategy”.

Instructions: All comments received are a part of the public record and generally will be posted for public viewing on www.regulations.gov without change. All personally identifiable information (name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the commenter will be publicly accessible. NOAA will accept anonymous comments (enter “N/A” in the required fields you wish to remain anonymous). 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. NOAA 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). Comments that are not responsive or contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT:

Caroline Donovan, NOAA Coral Reef Conservation Program, by email at caroline.donovan@noaa.gov or phone at (240) 410-3416.

SUPPLEMENTARY INFORMATION:

Background

NOAA announces the request for written public comments on the draft National Coral Reef Resilience Strategy (National Strategy) in accordance with the Coral Reef Conservation Act of 2000 (CRCA), as reauthorized and amended by the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Pub. L. 117-263, December 23, 2022, 136 Stat 2395). NOAA administers the Coral Reef Conservation Program (CRCP), which is implemented in the coastal areas and marine waters of Florida, Puerto Rico, the U.S. Virgin Islands, Gulf of Mexico, Hawaii, Guam, the Commonwealth of the Northern Mariana Islands, American Samoa, the U.S. Pacific Remote Island Area, and targeted international regions, including the wider Caribbean, the Coral Triangle, the South Pacific, and Micronesia. The reauthorized CRCA directs NOAA to develop the National Coral Reef Resilience Strategy (National Strategy) within two years of enactment. The

National Strategy will replace the existing CRCP Strategic Plan (2018).

The draft National Strategy articulates the vision, purpose, and goals that will drive the work of the U.S. coral reef conservation community now and into the future. Strategies, objectives, and actions that will help achieve these goals are described in detail. To support development of the National Strategy, NOAA’s Coral Reef Conservation Program consulted with the Secretary of the Interior, the Secretary of Defense, covered States, and covered Native entities through the United States Coral Reef Task Force and its working groups and other stakeholders; and the CRCP solicited public review and comment on scoping and the draft strategy. The National Strategy is based upon sound science, innovative management approaches, effective enforcement, meaningful partnerships, and inclusive public participation. The National Strategy uses an adaptive management framework and incorporates a resilience-based management approach into five conservation goals. If adequately resourced, the conservation outcomes supported by this plan will result in healthy, resilient coral reef ecosystems in the United States that will provide a variety of valuable services to current and future generations.

Pursuant to section 204(b) of the reauthorized CRCA, the required elements of the National Strategy are:

- A discussion addressing:
 - continuing and emerging threats to the resilience of U.S. coral reef ecosystems;
 - remaining gaps in coral reef ecosystem research, monitoring, and assessment;
 - the status of management cooperation and integration among Federal reef managers and covered reef managers;
 - the status of efforts to manage and disseminate critical information and enhance interjurisdictional data sharing related to research, reports, datasets, and maps;
 - areas of special focus, which may include:
 - improving natural coral recruitment,
 - preventing avoidable losses of corals and their habitat,
 - enhancing the resilience of coral populations,
 - supporting a resilience-based management approach,
 - developing, coordinating, and implementing watershed management plans,
 - building and sustaining watershed management capacity at the local level,

- providing data essential for coral reef fisheries management,
- building capacity for coral reef fisheries management,
- increasing understanding of coral reef ecosystem services,

- educating the public on the importance of coral reefs, threats, and solutions, and

- evaluating intervention efficiency;
 - the status of conservation efforts, including the use of marine protected areas to serve as replenishment zones developed consistent with local practices and traditions and in cooperation with, and with respect for the scientific, technical, and management expertise and responsibilities of, covered reef managers;

- science-based adaptive management and restoration efforts; and
- management of coral reef emergencies and disasters.

- A statement of national goals and objectives designed to guide:
 - future Federal coral reef

management and restoration activities authorized under Section 203 of the reauthorized CRCA;

- conservation and restoration priorities for grants awarded under section 211 of the reauthorized CRCA; and

- research priorities for the reef research coordination institutes designated under section 213(b)(1)(B).

- A designation of priority areas for conservation and priority areas for restoration to support the review and approval of grants under Section 211(e) of the reauthorized CRCA.

- Technical assistance in the form of general templates for use by covered reef managers and Federal reef managers to guide the development of coral reef action plans under Section 205 of the reauthorized CRCA, including guidance on the best science-based practices to respond to coral reef emergencies that can be included in coral reef action plans.

Public Comment

The official public comment period lasts until November 25, 2024. Please visit the CRCP web page for additional information on the program: <https://coralreef.noaa.gov/>.

Authority: Coral Reef Conservation Act of 2000.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024-23560 Filed 10-10-24; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****The 49th Meeting of the U.S. Coral Reef Task Force**

AGENCY: The Coral Reef Conservation Program, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of meeting; request for comments.

SUMMARY: NOAA and the Department of Interior (DOI) will hold the 49th meeting of the U.S. Coral Reef Task Force (USCRTF). NOAA and DOI will be accepting oral and written comments.

DATES: NOAA and DOI will hold a public meeting on Thursday, November 14, 2024, from 8:30 a.m. to 5 p.m. Chamorro Standard Time (ChST) in the Commonwealth of the Northern Mariana Islands at the Crowne Plaza Hotel, Coral Tree Ave Garapan, Saipan, 96950. Written comments must be received before 8 a.m. ChST on November 12, 2024.

ADDRESSES: Comments may be submitted by the following methods:

Oral Comments: NOAA and DOI will accept oral comments at the meeting on Thursday, November 14, 2024, from 2:00 p.m. to 2:30 p.m. ChST.

Email: Please direct written comments to Michael Lameier, NOAA, USCRTF Steering Committee Point of Contact, NOAA Coral Reef Conservation Program, via email at michael.lameier@noaa.gov. In the subject heading of your email, please include "Written comments for the 49th U.S. Coral Reef Task Force Meeting".

The oral and written comments NOAA and DOI receive are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and Social Security numbers, should not be included with the comment. Comments that are not related to the U.S. Coral Reef Task Force or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Michael Lameier, NOAA USCRTF Steering Committee Point of Contact, NOAA Coral Reef Conservation Program, (410) 267-5673, michael.lameier@noaa.gov, or Liza

Johnson, DOI USCRTF Steering Committee Executive Secretary, U.S. Department of Interior, (202) 255-9843, Liza_M_Johnson@ios.doi.gov, or visit the USCRTF website at <https://www.coralreef.gov/>.

SUPPLEMENTARY INFORMATION: The meeting provides a forum for coordinated planning and action among Federal agencies, State and territorial governments, and non-governmental partners. Registration is requested to participate in the meeting. This meeting has time allotted for public oral comment from 2 p.m. to 2:30 p.m. ChST. A written summary of the meeting will be posted on the USCRTF website within two months of occurrence. For more information about the meeting, registering for the meeting, and submitting public comments, visit <https://www.coralreef.gov>. During the oral comment period, commenters are encouraged to address the meeting, the role of the USCRTF, or general coral reef conservation issues.

Authority: 16 U.S.C. 6451 *et seq.*; E.O. 13089, 63 FR 32701.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024-23561 Filed 10-10-24; 8:45 am]

BILLING CODE 3510-08-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XE328]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 92 Atlantic Blueline Tilefish Life History Topical Working Group (LH-TWG) Webinar II.

SUMMARY: The SEDAR 92 assessment of the Atlantic stock of blueline tilefish will consist of a series of assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 92 Atlantic Blueline Tilefish LH-TWG Webinar II is scheduled for Wednesday, October 30, 2024, from 10 a.m. to 12 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments

may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via email at Julie.Neer@safmc.net.

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; www.sedarweb.org.

FOR FURTHER INFORMATION CONTACT: Julie Neer, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571-4366; email: Julie.Neer@safmc.net.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of

Councils, Commissions, and state and federal agencies.

Items of discussion at the SEDAR 92 Atlantic Blueline Tilefish LH-TWG webinar II: The Group will discuss available life history data sources and make recommendation for their use in the assessment.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: October 8, 2024.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2024-23623 Filed 10-10-24; 8:45 am]

BILLING CODE 3510-22-P

COMMISSION OF FINE ARTS

Notice of Meeting

Per 45 CFR chapter XXI section 2102.3, the next meeting of the U.S. Commission of Fine Arts is scheduled for October 17, 2024, at 9:00 a.m. and will be held via online videoconference. Items of discussion may include buildings, infrastructure, parks, memorials, and public art.

Draft agendas, the link to register for the online public meeting, and additional information regarding the Commission are available on our website: www.cfa.gov. Inquiries regarding the agenda, as well as any public testimony, should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing cfastaff@cfa.gov; or by calling 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated October 4, 2024, in Washington, DC.

Zakiya N. Walters,

Administrative Officer.

[FR Doc. 2024-23596 Filed 10-10-24; 8:45 am]

BILLING CODE 6330-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Deletions from the Procurement List.

SUMMARY: This action deletes product(s) and service(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* November 10, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, telephone: (703) 785-6404, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION:

Deletions

On 9/6/2024 (89 FR 72829), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.
3. There are no known regulatory alternatives which would accomplish

the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) and service(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

8465-01-524-8407—Carrier, Entrenching Tool, Universal Camouflage

Authorized Source of Supply: Chautauqua County Chapter, NYSARC, Jamestown, NY

Authorized Source of Supply: Dallas

Lighthouse for the Blind, Inc., Dallas, TX

Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Service(s)

Service Type: Janitorial/Custodial

Mandatory for: Eldorado National Forest:

Supervisors Office, Placerville, CA

Authorized Source of Supply: PRIDE

Industries, Roseville, CA

Contracting Activity: FOREST SERVICE, TAHOE NATIONAL FOREST

Service Type: Mailroom Operation

Mandatory for: Internal Revenue Service,

University Plaza Building, 949 East 36th

Avenue Room 112, Anchorage, AK

Authorized Source of Supply: Assets, Inc., Anchorage, AK

Contracting Activity: INTERNAL REVENUE SERVICE, DEPT OF TREAS/INTERNAL REVENUE SERVICE

Service Type: Grounds Maintenance

Mandatory for: Air National Guard Readiness Center, Andrews AFB, MD

Authorized Source of Supply: Melwood

Horticultural Training Center, Inc.,

Upper Marlboro, MD

Contracting Activity: DEPT OF DEFENSE, DOD/OFF OF SECRETARY OF DEF (EXC MIL DEPTS)

Service Type: Janitorial/Custodial Service

Mandatory for: Bureau of Land Management,

Carlsbad Field Office, 620 East Greene

Street, Carlsbad, NM

Authorized Source of Supply: Tresco, Inc., Las Cruces, NM

Contracting Activity: BUREAU OF LAND MANAGEMENT, NM-CARLSBAD FIELD OFFICE

Service Type: Grounds Maintenance

Mandatory for: US Army Corps of Engineers,

Douglas Creek Recreation Area, 201 First

Street, Riverdale, ND

Authorized Source of Supply: MVW Services, Inc., Minot, ND

Contracting Activity: DEPT OF THE ARMY, W071 ENDIST OMAHA

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024-23601 Filed 10-10-24; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed deletions from the Procurement List.

SUMMARY: The Committee is proposing to delete product(s) from the Procurement List that were furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before: November 10, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, telephone: (703) 489-1322, or email CMTEFedReg@AbilityOne.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Deletions

The following product(s) are proposed for deletion from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

6515-00-NIB-8191—Gloves, Exam, Powder-Free, Latex-Free, Nitrile, Pink, Small

6515-00-NIB-8192—Gloves, Exam, Powder-Free, Latex-Free, Nitrile, Pink, Medium

6515-00-NIB-8193—Gloves, Exam, Powder-Free, Latex-Free, Nitrile, Pink, Large

6515-00-NIB-8194—Gloves, Exam, Powder-Free, Latex-Free, Nitrile, Pink, X-Large

Authorized Source of Supply: Central Association for the Blind and Visually Impaired, Utica, NY

Contracting Activity: OFFICE OF ACQUISITION, ARLINGTON, VA

NSN(s)—Product Name(s):

1730-00-945-8450—Chock Wheel

Authorized Source of Supply: NEWVIEW Oklahoma, Inc., Oklahoma City, OK

Contracting Activity: DLA AVIATION, RICHMOND, VA

Contracting Activity: DLA TROOP SUPPORT,

PHILADELPHIA, PA
NSN(s)—Product Name(s):

7510-01-484-4564—Refill, Rubberized Ballpoint Stick Pen w Chain, Blue Ink, Medium Point

Authorized Source of Supply: Alphapointe, Kansas City, MO

Contracting Activity: GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024-23600 Filed 10-10-24; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Appointment Performance Review Board Members

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Notice.

SUMMARY: Appointment of individuals to serve as members of the Performance Review Board.

DATES: *Applicable Date:* These appointments are effective on November 4, 2024.

FOR FURTHER INFORMATION CONTACT: Kelvin R. Wood, Chief of Staff, U.S. AbilityOne Commission; kwood@abilityone.gov; 202-809-3967.

SUPPLEMENTARY INFORMATION: The Chairperson of the Committee for Purchase From People Who Are Blind or Severely Disabled, operating as the U.S. AbilityOne Commission, has appointed the following individuals to serve on the Commission's Performance Review Board (PRB):

Chairperson of the PRB: Jeffrey A. Koses
Member—Jennifer Sheehy
Member—Robert Hogue
Member—Malcom Shorter

Accessible Format: On request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, or compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal**

Register. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Authority: This notice is published in the **Federal Register** pursuant to the requirement of 5 U.S.C. 4314(c)(4).

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024-23602 Filed 10-10-24; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-41]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrmgmt.list.cns-mbx@mail.mil.

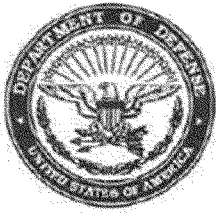
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-41, Policy Justification, and Sensitivity of Technology.

Dated: October 7, 2024.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

June 28, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-41, concerning the Air Force's proposed Letter(s) of Offer and Acceptance to the Government of Norway for defense articles and services estimated to cost \$293 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 23-41

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Norway

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	\$ 248 million
Other	\$ 45 million

Total	\$ 293 million

(iii) *Description and Quantity or Quantities of Articles or Services Under*

Consideration for Purchase: Foreign Military Sales (FMS) case NO-D-AAG was below the congressional notification threshold at \$18.9 million (\$7.2 million in Major Defense Equipment (MDE)), and included twenty (20 Guided Bomb Unit (GBU)-53/B Small Diameter Bombs-Increment II (SDB-II) All-Up-Rounds (AURs). The Government of Norway has requested the case be amended to include up to an additional five hundred eighty (580) GBU-53/B SDB-II AURs. This amendment will increase the MDE and total case values above notification

thresholds and thus requires notification of the entire case.

Major Defense Equipment (MDE):

Up to Six Hundred (600) GBU-53/B Small Diameter Bombs-Increment II (SDB-II) All-Up-Rounds (AURs)

Non-MDE:

Also included are SDB-II Weapon Load Crew Trainers (WLCT) and Practical Explosive Ordnance Disposal Trainers (PEDT); munitions support and support equipment; unclassified software delivery and support; spare parts, consumables, and accessories;

repair and return support; modifications and maintenance support; transportation support; unclassified publications and technical documentation; personnel training equipment and support; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support.

(iv) *Military Department*: Air Force (NO-D-AAG)

(v) *Prior Related Cases, if any*: None
(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: June 28, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Norway—Small Diameter Bomb II

The Government of Norway has requested to buy up to five hundred eighty (580) GBU-53/B Small Diameter Bombs-Increment II (SDB-II) All-Up-Rounds (AURs) that will be added to a previously implemented case. The original foreign military sales (FMS) case, valued at \$18.9 million, included twenty (20) GBU-53/B, SDB-II AURs. This amendment will increase the MDE and total case values above notification thresholds and thus requires notification of the entire case. Therefore, this notification is for a total of up to six hundred (600) GBU-53/B, SDB-II AURs. Also included are SDB-II Weapon Load Crew Trainers (WLCT) and Practical Explosive Ordnance Disposal Trainers (PEDT); munitions support and support equipment; unclassified software delivery and support; spare parts, consumables, and accessories; repair and return support; modifications and maintenance support; transportation support; unclassified publications and technical documentation; personnel training equipment and support; studies and surveys; U.S. Government and contractor engineering, technical, and logistics support services; and other related elements of logistical and program support. The total estimated cost is \$293 million.

This proposed sale will support the foreign policy goals and national security objectives of the United States by improving the security of a NATO Ally that is an important force for

political stability and economic progress in Europe.

The proposed sale will improve Norway's capability to meet current and future threats by bolstering operational readiness while enhancing air and defense capabilities with a modernized weapon to support the new F-35A fleet. Norway will have no difficulty absorbing this equipment and services into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor will be Raytheon Missile Systems, Tucson, AZ. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Norway.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23-41

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology*:

1. The GBU-53 Small Diameter Bomb-Increment II (SDB-II) Storm Breaker All-Up Round (AUR) is a 250-pound class precision-guided, semiautonomous, conventional, air-to-ground munition used to defeat moving targets through adverse weather from standoff range. The SDB-II has deployable wings and fins and uses Global Positioning System/Inertial Navigation System (GPS/INS) guidance, network-enabled datalink (Link-16 and Ultra High Frequency), and a multi-mode seeker (millimeter wave radar, imaging infrared, semi-active laser) to autonomously search, acquire, track, and defeat a variety of moving or stationary targets, at standoff range or close in, including a variety of attack modes. The SDB-II employs a multi-effects warhead (blast, fragmentation, and shaped-charge) for maximum lethality against armored and soft targets. The SDB-II weapon system consists of the tactical AUR weapon, a 4-place common carriage system, and mission planning system munitions application program (MAP).

a. The SDB-II Weapon Load Crew Trainer (WLCT) is a mass mockup of the tactical AUR used for load crew and maintenance training. It does not contain energetics, a live fuze, any

sensitive components, or hazardous material. It is not flight certified.

b. The SDB-II Practical Explosive Ordnance Disposal Trainer (PEST) is an Explosive Ordnance Disposal (EOD) training unit with sections and internal subassemblies which are identical to, or correlate to, the external hardware, sections, and internal subassemblies of the tactical AUR. The PEST does not contain energetics, a live fuze, any sensitive components, or hazardous material. It is not flight certified.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Norway can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Norway.

[FR Doc. 2024-23552 Filed 10-10-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee for the Prevention of Sexual Misconduct; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Personnel and Readiness (USD (P&R)), Department of Defense (DoD).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: The DoD is publishing this notice to announce the following Federal advisory committee meeting of the Defense Advisory Committee for the Prevention of Sexual Misconduct (DAC-PSM) will take place.

DATES: The DAC-PSM will hold an open meeting to the public on Thursday, November 14, 2024, from 9:00 a.m. to 4:00 p.m. Eastern Standard Time (EST).

ADDRESSES: The meeting may be accessed by videoconference. Information for accessing the videoconference will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION** “Meeting Accessibility”).

FOR FURTHER INFORMATION CONTACT: Dr. Suzanne Holroyd, Designated Federal Officer (DFO), (571) 372-2652 (voice), osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil (email). Website: www.sapr.mil/DAC-PSM. The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the “Federal Advisory Committee Act” or “FACA”), title 5, U.S.C., section 552b (commonly known as the “Government in the Sunshine Act”), and 41, Code of Federal Regulations (CFR), section 102–3.140 and 102–3.150.

Availability of Materials for the Meeting: Additional information, including the agenda or any updates to the agenda, is available on the DAC-PSM website (www.sapr.mil/DAC-PSM). Materials presented in the meeting may also be obtained on the DAC-PSM website.

Purpose of the Meeting: The purpose of the meeting is for the DAC-PSM to receive briefings and have discussions on topics related to the prevention of sexual misconduct within the Armed Forces of the United States, and vote on recommendations arising from DAC-PSM studies.

Agenda: The DAC-PSM will hold an open meeting to the public November 14, 2024, from 9:00 a.m. to 4:00 p.m. EST.

9:00–9:15 Meeting Open (Roll Call and Opening Remarks)
9:15–9:45 Discussion: NDAA Study Topics
9:45–10:45 Discussion: DAC-IPAD Prevention Insights from Closed Case Data Analysis and Observations from Site Visits
10:45–11:00 Break
11:00–12:00 Brief: DoD Updates on DAC-PSM 2023 Training Study Recommendations
12:00–1:00 Lunch
1:00–2:00 Brief: NDAA Study Topic on Recruit Pre-Screening
2:00–2:15 Break
2:15–3:45 Committee Discussion and Vote on 2024 Study Recommendations
3:45–4:00 Meeting Close (Closing Remarks)

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 9:00 a.m. to 4:00 p.m. EST on November 14, 2024. The meeting will be held by videoconference. All members of the public who wish to attend must register by contacting DAC-PSM at osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil or by contacting Dr. Suzanne Holroyd at (571) 372-2652 no later than November 8, 2024 (by 5:00 p.m. EST). Once registered, the web address and/or audio number will be provided.

Special Accommodations: Individuals requiring special accommodations to access the public meeting should contact Dr. Suzanne Holroyd at osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil or (571) 372-2652 no later than November 8, 2024, (by 5:00 p.m. EST) so that appropriate arrangements can be made.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and section 10(a)(3) of the FACA, the public and interested persons may submit a written statement to the DAC-PSM. Individuals submitting a statement must submit their statement no later than (5:00 p.m. EST), November 8, 2024, to Dr. Suzanne Holroyd at (571) 372-2652 (voice) or to osd.mc-alex.ousd-p-r.mbx.DAC-PSM@mail.mil (email). If a statement pertaining to a specific topic being discussed at the planned meeting is not received by November 8, 2024, then it may not be provided to, or considered by, the Committee during the November 14, 2024 meeting. The DFO will review all timely submissions with the DAC-PSM Chair and ensure such submissions are provided to the members of the DAC-PSM before the meeting. Any comments received by the DAC-PSM will be posted on the DAC-PSM website (www.sapr.mil/DAC-PSM).

Dated: October 7, 2024.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2024–23562 Filed 10–10–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0110]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency’s estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 10, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Logistics Agency, ATTN: Mary Haley, Director, 5250 Pearson Rd., Bldg. 207, WPAFB, Ohio 45433–5328, or call (937) 672–1751.

SUPPLEMENTARY INFORMATION:

Title; *Associated Form;* and **OMB Number:** Industry Engagement Request, DLA Form 3001; OMB Control Number 0704–IYER.

Needs and Uses: The DLA Information Operations (J6) and the Program Executive Office requires a process to provide fair and equal access to vendors. This information collection is intended to allow all vendors to request access to J6 staff when the vendor has products or services beneficial to the DLA J6 mission. The information collected will include what product or service the vendor is promoting as well as the area of DLA that would benefit (information systems, aviation, distribution, disposition, etc.). This allows the J6 to quickly and efficiently route the information to the correct DLA representative responsible for vendor engagement and product/resource acquisition instead of being sent through several offices to find the right one.

The information collection will be used by vendors to initiate contact with the DLA to invite DLA to engage with the vendor. By completing and submitting the information collection, the vendor is requesting a meeting with DLA and providing DLA with the information necessary to determine what office the vendor is intending to contact. The contact information provided by the vendor allows the correct DLA representative to contact the vendor to schedule meetings and demos of new or updated software/product/services to the DLA J6.

Affected Public: Business or other for-profit.

Annual Burden Hours: 5 minutes.

Number of Respondents: 20.

Responses per Respondent: 1.

Annual Responses: 20.

Average Burden per Response: 1.7 hours.

Frequency: On occasion.

This information collection is conducted electronically through a form created and accessible using Microsoft Forms. The vendor is responsible for initiating contact through a link in a signature block, business card, or available on the DLA public-facing website (www.dla.mil). The vendor will complete and submit the form to DLA through Microsoft Forms.

Dated: October 7, 2024.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2024–23557 Filed 10–10–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2023–HA–0101]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs (OASD(HA)), Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by November 12, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT: Reginald Lucas, (571) 372–7574, whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Certificate of Death Information Worksheet; OMB Control Number: 0720–COFD.

Type of Request: Existing collection in use without an OMB number.

Number of Respondents: 50.

Responses per Respondent: 1.

Annual Responses: 50.

Average Burden per Response: 1 hour.

Annual Burden Hours: 50.

Needs and Uses: Information collection via the Certificate of Death Information Worksheet is necessary to complete the DD Form 2064, “Certificate of Death,” which is used by family members of deceased DoD employees, contractors, and non-affiliated civilians to settle estates, insurance claims, and other post-death related matters. The form is also used by the DoD to track the cause and manner of death of service members, federal employees, as well as their family members, dependents, and federal contractors, when a death occurs within federal jurisdiction or per Status of Forces Agreements. The form is also used by OCONUS hospitals and allows

for the transportation of human remains. The Certificate of Death Information Worksheet is a tool that will be utilized to gather the information required to complete the DD Form 2064 if the necessary information is not available through normal channels. No members of the public will provide information directly onto the DD Form 2064. The information sheet is provided via email to the service casualty office, law enforcement agency, contract company, or next-of-kin to collect the necessary information. The missing or relevant information required to complete the DD Form 2064 is transferred into AFMETS once obtained via the worksheet. In AFMETS, information is synthesized, and a DD Form 2064 can be generated. This collection of information is authorized by 10 U.S.C. 1471, “Forensic Pathology Investigations”; 10 U.S.C. 1509, “Program to Resolve Missing Persons Cases”; and DoD Instruction 5154.30, “Armed Forces Medical Examiner System Operations.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Matt Eliseo.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Mr. Reginald Lucas.

Requests for copies of the information collection proposal should be sent to Mr. Lucas at whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.

Dated: October 7, 2024.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2024–23558 Filed 10–10–24; 8:45 am]

BILLING CODE 6001–FR–P

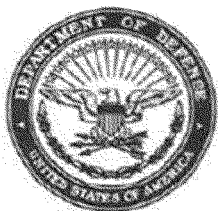
DEPARTMENT OF DEFENSE**Office of the Secretary**

[Transmittal No. 23-44]

Arms Sales Notification**AGENCY:** Defense Security Cooperation Agency, Department of Defense (DoD).**ACTION:** Arms sales notice.**SUMMARY:** The DoD is publishing the unclassified text of an arms sales notification.**FOR FURTHER INFORMATION CONTACT:**Pamela Young at (703) 953-6092, *pamela.a.young14.civ@mail.mil*, or *dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil*.**SUPPLEMENTARY INFORMATION:** This 36(b)(1) arms sales notification is published to fulfill the requirements of

section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-44, and Policy Justification.

Dated: October 7, 2024.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
*Department of Defense.***BILLING CODE 6001-FR-P****DEFENSE SECURITY COOPERATION AGENCY**
2800 Defense Pentagon
Washington, DC 20301-2800

June 29, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-44, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Taipei Economic and Cultural Representative Office in the United States (TECRO) for defense articles and services estimated to cost \$332.2 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in dark ink that reads "James A. Hursch".

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification

BILLING CODE 6001–FR–C

Transmittal No. 23–44

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Taipei Economic and Cultural Representative Office in the United States (TECRO)

(ii) *Total Estimated Value:*

Major Defense Equipment *	\$ 0 million
Other	\$332.2 million
TOTAL	\$332.2 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):

None

Non-MDE:

Included are: various unclassified 30 mm ammunition, including 30 mm High Explosive Incendiary-Tracer rounds, 30 mm multi-purpose rounds, and 30 mm training rounds; engineering technical services, including configuration control, production support, ammunition testing, and Load, Assemble, and Pack services; other technical services, including sourcing and acquisition assistance, Navy civilian personnel cost, contract support services, support on technical data requests, responses to Requests for Information, up to two (2) Program Management Reviews per year, and testing and documentation associated with contract procurements; and other related elements of logistic and program support.

(iv) *Military Department:* Navy (TW–P–AMA)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress:* June 29, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States (TECRO)—30 mm Ammunition

The Taipei Economic and Cultural Representative Office in the United States (U.S.) (TECRO) has requested to buy various unclassified 30 mm ammunition, including 30 mm High Explosive Incendiary-Tracer rounds, 30 mm multi-purpose rounds, and 30 mm training rounds; engineering technical services, including configuration control, production support, ammunition testing, and Load, Assemble, and Pack services; other technical services, including sourcing and acquisition assistance, Navy civilian personnel cost, contract support services, support on technical data requests, responses to Requests for Information, up to two (2) Program Management Reviews per year, and testing and documentation associated with contract procurements; and other related elements of logistic and program support. The estimated total cost is \$332.2 million.

This proposed sale is consistent with U.S. law and policy as expressed in Public Law 96–8.

This proposed sale serves U.S. national, economic, and security interests by supporting the recipient's continuing efforts to modernize its armed forces and to maintain a credible defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

The proposed sale will contribute to the sustainment of the recipient's CM34 Armored Vehicles, enhancing its ability to meet current and future threats. This ammunition will contribute to the recipient's goal of maintaining its military capability while further enhancing interoperability with the U.S. The recipient will have no difficulty absorbing this ammunition into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor for the AB44 ammunition will be Alliant

Techsystems Operations LLC, Plymouth, MN. The principal contractor for the AB51 and AA90 ammunition will be General Dynamics Ordnance and Tactical Systems—Simuni, Marion, IL. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the permanent assignment of any additional U.S. Government or contractor representatives to the recipient. Program Office and support representatives will travel to the recipient on a temporary basis.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2024–23553 Filed 10–10–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23–38]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

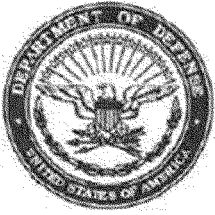
Pamela Young at (703) 953–6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23–38, and Policy Justification.

Dated: October 7, 2024.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 6001–FR–P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

June 29, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-38, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Taipei Economic and Cultural Representative Office in the United States (TECRO) for defense articles and services estimated to cost \$108 million. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification

BILLING CODE 6001-FR-C

Transmittal No. 23-38

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Taipei Economic and Cultural Representative Office in the United States (TECRO)

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	\$ 0 million
Other	\$108 million

TOTAL \$108 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

Major Defense Equipment (MDE):
None

Non-MDE:

A Cooperative Logistics Supply Support Arrangement (CLSSA) Foreign Military Sales Order II (FMSO II) to support the purchase of spare and repair parts for wheeled vehicles, weapons, and

other related elements of program support.

(iv) *Military Department:* Army (TW-B-KZJ)

(v) *Prior Related Cases, if any:* TW-B-KZD, TW-B-KZC

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None known at this time

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None

(viii) *Date Report Delivered to Congress*: June 29, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Taipei Economic and Cultural Representative Office in the United States (TECRO)—Blanket Order Cooperative Logistics Supply Support Arrangement (CLSSA) Foreign Military Sales Order II (FMSO II)

The Taipei Economic and Cultural Representative Office in the United States (TECRO) has requested to buy a Cooperative Logistics Supply Support Arrangement (CLSSA) Foreign Military Sales Order II (FMSO II) to support the purchase of spare and repair parts for wheeled vehicles, weapons, and other related elements of program support. The estimated total cost is \$108 million.

This proposed sale is consistent with U.S. law and policy as expressed in Public Law 96–8.

This proposed sale will support the foreign policy and national security objectives of the United States (U.S.) by supporting the recipient's continuing efforts to modernize its armed forces and to maintain a credible defensive capability. The proposed sale will help improve the security of the recipient and assist in maintaining political stability, military balance, and economic progress in the region.

The proposed sale will contribute to the sustainment of the recipient's vehicles, small arms, combat weapon systems, and logistical support items, enhancing its ability to meet current and future threats. The proposed sale will contribute to the recipient's goal of maintaining its military capability while further enhancing interoperability with the U.S. The recipient will have no difficulty absorbing this equipment and support into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractor(s) will be determined from approved vendors determined by the Defense Logistics Agency to provide these parts for the U.S. military. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to the recipient.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2024–23551 Filed 10–10–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0108]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 10, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24 Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and

associated collection instruments, please write to Defense Logistics Agency Headquarters, J349, 8725 John Kingman Rd., Ft. Belvoir, VA 22060–6221; ATTN: Mr. Thomas Presley, (571) 767–8144.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: End-Use Certificate; DLA Form 1822; OMB Control Number 0704–0382.

Needs and Uses: The End-Use Certificate (DLA Form 1822) is submitted by individuals prior to releasing export-controlled personal property out of DoD control. Export-controlled personal property are items listed on the United States Munitions Lists or Commerce Control List, and includes articles, items, technical data, technology, or software. Transfers of export-controlled personal property out of DoD control may be in tangible and intangible forms. The information collected is for the purpose of determining bidder or transferee eligibility to receive export-controlled personal property, and to ensure that transferees comply with the terms of sale or Military Critical Technical Data Agreement regarding end-use of the property. This form is to be used by the DoD Components, other Federal agencies who have acquired DoD export-controlled personal property, and or their contractors prior to releasing export-controlled personal property out of DoD or Federal agency control. End-use checks are required by the following: DoD Instruction 2030.08; DoD Manual 4160.28, Vol. 1–3; and DoD Manual 4160.21, Vol. 1–4.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Annual Burden Hours: 14,000.

Number of Respondents: 42,000.

Responses per Respondent: 1.

Annual Responses: 42,000.

Average Burden per Response: 20 minutes.

Frequency: On occasion.

Respondents are individuals/businesses/contractors who receive defense property identified as U.S. Munitions List Items and Commerce Control List Items through: purchase, exchange/trade sale, authorized transfer, or donation. They are checked to determine if they are responsible, not debarred bidders, Specially Designated Nationals or Blocked Persons, or have not violated U.S. export laws. The form is available on the DoD DEMIL/Trade Security Controls web page, DLA Disposition Services usable property sales web page, General Services Administration auction web page, and Defense Contract Management Agency offices, FormFlow and ProForm.

Dated: October 7, 2024.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2024-23555 Filed 10-10-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-47]

Arms Sales Notification

AGENCY: Defense Security Cooperation
Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the
unclassified text of an arms sales
notification.

FOR FURTHER INFORMATION CONTACT:
Pamela Young at (703) 953-6092,
pamela.a.young14.civ@mail.mil, or
dsca.ncr.rsrcmgmt.list.cns-mbx@
mail.mil.

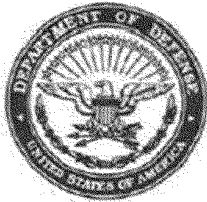
SUPPLEMENTARY INFORMATION: This
36(b)(1) arms sales notification is
published to fulfill the requirements of
section 155 of Public Law 104-164
dated July 21, 1996. The following is a
copy of a letter to the Speaker of the

House of Representatives with attached
Transmittal 23-47, Policy Justification,
and Sensitivity of Technology.

Dated: October 7, 2024.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

June 27, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-47, concerning the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Canada for defense articles and services estimated to cost \$5.9 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Hursch", is located below the word "Sincerely,".

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 23-47

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser*: Government of Canada

(ii) *Total Estimated Value*:

Major Defense Equipment *	\$3.9 billion
Other	\$2.0 billion

TOTAL	\$5.9 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase*:

Major Defense Equipment (MDE):

Up to sixteen (16) P-8A Patrol

Aircraft

Up to twenty-six (26) Multifunctional Information Distribution System Joint Tactical Radio System 5 (MIDS JTRS 5)

Up to thirty-eight (38) Embedded Global Positioning Systems (GPS)/Inertial Navigation Systems (EGIs) for the LN-251

Up to twenty-five (25) System Processor Replacements for AN/AAQ-24(V)N Large Aircraft Infrared Countermeasures (LAIRCM) System Processor Replacement (LSPR) with Exelis Embedded GPS Receiver (EGR) integrated with Selective Availability Anti-Spoofing Module (SAASM)

Up to twenty-two (22) Guardian Laser Transmitter Assemblies (GLTA) for the AN/AAQ-24(V)N

Non-MDE:

Also included are commercial engines; Tactical Open Mission Software (TOMS); Electro-Optical (E.O.) and Infrared (IR) MX-20HD; AN/AAQ-2 Acoustic System; AN/APY-10 Radar; AN/ALQ-240 Electronic Support Measures; NexGen Missile Warning Sensors; AN/ARC-210 RT-2036(C) Radios; AN/PRC-117G Manpack Radios including MPE-S type II with SAASM 3.7; AN/ALQ-213 Electronic Countermeasures; AN/ALE-47 Countermeasures Dispenser Systems; AN/UPX-43 Identification Friend or Foe (IFF) Interrogators; AN/APX-123A(V) IFF Digital Transponders; KIV-78 IFF Mode 4/5 Cryptographic Appliques; KIV-701A Cryptographic Core Modules; KY-100M, KY-58, KYV-5 for HF-121C radios; KG-175 Encryptor Network Convergence System; AN/PYQ-10 V3 Simple Key Loaders (SKL) with KOV-21 Cryptographic Appliques; Radiant Mercury Hardware and Software

with ENTR(V)4 Receiver with Embedded Crypto for the Integrated Broadcast System (IBS); software; publications; Dual KIV-7M with Power Supply HFIP Channel Link Encryptor; Advanced Digital Antenna Production (ADAP) Antenna Electronics (AE); Advanced Digital Antenna Production (ADAP) Controlled Reception Pattern Antennas (CRPA); Control Interface Units (CIU) for AN/AAQ-24(V)N LAIRCM; aircraft spares; spare engines; support equipment; operational support systems; training; training devices; maintenance trainer/classrooms; engineering technical assistance (ETA); logistics technical assistance (LTA); Country Liaison Officer (CLO) support; Contractor Engineering Technical Services (CETS); Contractor Logistics Support (CLS); repair and return; transportation; aircraft ferry; other associated training and support; and other related elements of logistics and program support.

(iv) *Military Department*: Navy (CN-P-SAH)

(v) *Prior Related Cases, if any*: CN-P-FGC

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid*: None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold*: See Attached Annex

(viii) *Date Report Delivered to Congress*: June 27, 2023

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada—P-8A Aircraft and Associated Support

The Government of Canada has requested to buy up to sixteen (16) P-8A Patrol Aircraft; up to twenty-six (26) Multifunctional Information Distribution System Joint Tactical Radio System 5 (MIDS JTRS 5); up to thirty-eight (38) Embedded Global Positioning Systems (GPS)/Inertial Navigation Systems (EGIs) for the LN-251; up to twenty-five (25) System Processor Replacements for AN/AAQ-24(V)N Large Aircraft Infrared Countermeasures (LAIRCM) System Processor Replacement (LSPR) with Exelis Embedded GPS Receiver (EGR) integrated with SAASM; and up to twenty-two (22) Guardian Laser Transmitter Assemblies (GLTA) for the AN/AAQ-24(V)N. Also included are commercial engines; Tactical Open Mission Software (TOMS); Electro-

Optical (E.O.) and Infrared (IR) MX-20HD; AN/AAQ-2 Acoustic System; AN/APY-10 Radar; AN/ALQ-240 Electronic Support Measures; NexGen Missile Warning Sensors; AN/ARC-210 RT-2036(C) Radios; AN/PRC-117G Manpack Radios including MPE-S type II with SAASM 3.7; AN/ALQ-213 Electronic Countermeasures; AN/ALE-47 Countermeasures Dispenser Systems; AN/UPX-43 Identification Friend or Foe (IFF) Interrogators; AN/APX-123A(V) IFF Digital Transponders; KIV-78 IFF Mode 4/5 Cryptographic Appliques; KIV-701A Cryptographic Core Modules; KY-100M, KY-58, KYV-5 for HF-121C radios; KG-175 Encryptor Network Convergence System; AN/PYQ-10 V3 Simple Key Loaders (SKL) with KOV-21 Cryptographic Appliques; Radiant Mercury Hardware and Software with ENTR(V)4 Receiver with Embedded Crypto for the Integrated Broadcast System (IBS); software; publications; Dual KIV-7M with Power Supply HFIP Channel Link Encryptor; Advanced Digital Antenna Production (ADAP) Antenna Electronics (AE); Advanced Digital Antenna Production (ADAP) Controlled Reception Pattern Antennas (CRPA); Control Interface Units (CIU) for AN/AAQ-24(V)N LAIRCM; aircraft spares; spare engines; support equipment; operational support systems; training; training devices; maintenance trainer/classrooms; engineering technical assistance (ETA); logistics technical assistance (LTA); Country Liaison Officer (CLO) support; Contractor Engineering Technical Services (CETS); Contractor Logistics Support (CLS); repair and return; transportation; aircraft ferry; other associated training and support; and other related elements of logistics and program support. The estimated total cost is \$5.9 billion.

This proposed sale will support the foreign policy and national security objectives of the United States (U.S.) by helping to improve the military capability of Canada, a NATO ally that is an important force for ensuring political stability and economic progress, and a contributor to military, peacekeeping, and humanitarian operations around the world.

This proposed sale will increase Canadian maritime forces' interoperability with the U.S. and other allied forces, as well as their ability to contribute to missions of mutual interest. This will significantly improve network-centric warfare capability for the U.S. forces operating globally alongside Canada. Canada will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The prime contractor will be The Boeing Company, Seattle, WA. There are a significant number of other companies under contract with the U.S. Navy that will provide components, systems, and engineering services during the execution of this effort. While the purchaser typically requests offsets, any offset agreement will be defined in future negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will require multiple trips by U.S. Government representatives and the assignment of contractor representatives to Canada on an intermittent basis over the life of the case to support delivery and integration of items and to provide supply support management, inventory control and equipment familiarization.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23-47

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item

No. vii

(vii) *Sensitivity of Technology:*

1. The P-8A Patrol Aircraft is a version of the Boeing 737-800 Next Generation (NG) commercial aircraft adapted for military uses. The P-8A will replace the CP-140 as Canada's long-range anti-submarine warfare (ASW), anti-surface warfare (ASuW), intelligence, surveillance, and reconnaissance (ISR) aircraft capable of broad-area, maritime, and littoral operations.

a. Tactical Open Mission Software (TOMS). Functions include environment planning, tactical aids, weapons planning aids, and data correlation. TOMS includes an algorithm for track fusion which automatically correlates tracks produced by on board and off board sensors.

b. Electro-Optical (E.O.) and Infrared (IR) MX-20HD. The E.O./IR system processes visible E.O. and IR spectrum (IR Focal Plane Array (FPA) and Turret Stabilization) to detect and image objects.

c. AN/AQQ-2 Acoustic System. The acoustic sensor system is integrated within the mission system as the primary sensor for the aircraft ASW missions. The system has multi-static active coherent (MAC) 64 sonobuoy processing capability and acoustic sensor prediction tools.

d. AN/APY-10 Radar. The aircraft radar is a direct derivative of the legacy AN/APS 137(V) installed in the CP-140. The radar capabilities include Global Positioning System (GPS) selective availability anti-spoofing monitoring (SAASM), Synthetic Aperture Radar (SAR) and Inverse Synthetic Aperture Radar (ISAR) imagery resolutions, and periscope detection mode.

e. AN/ALQ-240 Electronic Support Measures (ESM). This system provides real time capability for the automatic detection, location, measurement, and analysis of Radio Frequency (RF) signals and modes. Real time results are compared with a library of known emitters to perform emitter classification.

f. The P-8A Electronic Warfare Self Protection (EWSP) suite consists of the AN/ALQ-213 Electronic Warfare Management System (EWMS), AN/ALE-47 Countermeasures Dispensing System (CMDS), the NexGEN Missile Warning Sensors (MWS), AN/AAQ-24(V)N Large Aircraft Infrared Countermeasures (LAIRCM) System Processor Replacement (LSPR) with Exelis EGR integrated with SAASM, and the AN/AAQ-24(V)N Large Aircraft Infrared Countermeasures (LAIRCM) Guardian Laser Transmitter Assembly (GLTA) processors. The AN/AAQ-24(V)N LAIRCM is a self-contained, directed energy countermeasures system designed to protect aircraft from infrared guided surface-to-air missiles. The Electronic Warfare Self Protection (EWSP) includes threat information.

g. AN/ARC-210 RT-2036(C) Radio. The RT-2036(C) radios are capable of line of sight and beyond line of sight (SATCOM) and can transmit clear or secure voice using Single Channel Ground and Airborne Radio System (SINCGARS) or HAVEQUICK security features.

h. AN/PRC-117G Radio, Manpack. The AN/PRC-117G is a tactical radio that extends communications Beyond Line of Sight (BLOS) with abilities for simultaneous SATCOM voice and data communications. Situational awareness is enhanced by an embedded SAASM 3.7 GPS receiver.

i. Multifunctional Information Distribution System Joint Tactical Radio System (MIDS JTRS) 5, is an advanced Link-16 command, control, communications, and intelligence system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information, including both data and voice, among air, ground, and sea elements.

j. The Embedded Global Positioning System (EGI)-Inertial Navigation System

(INS)/LN-251 is a sensor that combines GPS and inertial sensor inputs to provide accurate location information for navigation and targeting.

k. AN/UPX-43 IFF Interrogator. The Identification Friend or Foe (IFF) AN/UPX-43 Interrogator system provides operators with the capability for timely and accurate display of both civil and military air traffic.

l. Radiant Mercury Hardware and Software. The Radiant Mercury Cross Domain Solution (CDS) allows data transfer traffic between both classified and unclassified networks onboard the P-8A.

m. ENTR(V)4 Receiver with Embedded Crypto. The tactical receiver interfaces with the Integrated Broadcast System receiving nationally transmitted tracks for situational awareness.

n. The Dual KIV-7M. The KIV-7M provides programmable link and multi-channel network encryption for High Frequency (HF) radio communications.

o. Advanced Digital Antenna Production (ADAP), Antenna Electronics (AE). The ADAP antenna electronics interfaces with the ADAP Controlled Reception Pattern Antenna (CRPA) antennas to insure availability of GPS signals to the aircraft.

p. Advance Digital Antenna Production (ADAP) Controlled Reception Pattern Antenna (CRPA). The ADAP CRPA enables reception of GPS signals to the aircraft.

q. KG-175 Encryptor Network Convergence System (NC) CNTRX, INMARSAT, IP Data. The KG-175 TACLANE provides network communications security on internet Protocol (IP) and Asynchronous Transfer Mode (ATM) networks used by the P-8A.

r. AN/APX-123A(V) IFF Transponder Digital. The IFF AN/APX-123A(V) transponder is capable of both Mode 5 and Mode S secure modes and provides own ship positional information.

s. KIV-78 IFF Mode 4/5 Cryptographic Applique. The KIV-78 is Type 1 NSA-certified COMSEC for IFF. The KIV-78 provides cryptographic and time-of-day services, concurrent Mode 4/5 operations as well as concurrent interrogator/transponder operations. The KIV-78 IFF system is deployed to identify cooperative, friendly systems.

t. KIV-701A Cryptographic Core Module. The KIV-701A encrypts the common data link that is used for line-of-sight secure transmission of video imagery to ground terminals and ships.

u. KY-100M, KY-58, KYV-5 for HF-121CD Radio. The KY-100M is a narrowband/wideband terminal that interoperates with TACTERM (CV-3591/KYV-5), MINTERM (KY-99A),

VINSON (KY-57, KY-58), and SINGARS. The KY-100M provides for secure voice and data communications in tactical airborne and ground environments and is a self-contained terminal that includes COMSEC. The KY-100M is based on the KY-99A architecture with enhanced interface capability. It includes KY-99A's operational modes and KY-58's operational modes.

v. AN/PYQ-10 V3 Simple Key Loader (SKL) with KOV-21 Cryptographic Applique. The SKL is a ruggedized, portable, hand-held fill device used for securely receiving, storing, and transferring data between compatible cryptographic and communications equipment. The SKL provides streamlined management of COMSEC key, Electronic Protection (EP) data, and Signal Operating Instructions (SOI). Cryptographic functions are performed by an embedded KOV-21 applique.

2. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software

elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Canada can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Canada.

[FR Doc. 2024-23554 Filed 10-10-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 23-16]

Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense (DoD).

ACTION: Arms sales notice.

SUMMARY: The DoD is publishing the unclassified text of an arms sales notification.

FOR FURTHER INFORMATION CONTACT:

Pamela Young at (703) 953-6092, pamela.a.young14.civ@mail.mil, or dsca.ncr.rsrcmgmt.list.cns-mbx@mail.mil.

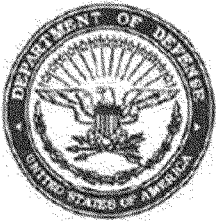
SUPPLEMENTARY INFORMATION: This 36(b)(1) arms sales notification is published to fulfill the requirements of section 155 of Public Law 104-164 dated July 21, 1996. The following is a copy of a letter to the Speaker of the House of Representatives with attached Transmittal 23-16, Policy Justification, and Sensitivity of Technology.

Dated: October 7, 2024.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

BILLING CODE 6001-FR-P



DEFENSE SECURITY COOPERATION AGENCY

2800 Defense Pentagon
Washington, DC 20301-2800

June 28, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
H-209, The Capitol
Washington, DC 20515

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 23-16, concerning the Army's proposed Letter(s) of Offer and Acceptance to the Government of Poland for defense articles and services estimated to cost \$15 billion. We will issue a news release to notify the public of this proposed sale upon delivery of this letter to your office.

Sincerely,

James A. Hursch
Director

Enclosures:

1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

BILLING CODE 6001-FR-C

Transmittal No. 23-16

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Poland

(ii) *Total Estimated Value:*

Major Defense Equipment * ..	\$13 billion
Other	\$ 2 billion

TOTAL \$15 billion

Funding Source: National Funds.

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* The Government of Poland has requested to buy phase two of a two-phase program for an Integrated Air and Missile Defense (IAMD) Battle Command System (IBCS) enabled PATRIOT Configuration-3+ with modernized

sensors and components. The request is for the following equipment:

Major Defense Equipment (MDE):

Forty-eight (48) PATRIOT M903 Launch Stations
Up to six hundred forty-four (644) PATRIOT Advanced Capability (PAC) 3 Missile Segment Enhanced (MSE) Missiles
Forty-eight (48) Launcher Interface Network Kits (LINKs)
Twelve (12) Lower Tier Air and

Missile Defense Sensors (LTAMDS) Twelve (12) Large Tactical Power Systems (LTPS) for the LTAMDS
Non-MDE:

Also included is communications equipment; tools and test equipment; support equipment; generators; spare parts; repair parts; Selective Availability Anti-spoofing Module (SAASM) Global Positioning System Precise Positioning Service receivers; modification kits; U.S. Government and contractor technical, engineering, and logistics support services for planning, execution, Systems Integration and Checkout (SICO), flight test activities, field office support, and training; and other related elements of logistics and program support.

(iv) *Military Department:* Army (PL-B-UEJ, PL-B-UEK, PL-B-UEL, PL-B-UEM)

(v) *Prior Related Cases, if any:* PL-B-UCW

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:*

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Poland—Integrated Air and Missile Defense (IAMD) Battle Command System (IBCS)

The Government of Poland has requested to buy phase two of a two-phase program for an Integrated Air and Missile Defense Battle Command System (IBCS) enabled PATRIOT Configuration-3+ with modernized sensors and components. The request is for the following equipment: forty-eight (48) PATRIOT M903 Launch Stations; up to six hundred forty-four (644) PATRIOT Advanced Capability (PAC) 3 Missile Segment Enhanced (MSE) missiles; forty-eight (48) Launcher Interface Network Kits (LINKs); twelve (12) Lower Tier Air and Missile Defense Sensors (LTAMDS); and twelve (12) Large Tactical Power Systems (LTPS) for the LTAMDS. Also included is communications equipment; tools and test equipment; support equipment; generators; spare parts; repair parts; Selective Availability Anti-spoofing Module (SAASM) Global Positioning System Precise Positioning Service receivers; modification kits; U.S. Government and contractor technical, engineering, and logistics support

services for planning, execution, Systems Integration and Checkout (SICO), flight test activities, field office support, and training; and other related elements of logistics and program support. The total estimated program cost is \$15 billion.

This proposed sale will support the foreign policy goals and national security objectives of the United States (U.S.) by improving the security of a NATO Ally that is a force for political stability and economic progress in Europe.

The proposed sale will improve Poland's missile defense capability and contribute to Poland's military goals of updating capability while further enhancing interoperability with the U.S. and other allies. Poland will have no difficulty absorbing this equipment into its armed forces.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Raytheon Corporation, Andover, MA; Lockheed-Martin Missiles and Fire Control, Grand Prairie, TX; and another original equipment manufacturer to be selected to develop and produce generator sets for the LTPS. The purchaser has requested offsets. Any offset agreement will be defined in negotiations between the purchaser and the contractor(s).

Implementation of this proposed sale will require approximately forty (40) U.S. Government and/or forty-five (45) contractor representatives to travel to Poland for an extended period for equipment de-processing/fielding, system checkout, training, and technical and logistics support.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 23-16

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The PATRIOT Advanced Capability (PAC) 3 Missile Segment Enhanced (MSE) missile is a small, highly agile, kinetic kill interceptor for defense against tactical ballistic missiles, cruise missiles, and air-breathing threats. The MSE variant of the PAC-3 missile represents the next generation in hit-to-kill interceptors and provides expanded battlespace against evolving threats. The PAC-3 MSE improves upon the original PAC-3 capability with a higher performance solid rocket motor,

modified lethality enhancer, more responsive control surfaces, upgraded guidance software, and insensitive munitions improvements.

2. M903 launcher stations are capable of launching the entire family of PATRIOT missiles. All new U.S. launchers are M903 configuration.

3. The highest level of classification of defense articles, components, and services included in this potential sale is SECRET.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures that might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that the Government of Poland can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

6. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Poland.

[FR Doc. 2024-23550 Filed 10-10-24; 8:45 am]

BILLING CODE 6001-FR-P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD-2024-OS-0109]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), Department of Defense (DoD).

ACTION: 60-Day information collection notice.

SUMMARY: In compliance with the *Paperwork Reduction Act of 1995*, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the

burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 10, 2024.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

Mail: Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24 Suite 05F16, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Logistics Agency, 4800 Mark Center Drive, Suite 14G07–01, Alexandria, VA 22350, ATTN: Suzanne Rohr, 269–961–4274.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Defense Materiel Disposition Procedures for the Sale of DoD Materiel; DLA Form 2536; OMB Control Number 0704–0534.

Needs and Uses: This collection is necessary for the DoD and its representatives to assess the ability of prospective purchasers to comply with applicable laws and regulations before the sale of materiel. DLA Form 2536, “Statement of Intent,” is used to identify the nature of the purchaser’s business, where the materials will be stored, and what the buyer’s intentions are with the materiel (*i.e.*, use the materiel as intended, re-sell to others, scrap the materiel for recovery of contents, or re-refine or re-process the materiel).

Affected Public: Business or other for-profit.

Annual Burden Hours: 198.

Number of Respondents: 72.

Responses per Respondent: 2.

Annual Responses: 144.

Average Burden per Response: 82.5 minutes.

Frequency: On occasion.

Dated: October 7, 2024.

Patricia L. Toppings,
OSD Federal Register Liaison Officer,
Department of Defense.

[FR Doc. 2024–23556 Filed 10–10–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF EDUCATION

[Docket ID ED–2024–IES–0078]

Privacy Act of 1974; System of Records

AGENCY: Institute of Education Sciences, U.S. Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the U.S. Department of Education (Department) publishes this notice of a new system of records titled “Impact Evaluation of Training in Multi-Tiered Systems of Support for Reading (MTSS–R) in Early Elementary School” (18–13–48). This system contains personally identifiable information provided by school districts, schools, and individuals who participate in the impact evaluation of training in MTSS–R. The records in this system will be used to measure the effectiveness of two promising ways of providing technical assistance (TA) to improve the quality of reading instruction and how struggling elementary school students are identified and provided with extra help.

DATES: Submit your comments on this notice of a new system of records on or before November 12, 2024. This new system of records will become applicable upon publication in the **Federal Register** on October 11, 2024, unless it needs to be changed as a result of public comment. The routine uses outlined in the section titled “ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES” will become effective on the expiration of the 30-day period of public comment on November 12, 2024, unless they need to be changed as a result of public comment. The Department will publish any significant changes to the system of records or routine uses resulting from public comment.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at [regulations.gov](http://www.regulations.gov). However, if

you require an accommodation or cannot otherwise submit your comments via [regulations.gov](http://www.regulations.gov), please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure that the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to www.regulations.gov to submit your comments electronically. Information on using [Regulations.gov](http://www.regulations.gov), including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under “FAQ”.

Privacy Note: The Department’s policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at www.regulations.gov. Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request, the Department will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Teresa Cahalan, SORN coordinator, Institute of Education Sciences, U.S. Department of Education, Potomac Center Plaza, 550 12th Street SW, Room 4126, Washington, DC 20202. Telephone: 202–245–7299. Email: IES_SORN@ed.gov.

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

SUPPLEMENTARY INFORMATION: The records maintained in this system will be used to measure the effectiveness of two promising ways of providing TA to improve the quality of reading instruction and how struggling elementary school students are identified and provided with extra help. The information contained in the records maintained in this system will

be used to address the following study research questions:

- Does the training and TA affect students' reading skills and achievement, both initially and over time? Does it help students identified as struggling in reading make more significant gains? Do the effects differ across the two strategies?
- Are the effects on reading related to elementary schools' experiences implementing the MTSS–R strategies, including the extent to which they carry out the strategies as intended and their use of key instructional practices?
- In what ways do these strategies affect the identification of special education students? What are their outcomes?

Accessible Format: On request to the program contact listed under **FOR FURTHER INFORMATION CONTACT**, individuals with disabilities can obtain this document in an accessible format. The Department will provide the requestor with an accessible format that may include Rich Text Format (RTF) or text format (txt), a thumb drive, an MP3 file, braille, large print, audiotape, compact disc, or other accessible format.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at www.govinfo.gov. At this site, you can view this document, as well as all other Department documents published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access Department documents published in the **Federal Register** by using the article search feature at www.federalregister.gov. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Matthew Soldner,
Acting Director, Institute of Education Sciences.

For the reasons discussed in the preamble, the Acting Director of the Institute of Education Sciences, of the U.S. Department of Education, publishes a notice of a new system of records to read as follows:

SYSTEM NAME AND NUMBER:

Impact Evaluation of Training in Multi-Tiered Systems of Support for Reading (MTSS–R) in Early Elementary School (18–13–48).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Institute of Education Sciences (IES), U.S. Department of Education (Department), 550 12th Street SW, Washington, DC 20202. (This is the location of the IES Data Center.)

American Institutes for Research (AIR), 1400 Crystal Drive, 10th Floor, Arlington, VA 22202. (AIR is a Department contractor that will collect personally identifiable information regarding school staff, district-based coaches (namely, study-supported district staff who support MTSS–R team leaders, teachers, and interventionists in their practices), and students in participating districts and store these records until uploaded through secure transfer to the IES Data Center.)

School Readiness Consulting, 912 Thayer Avenue, Suite 209, Silver Spring, MD 20910. (School Readiness Consulting is a Department subcontractor that will collect personally identifiable information regarding school staff and district-based coaches in participating districts and store these records until uploaded through secure transfer to the IES Data Center.)

SYSTEM MANAGER(S):

Associate Commissioner, Evaluation Division, National Center for Education Evaluation and Regional Assistance, Institute of Education Sciences, U.S. Department of Education, 550 12th Street SW, Washington, DC 20202.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This study is authorized by section 664 of the Individuals with Disabilities Education Act (IDEA, 20 U.S.C. 1464), and section 8601 of the Elementary and Secondary Education Act of 1965 (ESEA) as amended by the Every Student Succeeds Act (ESSA, 20 U.S.C. 7981).

PURPOSE(S) OF THE SYSTEM:

The records maintained in this system will be used to measure the effectiveness of two promising ways of providing technical assistance (TA) to improve the quality of reading instruction and how struggling elementary school students are identified and provided with extra help. The information contained in the records maintained in this system will be used to address the following study research questions:

- Does the training and TA affect students' reading skills and achievement, both initially and over time? Does it help students identified as struggling in reading make more significant gains? Do the effects differ across the two strategies?

- Are the effects on reading related to elementary schools' experiences implementing the MTSS–R strategies, including the extent to which they carry out the strategies as intended and their use of key instructional practices?

- In what ways do these strategies affect the identification of special education students? What are their outcomes?

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on approximately 20 district-based coaches; school staff including 150 MTSS–R team leaders, 900 teachers, and 450 interventionists; and 22,500 students.

CATEGORIES OF RECORDS IN THE SYSTEM:

For district-based coaches (namely, study staff who support MTSS–R team leaders, teachers, and interventionists in their practices), records maintained in this system include name, work email, and work phone number, and the support that they provide to school staff including training, coaching, and problem-solving.

For MTSS–R team leaders (namely, school staff who oversee and support the MTSS–R program), records maintained in this system include name, work email, and work phone number (if available), activities as an MTSS–R team leader, and professional development experiences.

For teachers, records maintained in this system include name, work email, and work phone number (if available), educational background, professional development experiences, coaching experiences, and activities related to classroom instruction.

For interventionists (namely, school staff who administer supplemental support to struggling students), records maintained in this system include name, work email, and work phone number (if available), educational background, professional development experiences, coaching experiences, and activities related to the provision of supplemental supports for struggling students.

For students, records maintained in this system include name; demographic information such as race, date of birth, ethnicity, and gender; school information, such as the student's grade level, school name, teacher name, free or reduced-price lunch status, English learner status, special education status, and performance information on school-administered English language arts and mathematics state assessments; school-administered reading screening tests; and study-administered reading assessments.

RECORD SOURCE CATEGORIES:

Information in this system will be obtained through teacher and student records maintained by school districts and schools; surveys of MTSS–R team leaders, teachers, and interventionists; interviews of MTSS–R team leaders and district-based coaches; and direct assessments of students' reading skills.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system under the routine uses listed in this system of records without the consent of the individual if the disclosure is compatible with the purpose for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a), under a computer matching agreement. Any disclosure of personally identifiable information from a record in this system must also comply with the requirements of section 183 of the Education Sciences Reform Act of 2002 (ESRA) (20 U.S.C. 9573) providing for confidentiality standards that apply to all collections, reporting, and publication of data by IES. Any disclosure of personally identifiable information from student education records that were obtained from schools or school districts must also comply with the confidentiality requirements of the (Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g; 34 CFR part 99), which protect the privacy of student education records, and, as applicable, the confidentiality requirements of the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. 1401 et seq; 34 CFR part 300), which protect the privacy of education records of children referred to and served under the IDEA.

(1) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. As part of such a contract, the Department will require the contractor to agree to maintain safeguards to protect the security and confidentiality of the records in the system.

(2) *Research Disclosure.* The Department may disclose records to a qualified researcher if the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out

specific research that is compatible with the purpose(s) of this system of records. The researcher must agree to safeguards, consistent with section 183(c) of the ESRA (20 U.S.C. 9573(c)), to protect the security and confidentiality of the records disclosed from this system. If the Department discloses, without prior written consent under FERPA, personally identifiable information from a student's education record to the researcher, the researcher also must agree to comply with the requirements in the applicable exception to FERPA's general written consent requirement (20 U.S.C. 1232g(b) and 34 CFR 99.31).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are maintained in a secure, password-protected electronic system. The Department also maintains records on CD-ROM, and the contractor (AIR) and sub-contractor (School Readiness Consulting) maintain data for this system on computer systems and in hard copy.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are indexed and retrieved by a unique number assigned to each individual that is cross-referenced by the individual's name on a separate list.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The Department submitted a retention and disposition schedule that is intended to cover the records contained in this system to the National Archives and Records Administration (NARA) in June 2022 for NARA's review. The records will not be destroyed until such a time as NARA approves said schedule.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security protocols for this system of records meet all required security standards. All physical access to the Department's site and to the site of the Department's contractor and subcontractor, where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This system limits data access to Department and contract staff on a need-to-know basis and controls individual users' ability to access and alter records within the system. The contractor and subcontractor will establish a similar set of procedures at their sites to ensure the confidentiality of data. The contractor's and subcontractor's systems are required to

ensure that information identifying individuals is in files physically separated from other research data. The contractor and subcontractor will maintain the security of the complete set of all master data files and documentation. Access to personally identifiable information will be strictly controlled. All information will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry.

Security of electronic data will also be maintained. Security features that protect project data include password-protected accounts that authorize users to use the contractor's and subcontractor's system but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; and additional security features that the network administrators will establish for projects as needed. The contractor's and subcontractor's employees who "maintain" (collect, maintain, use, or disseminate) data in this system shall comply with the requirements of the confidentiality standards in section 183 of the ESRA (20 U.S.C. 9573).

RECORD ACCESS PROCEDURES:

If you wish to gain access to your record, you must contact the system manager at the address listed above. Your request must provide necessary particulars of your full name, address, telephone number, and any other identifying information requested by the Department, to distinguish between individuals with the same name. Your request must meet the requirements of regulations at 34 CFR 5b.5.

CONTESTING RECORD PROCEDURES:

If you wish to contest the content of a record regarding you, you must contact the system manager at the address listed above. Requests must contain your full name, address, telephone number, and any other identifying information requested by the Department to distinguish between individuals with the same name. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

NOTIFICATION PROCEDURES:

If you wish to determine whether a record exists regarding you, you must contact the systems manager at the address listed above. Your request must provide necessary particulars, such as your full name, address, telephone number, and any other identifying

information requested by the Department while processing the request, to distinguish between individuals with the same name. Your request must meet the requirements of regulations at 34 CFR 5b.5.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:
None.

HISTORY:
None.

[FR Doc. 2024–23517 Filed 10–10–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0068]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Subminimum Wage to Competitive Integrated Employment (SWTCIE) Program Evaluation

AGENCY: Office of Special Education and Rehabilitative Services (OSERS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing a new information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before November 12, 2024.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be submitted within 30 days of publication of this notice. Click on this link www.reginfo.gov/public/do/PRAMain to access the site. Find this information collection request (ICR) by selecting “Department of Education” under “Currently Under Review,” then check the “Only Show ICR for Public Comment” checkbox. *Reginfo.gov* provides two links to view documents related to this information collection request. Information collection forms and instructions may be found by clicking on the “View Information Collection (IC) List” link. Supporting statements and other supporting documentation may be found by clicking on the “View Supporting Statement and Other Documents” link.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Diandrea Bailey, (202) 987–0126.

SUPPLEMENTARY INFORMATION: The Department is especially interested in

public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Subminimum Wage to Competitive Integrated Employment (SWTCIE) Program Evaluation.

OMB Control Number: 1820–NEW.

Type of Review: New ICR.

Respondents/Affected Public:

Individuals or Households.

Total Estimated Number of Annual Responses: 4,866.

Total Estimated Number of Annual Burden Hours: 2,224.

Abstract: The U.S. Department of Education’s Rehabilitation Services Administration (RSA) requests clearance for new data collection activities to support the evaluation of the Disability Innovation Fund (DIF) Subminimum Wage to Competitive Integrated Employment (SWTCIE) program. The aim of this project is to increase transitions to competitive integrated employment (CIE) among people working in subminimum wage employment (SWE)—or considering doing so—through innovative activities to build systemwide alternatives to subminimum wage employment. Advocacy, policy and practice have evolved in recent decades toward a shift to CIE, as reflected in the Workforce Innovation and Opportunity Act and most recently in the Consolidated Appropriations Act of 2021, which provides funding for DIF. This request covers primary data collection activities, including survey data, administrative data, site visits, and focus groups.

In September 2022, the RSA awarded five-year grants for the 84.421D DIF. The grants provide 14 state vocational rehabilitation (VR) agencies with funding to implement SWTCIE Innovative Model Demonstration projects to decrease SWE and increase CIE among people with disabilities currently employed in or contemplating SWE. To achieve this purpose, the projects will create innovative models for dissemination and replication to (1) identify strategies for addressing barriers associated with accessing CIE, (2) provide integrated services that

support CIE, (3) support integration into the community through CIE, (4) identify and coordinate wraparound services for project participants who obtain CIE, (5) develop and disseminate evidence-based practices, and (6) provide entities holding section 14(c) certificates with readily accessible transformative business models for adoption. The intervention models vary across the SWTCIE projects, but all of them will work with employers that hold 14(c) certificates, other employers, service providers, and additional community partners to empower transition-age youth and working-age adults with disabilities to pursue CIE. In addition, each project will use part of its funds for an independent evaluator to conduct a project-specific evaluation of its activities and outcomes.

This data collection for the RSA DIF is critical as the evaluation is intended to make information more actionable for practitioners and policymakers and ensure the DIF program outcomes are duplicatable for VR agencies and partners. The evaluation will (1) describe the implementation and costs of the federally-funded program and strategies; (2) improve the identification of DIF program models and strategies related to the state VR programs, intended to improve outcomes for individuals with disabilities in CIE, including but not limited to accommodations and services for individuals with disabilities, utilization of technology, and supports; (3) interconnect the projects to evaluate the effectiveness of particular strategies in the context of how commonly that strategy is used across the projects; (4) analyze trends in CIE outcomes and potential impacts of federal grants; and (5) examine the effectiveness and cost effectiveness of the program and strategies that support CIE and reduce SWE.

Dated: October 7, 2024.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–23516 Filed 10–10–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an in-person/virtual hybrid meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, November 6, 2024; 9 a.m.–4:30 p.m. PST.

ADDRESSES: The Holiday Inn Express & Suites Pasco, Vineyard Ballroom, 4525 Convention Place, Pasco, Washington 99301. This hybrid meeting will be in-person at The Holiday Inn Express & Suites Pasco and virtually. To receive the virtual access information and call-in number, please contact the Deputy Designated Federal Officer, Lindsay Somers, at the telephone number or email listed below at least five days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Lindsay Somers, Deputy Designated Federal Officer, U.S. Department of Energy, Hanford Office of Communications, Richland Operations Office, P.O. Box 550, Richland, WA, 99354; Phone: (509) 376–0923; or Email: lindsay.somers@rl.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide advice and recommendations concerning the following EM site-specific issues: clean-up activities and environmental restoration; waste and nuclear materials management and disposition; excess facilities; future land use and long-term stewardship. The Board may also be asked to provide advice and recommendations on any EM program components.

Tentative Agenda

- Tri-Party Agreement Agencies' Updates
- Presentation
- Subcommittee Reports
- Board Member Roundtable
- Board Business

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Lindsay Somers at least seven days in advance of the meeting at the telephone number listed above. Written statements may be filed with the Board either before or within five business days after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Lindsay Somers.

Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available at the following website: <https://www.hanford.gov/page.cfm/hab/FullBoardMeetingInformation>.

Signing Authority: This document of the Department of Energy was signed on October 7, 2024, by David Borak, 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 October 7, 2024.

Jennifer Hartzell,

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

[FR Doc. 2024–23507 Filed 10–10–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

**Agency Information Collection
Proposed New Survey**

AGENCY: U.S. Energy Information Administration (EIA), U.S. Department of Energy (DOE).

ACTION: Notice.

SUMMARY: EIA submitted an information collection request for clearance of the Residential Utility Disconnections Survey as required by the Paperwork Reduction Act of 1995. The collection requests a three-year clearance of a new data collection survey—Form EIA–112. Form EIA–112 is an annual survey that collects information on the number of monthly natural gas and electric service final notices, disconnections, and reconnections for bill non-payment across residential customers.

DATES: Comments on this information collection must be received no later than November 12, 2024. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Kenneth Pick, EIA Clearance Officer, at (202) 586–5562. The form and instructions are available at <https://www.eia.gov/survey/>.

SUPPLEMENTARY INFORMATION: This information collection request contains:

- (1) *OMB No.:* New;
- (2) *Information Collection Request Title:* Residential Utility Disconnections Survey;
- (3) *Type of Request:* New;
- (4) *Purpose:* Form EIA–112 is an annual form that will collect 12 months of data from electric and natural gas providers about final termination notices sent to residential customers due to bill nonpayment, service disconnections of residential customers due to bill nonpayment, and service reconnections of residential customers who were disconnected due to bill nonpayment.

No national data is currently collected on this information. Some States collect some of the data described above, but the data are inconsistent, and publication is not uniform. Form EIA–112 aims to better inform State and Federal policymakers on utility disconnections by providing reliable data that can help inform appropriate levels of budgetary support for various assistance programs across the United States. The results of the survey will be published on the EIA website at the aggregated national and State level, as well as at the utility level for respondents.

EIA will conduct periodic censuses of all natural gas and electric utilities above a certain size threshold. These censuses will cover respondents that complete Form EIA–176 and Form EIA–861, excluding the small electric utilities receiving Form EIA–861S. To reduce the respondent burden of this proposed data collection, while also considering data quality, for the years in between censuses, EIA will use cut-off samples from Form EIA–857 and Form EIA–861M, based on utility size and State coverage. This strategy will allow EIA to reduce respondent burden on smaller utilities, while also producing population estimates at the State level

by modeling data for the utilities on the frames that were subjected to sampling but not selected.

(5) *Annual Estimated Number of Respondents*: 1,130;

(6) *Annual Estimated Number of Total Responses*: 1,130;

(7) *Annual Estimated Number of Burden Hours*: 2,260;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden*: EIA estimates that there are no capital and start-up costs associated with this data collection. The information is maintained during the normal course of business. The cost of the burden hours is estimated to be \$206,021.60 (2,260 burden hours times \$91.16 per hour). Other than the cost of burden hours, EIA estimates that there are no additional costs for generating, maintaining, and providing this information.

Statutory Authority: 15 U.S.C. 772(b) and 42 U.S.C. 7101 *et seq.*

Signed in Washington, DC, on October 8, 2024.

Samson A. Adeshiyun,

Director, Office of Statistical Methods and Research, U.S. Energy Information Administration.

[FR Doc. 2024–23621 Filed 10–10–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–514–000]

National Fuel Gas Supply Corporation; Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Tioga Pathway Project, and Notice of Virtual Public Scoping Session

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental document, that will discuss the environmental impacts of the Tioga Pathway Project involving construction and operation of facilities by National Fuel Gas Supply Corporation (National Fuel) in Potter and Tioga Counties, Pennsylvania. The Commission will use this environmental document in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies regarding the project. As part of the National Environmental Policy Act (NEPA) review process, the Commission takes

into account concerns the public may have about proposals and the environmental impacts that could result from its action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. This gathering of public input is referred to as “scoping.” The main goal of the scoping process is to focus the analysis in the environmental document on the important environmental issues. Additional information about the Commission’s NEPA process is described below in the NEPA Process and Environmental Document section of this notice.

By this notice, the Commission requests public comments on the scope of issues to address in the environmental document. To ensure that your comments are timely and properly recorded, please submit your comments so that the Commission receives them in Washington, DC on or before 5:00 p.m. Eastern Time on November 4, 2024. Comments may be submitted in written or oral form. Further details on how to submit comments are provided in the Public Participation section of this notice.

Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. Your input will help the Commission staff determine what issues they need to evaluate in the environmental document. Commission staff will consider all written or oral comments during the preparation of the environmental document.

If you submitted comments on this project to the Commission before the opening of this docket on August 21, 2024, you will need to file those comments in Docket No. CP24–514–000 to ensure they are considered as part of this proceeding.

This notice is being sent to the Commission’s current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable easement agreement. You are not required to enter into an agreement. However, if the Commission approves the project, the Natural Gas Act conveys the right of eminent domain to the company. Therefore, if you and the company do not reach an easement

agreement, the pipeline company could initiate condemnation proceedings in court. In such instances, compensation would be determined by a judge in accordance with state law. The Commission does not subsequently grant, exercise, or oversee the exercise of that eminent domain authority. The courts have exclusive authority to handle eminent domain cases; the Commission has no jurisdiction over these matters.

National Fuel provided landowners with a fact sheet prepared by the FERC entitled “An Interstate Natural Gas Facility On My Land? What Do I Need To Know?” which addresses typically asked questions, including the use of eminent domain and how to participate in the Commission’s proceedings. This fact sheet along with other landowner topics of interest are available for viewing on the FERC website (www.ferc.gov) under the Natural Gas, Landowner Topics link.

Public Participation

There are four methods you can use to submit your comments to the Commission. Please carefully follow these instructions so that your comments are properly recorded. The Commission encourages electronic filing of comments and has staff available to assist you at (866) 208–3676 or FercOnlineSupport@ferc.gov.

(1) You can file your comments electronically using the eComment feature, which is located on the Commission’s website (www.ferc.gov) under the link to FERC Online. Using eComment is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically by using the eFiling feature, which is also located on the Commission’s website (www.ferc.gov) under the link to FERC Online. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on “eRegister.” You will be asked to select the type of filing you are making; a comment on a particular project is considered a “Comment on a Filing”;

(3) You can file a paper copy of your comments by mailing them to the Commission. Be sure to reference the project docket number (CP24–514–000) on your letter. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier

must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852; or

(4) In lieu of sending written comments, the Commission invites you to attend one of the virtual public scoping sessions its staff will conduct by telephone, scheduled as follows:

Date and Time:

Tuesday, October 29, 2024, 10:00 a.m. (EST), Call in number: 1-888-810-4938

Tuesday, October 29, 2024, 4:00 p.m. (EST), Call in number: 1-888-810-4938

The primary goal of these scoping sessions is to have you identify the specific environmental issues and concerns that should be considered in the environmental document. Note the first scoping session is scheduled from 10:00 a.m. to 11:30 a.m. EST, and the second scoping session is scheduled from 4:00 p.m. to 6:30 p.m. EST. Note that the scoping sessions will start at 10:00 a.m. and 4:00 p.m. and will end once all participants wishing to comment have had the opportunity to do so or at 11:30 a.m. and 6:30 p.m., respectively, whichever comes first. Individual oral comments will be taken one at a time with a court reporter present on the line.

There will be a brief introduction by Commission staff when the session opens, so please attempt to call in at the beginning of the session. All participants will be able to hear the comments provided by other participants; however, all lines will remain closed during the comments of others and then opened one at a time for providing comments. Once you call in, the operator will provide directions on how to indicate you would like to provide a comment. A time limit of three (3) minutes may be implemented for each commentor.

Your oral comments will be recorded by the court reporter and become part of the public record for this proceeding. Transcripts of all comments received during the scoping sessions will be publicly available on FERC's eLibrary system (see the last page of this notice for instructions on using eLibrary).

It is important to note that the Commission provides equal consideration to all comments received, whether filed in written form or provided orally at a virtual scoping session.

Additionally, the Commission offers a free service called eSubscription which makes it easy to stay informed of all issuances and submittals regarding the dockets/projects to which you

subscribe. These instant email notifications are the fastest way to receive notification and provide a link to the document files which can reduce the amount of time you spend researching proceedings. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Summary of the Proposed Project

National Fuel proposes to provide 190,000 dekatherms per day of firm transportation service from the Tioga County, Pennsylvania natural gas production area to downstream delivery points with other interstate pipelines, which reach various end-use markets and demand centers in the United States and Canada, and (ii) modernize a portion of National Fuel's existing Line Z20 pipeline system.

The Tioga Pathway would consist of the following facilities:

- **Line Z20:** Replace approximately 3.8 miles of 12-inch-diameter 1936-vintage bare steel pipeline with new 20-inch-diameter coated steel pipeline in National Fuel's existing right-of-way in Potter County, Pennsylvania;
- **Line YM59:** Install approximately 19.5 miles of new 20-inch-diameter coated steel pipeline beginning at the east end of the 3.8-mile Z20 Pipeline replacement, traversing Potter and Tioga Counties, Pennsylvania, and ending at the NFG Midstream Covington, LLC (Midstream) Lee Hill Interconnect;
- **McCutcheon Hill OPP Station:** Construct a new over-pressure protection (OPP) station at the interconnection between the eastern terminus of the Z20 Pipeline replacement and the western terminus of the YM59 Pipeline in Potter County;
- **Measurement equipment at Midstream's Lee Hill Interconnect:**¹ The Lee Hill Interconnect is a proposed producer interconnect with Midstream

¹ This interconnect would be designed, installed, owned, operated, and maintained by Midstream, except for the interconnect's gas measurement, gas quality, over pressure protection devices and a pig launcher, which would be owned, operated, and maintained by National Fuel.

that will connect the proposed YM59 Pipeline to Midstream's facilities at the southeastern terminus of the Project in Tioga County;

- Perform minor modifications at National Fuel's existing Ellisburg Compressor Station² including replacing/installing measurement, OPP devices, flow control, and other associated appurtenances. The Ellisburg Compressor Station is in Potter County;

- Construct one new remote-control valve setting along the Line YM59 Pipeline in Tioga County;

- Perform modifications to an existing valve setting on Line Z20 in Potter County; and

- Install a new cathodic protection ground bed along the Line YM59 Pipeline in Tioga County.

The general location map of the project facilities is shown in appendix 1.³

Land Requirements for Construction

Construction of the proposed facilities would disturb about 359.8 acres of land for the aboveground facilities and the pipeline. Following construction, National Fuel would maintain about 128.5 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. The entire 3.8 miles of the replacement pipeline (Line Z20) is proposed within existing National Fuel right-of-way in Potter County, Pennsylvania. Of the 19.5 miles of new Mainline Pipeline (Line YM59), 17.8 miles (91 percent of length) is proposed within new right-of-way and 1.7 miles (9 percent of length) would parallel existing Eastern Gas Transmission and Storage, Inc. pipelines.

NEPA Process and the Environmental Document

Any environmental document issued by the Commission will discuss impacts that could occur as a result of the construction and operation of the proposed project under the relevant general resource areas:

- geology and soils;
- water resources and wetlands;
- vegetation and wildlife;
- threatened and endangered species;
- cultural resources;

² National Fuel does not propose any changes to compressor units or to the certificated capacity at the Ellisburg Compressor Station.

³ The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at www.ferc.gov using the link called "eLibrary". For instructions on connecting to eLibrary, refer to the last page of this notice. For assistance, contact FERC at FERCOnlineSupport@ferc.gov or call toll free, (886) 208-3676 or TTY (202) 502-8659.

- land use;
- environmental justice;
- air quality and noise; and
- reliability and safety.

Commission staff will also evaluate reasonable alternatives to the proposed project or portions of the project and make recommendations on how to lessen or avoid impacts on the various resource areas. Your comments will help Commission staff identify and focus on the issues that might have an effect on the human environment and potentially eliminate others from further study and discussion in the environmental document.

Following this scoping period, Commission staff will determine whether to prepare an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). The EA or the EIS will present Commission staff's independent analysis of the issues. If Commission staff prepares an EA, a *Notice of Schedule for the Preparation of an Environmental Assessment* will be issued. The EA may be issued for an allotted public comment period. The Commission would consider timely comments on the EA before making its decision regarding the proposed project. If Commission staff prepares an EIS, a *Notice of Intent to Prepare an EIS/Notice of Schedule* will be issued, which will open up an additional comment period. Staff will then prepare a draft EIS which will be issued for public comment. Commission staff will consider all timely comments received during the comment period on the draft EIS and revise the document, as necessary, before issuing a final EIS. Any EA or draft and final EIS will be available in electronic format in the public record through eLibrary⁴ and the Commission's natural gas environmental documents web page (<https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents>). If eSubscribed, you will receive instant email notification when the environmental document is issued.

With this notice, the Commission is asking agencies with jurisdiction by law and/or special expertise with respect to

the environmental issues of this project to formally cooperate in the preparation of the environmental document.⁵ Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the *Public Participation* section of this notice.

Consultation Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Office(s), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.⁶ The environmental document for this project will document findings on the impacts on historic properties and summarize the status of consultations under section 106.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project and includes a mailing address with their comments. Commission staff will update the environmental mailing list as the

analysis proceeds to ensure that Commission notices related to this environmental review are sent to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If you need to make changes to your name/address, or if you would like to remove your name from the mailing list, please complete one of the following steps:

(1) Send an email to GasProjectAddressChange@ferc.gov stating your request. You must include the docket number CP24-514-000 in your request. If you are requesting a change to your address, please be sure to include your name and the correct address. If you are requesting to delete your address from the mailing list, please include your name and address as it appeared on this notice. This email address is unable to accept comments.

OR

(2) Return the attached "Mailing List Update Form" (appendix 2).

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number in the "Docket Number" field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at FercOnlineSupport@ferc.gov or (866) 208-3676, or for TTY, contact (202) 502-8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at <https://www.ferc.gov/news-events/events> along with other related information.

Dated: October 4, 2024.

Debbie-Anne A. Reese,
Acting Secretary.

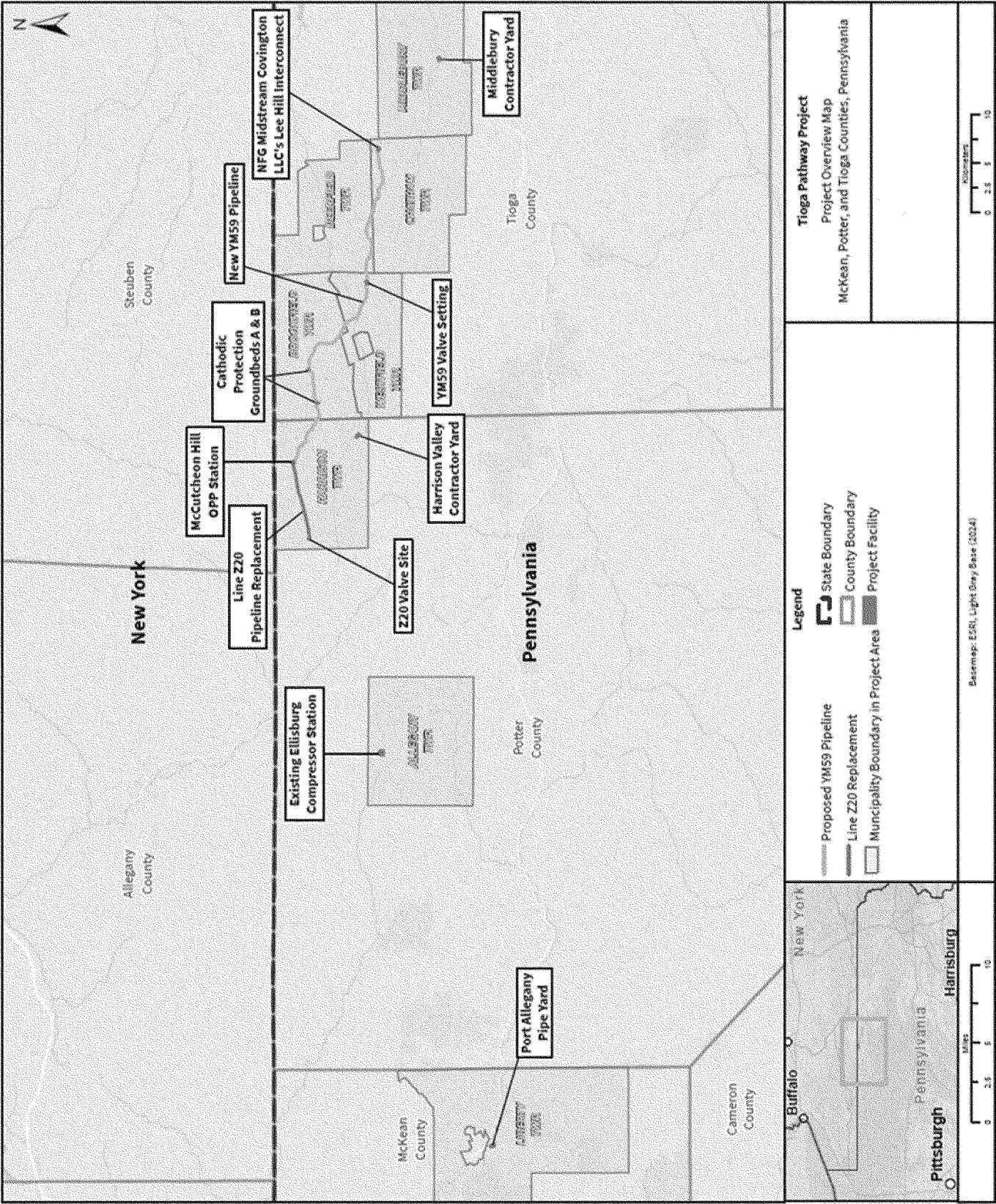
Appendix 1

BILLING CODE 6717-01-P

⁴ For instructions on connecting to eLibrary, refer to the last page of this notice.

⁵ The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Section 1501.8.

⁶ The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.



Appendix 2

MAILING LIST UPDATE FORM**Tioga Pathway Project**

Name _____

Agency _____

Address _____

City _____ State _____ Zip Code _____

☐ Please update the mailing list☐ Please remove my name from the mailing list

FROM _____

ATTN: OEP - Gas 1, PJ - 11.1
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

CP24-514-000 Tioga Pathway Project Staple or Tape Here

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****[Project No. 4117-013]****The Metropolitan District; Notice of Effectiveness of Withdrawal of Application for Surrender of License**

On August 26, 2019, as supplemented on October 17, 2019, and December 19, 2019, The Metropolitan District filed an application for surrender of license for the 3-megawatt Colebrook Hydroelectric Project No. 4117, located on the West Branch of the Farmington River in Litchfield County, Connecticut. On July 11, 2024, The Metropolitan District filed a notice of withdrawal of its application.

No motion in opposition to the notice of withdrawal has been filed, and the Commission has taken no action to disallow the withdrawal. Pursuant to Rule 216(b) of the Commission's Rules of Practice and Procedure,¹ the withdrawal of the surrender application became effective on July 26, 2024, and this proceeding is hereby terminated.

Dated: October 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-23520 Filed 10-10-24; 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: EG25-2-000.

Applicants: BCE Seal Beach, LLC.

Description: BCE Seal Beach, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 10/4/24.

Accession Number: 20241004-5054.

Comment Date: 5 p.m. ET 10/25/24.

Take notice that the Commission received the following Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL24-150-000; TX24-5-000.

Applicants: Madras PV1, LLC, Madras PV1, LLC.

Description: Petition for Declaratory Order of Madras PV1, LLC.

Filed Date: 9/4/24.

Accession Number: 20240904-5218.

Comment Date: 5 p.m. ET 11/4/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER23-2449-000.

Applicants: Lyons Solar, LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 10/4/24.

Accession Number: 20241004-5071.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER24-2450-000.

Applicants: Lyons Solar, LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 10/4/24.

Accession Number: 20241004-5073.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER24-2921-000.

Applicants: Boswell Wind, LLC.

Description: Supplement to 08/29/2024 Boswell Wind, LLC tariff filing.

Filed Date: 10/3/24.

Accession Number: 20241003-5189.

Comment Date: 5 p.m. ET 10/15/24.

Docket Numbers: ER24-3147-001.

Applicants: PacifiCorp.

Description: Tariff Amendment: Errata Filing: Project Construction Construction Agreement (RS No. 789) to be effective 11/30/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5078.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-34-000.

Applicants: New York Independent System Operator, Inc.

Description: Tariff Amendment: Notice of Cancellation: SGIA SA 2572 among NYISO, National Grid, and Bakerstand to be effective 12/4/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5030.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-35-000.

Applicants: New York Independent System Operator, Inc.

Description: Tariff Amendment: Notice of Cancellation: Amnd SGIA SA 2571 among NYISO, National Grid, Martin Rd to be effective 12/4/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5037.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-36-000.

Applicants: BCE Seal Beach, LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application to be effective 12/4/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5055.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-37-000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: 1st Amend GIA & DSA, SCEBESS-021 (WDT1514-WDT1935/SA Nos. 1087-1088) to be effective 10/5/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5068.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-38-000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-BRP Antlia BESS 4th Amended Generator Interconnection Agreement to be effective 9/17/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5075.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-39-000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original CSA, SA No. 7375; Project Identifier No. AE2-298 to be effective 9/9/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5083.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-40-000.

Applicants: Northern Indiana Public Service Company LLC.

Description: § 205(d) Rate Filing: Parr Supplement to WVPA IA to be effective 10/4/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5088.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-41-000.

Applicants: Otter Tail Power Company.

Description: § 205(d) Rate Filing: Fargo-Moorhead Flood Mitigation Project Certificate of Concurrence—MURA—NSP to be effective 8/8/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5097.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-42-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024-10-04 SA 3643 Termination of ITC Midwest-Ledyard Windpower E&P (J836) to be effective 10/5/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5106.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-43-000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024-10-04 SA 3665 Termination of ATC-North Rock Solar E&P (J1188) to be effective 10/5/2024.

Filed Date: 10/4/24.

Accession Number: 20241004-5130.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25-44-000.

Applicants: Portland General Electric Company.

Description: § 205(d) Rate Filing: Second Amended and Restated Colstrip Transmission Agreement to be effective 10/5/2024.

¹ 18 CFR 385.216(b) (2024).

Filed Date: 10/4/24.

Accession Number: 20241004–5134.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25–45–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2024–10–04_SA 4359 ATC–WPL GIA (J1706) to be effective 9/30/2024.

Filed Date: 10/4/24.

Accession Number: 20241004–5149.

Comment Date: 5 p.m. ET 10/25/24.

Docket Numbers: ER25–46–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX—Texas New Mexico Power (Fort Stockton Sw) Facilities Agreement to be effective 9/17/2024.

Filed Date: 10/4/24.

Accession Number: 20241004–5160.

Comment Date: 5 p.m. ET 10/25/24.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or OPP@ferc.gov.

Dated: October 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23525 Filed 10–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP25–38–000.

Applicants: Gulf South Pipeline Company, LLC.

Description: § 4(d) Rate Filing: Housekeeping and Update to Rate Sheets for Certain Rate Schedule Options to be effective 11/4/2024.

Filed Date: 10/3/24.

Accession Number: 20241003–5162.

Comment Date: 5 p.m. ET 10/15/24.

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.

Dated: October 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–23518 Filed 10–10–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP24–526–000]

Florida Gas Transmission Company, LLC; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on September 27, 2024, Florida Gas Transmission Company, LLC (FGT), 1300 Main St., Houston, Texas 77002, filed in the above referenced docket, a prior notice request pursuant to sections 157.205, 157.208, and 157.210 of the Commission's regulations under the Natural Gas Act (NGA), and FGT's blanket certificate issued in Docket No. CP82–553–000, for authorization to: (1) increase its certificated mainline capacity, to (2) make minor auxiliary facility modifications under section 2.55(a) of the Commission's regulations to Unit 1201 at Compressor Station 12 in Santa Rosa County, Florida, and (3) construct appurtenant facilities as needed (the Southeast Alabama Project). The Southeast Alabama Project will enable FGT to supply an additional 10 million cubic feet per day (MMcf/d) of firm transportation capacity to Southeast Alabama Gas District's delivery point in Escambia County, Alabama. The estimated cost for the project is \$1,700,000, 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 (<http://www.ferc.gov>). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

Any questions concerning this request should be directed to Blair Lichtenwalter, Sr. Director Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., P.O. Box 4967, Houston, Texas 77210-4967, by phone (713) 989-2605, or by email Blair.Lichtenwalter@energytransfer.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 December 3, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502-6595 or OPP@ferc.gov.

Protests

Pursuant to section 157.205 of the Commission's regulations under the NGA,¹ any person² or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,³ and must be submitted by the protest deadline, which is December 3, 2024. 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 Procedure⁴ and the regulations under the NGA⁵ by the intervention deadline for the project, which is December 3, 2024. 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 December 3, 2024. 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 CP24-526-000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (www.ferc.gov) under the link to Documents and Filings. New eFiling users must first create an account by clicking on "eRegister." You will be asked to select the type of filing you are making; first select "General" and then select "Protest", "Intervention", or "Comment on a Filing"; or⁶

(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 CP24-526-000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502-8258 or FercOnlineSupport@ferc.gov.

Protests and motions to intervene must be served on the applicant either by mail at: Blair Lichtenwalter, Sr. Director Certificates, Florida Gas Transmission Company, LLC, 1300 Main St., P.O. Box 4967, Houston, Texas 77210-4967, or by email (with a link to the document) at Blair.Lichtenwalter@energytransfer.com. Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

Tracking the Proceeding

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208-FERC, or on the FERC website at www.ferc.gov using the "eLibrary" link as described above. The eLibrary link

¹ 18 CFR 157.205.

² Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

³ 18 CFR 157.205(e).

⁴ 18 CFR 385.214.

⁵ 18 CFR 157.10.

⁶ Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at www.ferc.gov under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

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/subscription.asp.

Dated: October 4, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024-23521 Filed 10-10-24; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2024-0391; FRL-12178-01-OGC]

Proposed Partial Settlement Agreement and Consent Decree, Claim Regarding Implementation of Endocrine Disruptor Screening Program Under the Section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed partial settlement agreement and partial consent decree; request for public comment.

SUMMARY: Notice is given of a proposed partial settlement agreement and consent decree to address *Alianza Nacional de Campesinas, et al. v. U.S. Environmental Protection Agency, et al.*, a case in the United States District Court for the Northern District of California (4:22-cv-9030) that alleges that Environmental Protection Agency (EPA) violated the Federal Food, Drug, and Cosmetic Act ("FFDCA"), with respect to actions or omissions concerning EPA's implementation of the Endocrine Disruptor Screening Program ("EDSP"), including the testing of pesticide chemicals for estrogen, androgen, and thyroid effects, and that such alleged violation is actionable under the Administrative Procedure Act. EPA is providing notice of the proposed partial settlement agreement and partial consent decree, which would resolve all claims in both cases by establishing commitments and/or deadlines for EPA to take specified actions.

DATES: Written comments on the proposed consent decree must be received by November 12, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2024-0391 online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID number for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments, see the "Additional Information about Commenting on the Proposed Consent Decree" heading under the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Amber Aranda, Pesticides and Toxic Substances Law Office; telephone (202) 564-1737; email address aranda.amber@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining a Copy of the Proposed Partial Settlement Agreement and/or Partial Consent Decree

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2024-0391) contains a copy of the proposed partial settlement agreement and partial consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed partial settlement agreement and partial consent decree and both are available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select "search."

II. Additional Information About Commenting on the Proposed Consent Decree

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2024-0391 via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

Dated: October 8, 2024.

Randolph L. Hill,

Associate General Counsel.

[FR Doc. 2024-23633 Filed 10-10-24; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP-OFA-147]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>. Weekly receipt of Environmental Impact Statements (EIS)

Filed September 30, 2024 10 a.m. EST
Through October 7, 2024 10 a.m. EST
Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

EIS No. 20240181, Final, UDOT, UT, I-15 Farmington to Salt Lake City, Contact: Brandon Weston 801-965-4603.

Under 23 U.S.C. 139(n)(2), UDOT has issued a single document that consists of a final environmental impact statement and record of decision. Therefore, the 30-day wait/review period under NEPA does not apply to this action.

EIS No. 20240182, Final, BLM, NM, Organ Mountains-Desert Peaks National Monument Final Environmental Impact Statement and Proposed Resource Management Plan, Review Period Ends: 11/12/2024, *Contact:* Mr. Patrick Rich 405-579-7154.

EIS No. 20240183, Final, BLM, OR, Cascade-Siskiyou National Monument Proposed Resource Management Plan/ Final Environmental Impact Statement, Review Period Ends: 11/12/2024, *Contact:* Nikki Haskett 202-740-0835.

EIS No. 20240184, Draft, USFWS, CA, General Conservation Plan for the Desert Tortoise in California, Comment Period Ends: 12/10/2024, *Contact:* Peter Sanzenbacher 442-222-0165.

Amended Notice:

EIS No. 20240140, Draft, USAF, AZ, Regional Special Use Airspace Optimization to Support Air Force Missions in Arizona, Comment Period Ends: 11/12/2024, *Contact:* Grace Keesling 210-925-4534.

Revision to FR Notice Published 08/09/2024; Extending the Comment Period from 10/09/2024 to 11/12/2024.

EIS No. 20240151, Draft, USACE, OR, Lower Columbia River Channel Maintenance Plan, Draft Dredged Material Management Plan and Environmental Impact Statement, Comment Period Ends: 11/06/2024, *Contact:* Amy Gibbons 503-808-4708.

Revision to FR Notice Published 08/23/2024; Extending the Comment Period from 10/07/2024 to 11/06/2024.

Dated: October 7, 2024.

Timothy Witman,

Acting Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 2024-23581 Filed 10-10-24; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meetings

TIME AND DATE: 4:04 p.m. on Tuesday, October 8, 2024.

PLACE: The meeting was held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street NW, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Board of Directors of the Federal Deposit Insurance Corporation met to consider matters related to the Corporation's corporate activities. In calling the meeting, the Board determined, on motion of Director Jonathan McKernan, seconded by Director Rohit Chopra (Director, Consumer Financial Protection Bureau), by the unanimous vote of Chairman Martin J. Gruenberg, Vice Chairman Travis Hill, Director Jonathan McKernan, Director Michael J. Hsu (Acting Comptroller of the Currency), and Director Rohit Chopra (Director, Consumer Financial Protection Bureau), that Corporation business required its consideration of the matters which were to be the subject of this meeting on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of

subsections (c)(2) and (c)(6), of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION: Requests for further information concerning the meeting may be directed to Debra A. Decker, Executive Secretary of the Corporation, at 202-898-8748.

Dated this the 8th day of October, 2024.

Federal Deposit Insurance Corporation.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2024-23688 Filed 10-9-24; 11:15 am]

BILLING CODE 6714-01-P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than October 28, 2024.

A. Federal Reserve Bank of St. Louis (Holly A. Rieser, Senior Manager) P.O. Box 442, St. Louis, Missouri 63166–2034. Comments can also be sent electronically to

Comments.applications@stls.frb.org;

1. *The Gary Canada Family Trust and the Bradley S. Canada 2020 Trust, Bradley S. Canada, as trustee for both Trusts, all of Little Rock, Arkansas; and Gary R. Canada, Sr., England, Arkansas;* as a group acting in concert, to retain voting shares of MHBC Investments Limited Partnership I, LLLP, and thereby indirectly retain voting shares of Canada Bancshares, Inc., and the Bank of England, all of England, Arkansas.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–23634 Filed 10–10–24; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying

information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than November 12, 2024.

A. Federal Reserve Bank of Minneapolis (Mark Rauzi, Vice President), 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291. Comments can also be sent electronically to *MA@mpls.frb.org;*

1. *Bravera Holdings Corp., Dickinson, North Dakota;* to acquire Vision Bank Holdings, Inc., and thereby indirectly acquire VISIONBank, both of Fargo, North Dakota. In addition, Bravera Acquisition Corp., Dickinson, North Dakota, an interim subsidiary, to merge with Vision Bank Holdings, Inc., whereby Bravera Acquisition Corp. will be the surviving entity and a wholly-owned subsidiary of Bravera Holdings Corp. for a moment in time. Following the interim holding company merger, Bravera Acquisition Corp. will be merged with and into Bravera Holdings Corp., with Bravera Holdings Corp. being the surviving entity.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–23635 Filed 10–10–24; 8:45 am]

BILLING CODE 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.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

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 November 12, 2024.

A. Federal Reserve Bank of New York (Bank Applications Officer) 33 Liberty Street, New York, New York 10045–0001. Comments can also be sent electronically to

Comments.applications@ny.frb.org;

1. *Grasshopper Bancorp, Inc., New York, New York;* through its subsidiary bank, Grasshopper Bank, National Association, also of New York, New York, to acquire Auto Club Trust, FSB, Dearborn, Michigan, and thereby engage in operating a savings association pursuant to section 225.28(b)(4)(ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Associate Secretary of the Board.

[FR Doc. 2024–23510 Filed 10–10–24; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 192 3022]

Marriott International, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 12, 2024.

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Please write “Marriott and Starwood; File No. 192 3022” on your comment and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, please mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex L), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Katherine McCarron, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580, kmccarron@ftc.gov, (202-326-2333).

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule § 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of 30 days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before November 12, 2024. Write “Marriott and Starwood; File No. 192 3022” on your comment. Your comment—including your name and your State—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We

strongly encourage you to submit your comments online through the <https://www.regulations.gov> website. If you prefer to file your comment on paper, write “Marriott and Starwood; File No. 192 3022” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H-144 (Annex L), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other State identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “trade secret or any commercial or financial information which . . . is privileged or confidential”—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule § 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule § 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

Visit the FTC website at <https://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments it receives on or before November 12, 2024. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (the “Commission”) has accepted, subject to final approval, an agreement containing consent order from Marriott International, Inc. (“Marriott”) and Starwood Hotels & Resorts Worldwide, LLC (“Starwood” or collectively, “Respondents”). The proposed consent order (“Proposed Order”) has been placed on the public record for 30 days for receipt of comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreement, along with any comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the Proposed Order.

Marriott is a multinational hospitality company that manages and franchises hotels and related lodging facilities, including 30 brands and more than 7,000 properties throughout the United States and across 131 countries and territories. On or about November 16, 2015, Marriott announced that it would acquire Starwood, and on or about September 23, 2016, Starwood became a wholly owned subsidiary of Marriott. With the acquisition of Starwood, Marriott became the largest hotel chain in the world at that time, with more than 1.1 million hotel rooms, accounting for one out of every fifteen hotel rooms worldwide.

After Marriott’s acquisition of Starwood, Marriott took control of Starwood’s computer network and has been responsible for establishing, reviewing, and implementing the information security practices for both Marriott and Starwood. Additionally, Marriott commenced a two-year process to integrate some Starwood systems into the Marriott network. Marriott fully integrated those Starwood systems into its own network by December 2018.

According to the FTC’s Complaint, Respondents suffered at least three

distinct data security breaches over the course of several years. Starwood informed customers of the first breach just four days after the announcement of Marriott's acquisition of Starwood. This breach allowed intruders to compromise Starwood's point-of-sale systems and gain access to more than 40,000 customer payment cards over the course of 14 months.

The second breach began on or around July 28, 2014, and involved a breach of a Starwood guest reservation database. This breach went undetected for four years—during which Marriott had responsibility for Starwood's information security practices and network following the acquisition. Forensic examiners, retained by Marriott in September 2018, identified similar failures that resulted in the first breach, including: inadequate firewall controls, unencrypted payment card information stored outside of the secure cardholder data environment, lack of multifactor authentication, and inadequate monitoring and logging practices. As a result of the second breach, intruders compromised the personal information of 339 million Starwood guest records and 5.25 million unencrypted passport numbers worldwide. Additional compromised information from the Starwood guest reservation database included: names, dates of birth, payment card numbers, addresses, email addresses, telephone numbers, usernames, Starwood loyalty numbers, and partner loyalty program numbers.

As to the third breach, Marriott announced in March 2020 that malicious actors had compromised the credentials of employees at a Marriott-franchised property to gain access to Marriott's own network. The intruders began accessing and exporting consumers' personal information without detection from September 2018—the same month that Marriott became aware of the second breach—to December 2018 and resumed in January 2020 and continued until they were ultimately discovered in February 2020. The intruders were able to access more than 5.2 million guest records, including 1.8 million records related to U.S. consumers, that contained significant amounts of personal information, including: names, mailing addresses, email addresses, phone numbers, affiliated companies, gender, month and day of birth, Marriott loyalty account information, partner loyalty program numbers, and hotel stay and room preferences. Marriott's internal investigation confirmed that the malicious actors' main purpose for searching, accessing, and exporting

guest records was to identify loyalty accounts with sufficient loyalty points to be either used or redeemed, including for booking stays at hotel properties.

The Commission's proposed two-count complaint alleges that Respondents violated section 5(a) of the FTC Act by: (1) deceiving customers by representing in each of their privacy policies that they used reasonable and appropriate safeguards to protect consumers' personal and financial information; and (2) failing to employ reasonable security measures to protect consumers' personal information. With respect to these counts, the proposed complaint alleges that Respondents:

- failed to implement appropriate password controls, which resulted in employees often using default, blank or weak passwords;
- failed to patch outdated software and systems in a timely manner;
- failed to adequately monitor and log network environments, limiting the ability to detect malicious actors and distinguish between authorized and unauthorized activity;
- failed to implement appropriate access controls;
- failed to implement appropriate firewall controls;
- failed to implement appropriate network segmentation to prevent attackers from moving freely across its networks and databases; and
- failed to apply adequate multifactor authentication to protect sensitive information.

The proposed complaint alleges, with respect to the second count above, that Respondents' failure to employ reasonable security measures to protect consumers' personal information caused, or is likely to cause, substantial injury to consumers that is not outweighed by countervailing benefits to consumers or competition and is not reasonably avoidable by consumers themselves. Such practices constitute unfair acts or practices under section 5 of the FTC Act.

The Proposed Order contains injunctive relief designed to prevent Respondents from engaging in the same or similar acts or practices in the future. Part I prohibits Respondents from misrepresenting in any manner, expressly or by implication: (1) Respondents' collection, maintenance, use, deletion, or disclosure consumers' personal information; and (2) the extent to which Respondents protect the privacy, security, availability, confidentiality, or integrity of consumers' personal information. Part II requires that Respondents establish, implement, and document a comprehensive information security

program. The program must include specific safeguards tailored to Respondents' previous data security shortcomings.

Parts III–VI require Respondents to obtain initial and biennial information security assessments by an independent, third-party professional for 20 years (part III), cooperate with the independent assessor (part IV), provide the Commission with a certification of compliance with the Order from Respondents' CEO (part V), and submit reports to the Commission if they suffer additional data incidents (part VI).

Part VII requires Respondents to provide a Clear and Conspicuous method by which U.S. consumers can request that Respondents review the deletion of personal information associated with an email address and/or Loyalty Rewards Program account number. Part VIII requires Respondents to provide a link on their website and mobile app where all U.S. consumers may request deletion of Personal Information associated with an email address and/or Loyalty Rewards Program account number.

Parts IX–XII are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondents to provide information or documents necessary for the Commission to monitor compliance. Part XIII states that the Proposed Order will remain in effect for 20 years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the Proposed Order, and it is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify the Proposed Order's terms in any way.

By direction of the Commission, Commissioners Holyoak and Ferguson recused.

April J. Tabor,
Secretary.

[FR Doc. 2024–23283 Filed 10–10–24; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice—C0A–2024–01; Docket No. 2024–0002; Sequence No 43]

Office of Human Resources Management; SES Performance Review Board

AGENCY: Office of Human Resources Management (OHRM), General Services Administration (GSA).

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of new members to the GSA Senior Executive Service Performance Review Board. The Performance Review Board assures consistency, stability, and objectivity in the performance appraisal process.

DATES: *Applicable:* October 11, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Nathaniel Williams, Acting Director, Executive Resources Division, Office of Human Resources Management, GSA, 1800 F Street NW, Washington, DC 20405, or via telephone at (571) 513-9451.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5 U.S.C requires each agency to establish, in accordance with regulation prescribed by the Office of Personnel Management, one or more SES performance review board(s). The board is responsible for making recommendations to the appointing and awarding authority on the performance appraisal ratings and performance awards for employees in the Senior Executive Service.

The following have been designated as members of the Performance Review Board of GSA:

- Katy Kale, Deputy Administrator—PRB Chair.
- Christopher Bennethum, Assistant Commissioner for Assisted Acquisition Services, Federal Acquisition Service.
- Lesley Briante, Associate Chief Information Officer of Digital Management, Office of GSA IT.
- Aluanda Drain, Associate Administrator for Civil Rights, Office of Civil Rights.
- Andrew Heller, Deputy Commissioner for Enterprise Strategy, Public Buildings Service.
- Arron Helm, Chief Human Capital Officer, Office of Human Resources Management.
- Dena McLaughlin, Executive Director, Catalog and Solicitation Management Program Management Office, Federal Acquisition Service.
- Tanisha Palermo, Regional Commissioner, Public Buildings Service, Rocky Mountain Region.
- Flavio Peres, Assistant Commissioner for Real Property Disposition, Public Buildings Service.
- Camille Sabbakhan, Deputy General Counsel, Office of the General Counsel.

Robin Carnahan,
Administrator, General Services Administration.

[FR Doc. 2024-23586 Filed 10-10-24; 8:45 am]

BILLING CODE 6820-FM-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2018-N-1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher; TREMFYA (guselkumab)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of a product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (FD&C Act) authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of priority review vouchers as well as the approval of products redeeming a priority review voucher. FDA has determined that the supplemental application for TREMFYA (guselkumab), approved September 11, 2024, meets the criteria for redeeming a priority review voucher.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-1394, email: Cathryn.Lee@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: FDA is announcing the approval of a product redeeming a rare pediatric disease priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that the supplemental application for TREMFYA (guselkumab) meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to <https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm>. For further information about TREMFYA (guselkumab), go to the “Drugs@FDA” website at <https://www.accessdata.fda.gov/scripts/cder/daf/>.

Dated: October 8, 2024.

Eric Flamm,

Acting Associate Commissioner for Policy.

[FR Doc. 2024-23629 Filed 10-10-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA-2012-N-1021]

Notice to Public of Website Location of Center for Devices and Radiological Health Fiscal Year 2025 Proposed Guidance Development

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the website location where the Agency will post two lists of guidance documents that the Center for Devices and Radiological Health (CDRH) intends to publish in fiscal year (FY) 2025. In addition, FDA has established a docket where interested parties may comment on the priority of topics for guidance, provide comments and/or propose draft language for those topics, suggest topics for new or different guidance documents, comment on the applicability of guidance documents that have issued previously, and provide any other comments that could benefit the CDRH guidance program and its engagement with interested parties. This feedback is critical to the CDRH guidance program to ensure that we meet the needs of interested parties.

DATES: Either electronic or written comments on the notice must be submitted by December 10, 2024.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of December 10, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to

the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

Instructions: All submissions received must include the Docket No. FDA-2012-N-1021 for "Notice to Public of website Location of CDRH Fiscal Year 2025 Proposed Guidance Development." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions**—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available

for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

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

FOR FURTHER INFORMATION CONTACT:

Erica Takai, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5456, Silver Spring, MD 20993-0002, 301-796-6353.

SUPPLEMENTARY INFORMATION:

I. Background

During negotiations on the Medical Device User Fee Amendments of 2012, title II, Food and Drug Administration Safety and Innovation Act (Pub. L. 112-144), FDA agreed to meet a variety of quantitative and qualitative goals intended to help get safe and effective medical devices to market more quickly. Among these commitments included:

- Annually posting a list of priority medical device guidance documents that the Agency intends to publish within 12 months of the date this list is published each fiscal year (the "A-list"), and

- Annually posting a list of device guidance documents that the Agency intends to publish, as the Agency's guidance-development resources permit each fiscal year (the "B-list").

The Medical Device User Fee Amendments of 2017 (MDUFA IV), Title II, FDA Reauthorization Act of 2017 (Pub. L. 115-52), maintained these commitments.

In addition, to ensure that final guidance documents continue to provide interested parties with the Agency's current thinking, CDRH

annually conducts a staged review of previously issued final guidances in collaboration with interested parties. CDRH intends to annually provide lists of previously issued final guidances that are subject to review in 10-year increments to facilitate a continuous and systematic assessment of the applicability of existing guidances. For instance, in FY 2025, CDRH is providing a list of the final guidance documents that issued in 2015, 2005, 1995, and 1985; in FY 2026 we expect to provide a list of the final guidance documents that issued in 2016, 2006, 1996, and 1986, and so on. Consistent with the Good Guidance Practices regulation at 21 CFR 10.115(f)(4), CDRH would appreciate suggestions that CDRH revise or withdraw an already existing guidance document. We request that the suggestion clearly explain why the guidance document should be revised or withdrawn and, if applicable, how it should be revised. While we are requesting feedback on the list of previously issued final guidances located in the annual agenda website, feedback on any guidance is appreciated and will be considered.

FDA welcomes comments on any or all of the guidance documents on the lists as explained in 21 CFR 10.115(f)(5). FDA has established Docket No. FDA-2012-N-1021 where comments on the FY 2025 lists, draft language for guidance documents on those topics, suggestions for new or different guidances, and relative priority of guidance documents may be submitted and shared with the public (see **ADDRESSES**). FDA believes this docket is a valuable tool for receiving information from interested parties. FDA anticipates that feedback from interested parties will allow CDRH to better prioritize and more efficiently draft guidances to meet the needs of the Agency and interested parties.

In addition to posting the lists of prioritized device guidance documents, CDRH has identified as a priority, and has devoted resources to, finalization of draft guidance documents. To ensure the timely completion or reissuance of draft guidances, in FY 2015 CDRH committed to performance goals for current and future draft guidance documents. For draft guidance documents issued after October 1, 2014, CDRH committed to finalize, withdraw, reopen the comment period, or issue new draft guidance on the topic for 80 percent of the documents within 3 years of the close of the comment period and for the remaining 20 percent, within 5 years. As part of MDUFA IV commitments, FDA reaffirmed this commitment, as resources permit.

Fulfillment of these commitments will be reflected through the issuance of updated guidance on existing topics, withdrawal of guidances that no longer reflect FDA's current thinking on a particular topic, and annual updates to the A-list and B-list announced in this notice.

II. Website Location of Guidance Lists

This notice announces the website location of the document that provides the A- and B-lists of guidance documents, which CDRH is intending to publish during FY 2025. To access these two lists, visit FDA's website at <https://www.fda.gov/medical-devices/guidance-documents-medical-devices-and-radiation-emitting-products/cdrh-proposed-guidance-development>. We note that the topics on these lists may be removed or modified based on current priorities, as well as comments received regarding these lists. Furthermore, FDA and CDRH priorities are subject to change at any time (e.g., newly identified safety issues). The Agency is not required to publish every guidance on either list if the resources needed would be to the detriment of meeting quantitative review timelines and statutory obligations. In addition, the Agency is not precluded from issuing guidance documents that are not on either list.

Dated: October 7, 2024.

Eric Flamm,

Acting Associate Commissioner for Policy.

[FR Doc. 2024-23544 Filed 10-10-24; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Secretary, U.S. Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services (HHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting will be open to the public. Preregistration is required for the public to attend the meeting, provide comments, and/or distribute printed material(s) to ACMH members. Information about the meeting is available from the designated contact person and will be posted on the HHS Office of Minority Health (OMH) website: www.minorityhealth.hhs.gov.

Information about ACMH activities can be found on the OMH website under the heading *About OMH, Committees and Working Groups*.

DATES: The ACMH meeting will be held on November 14–15, 2024 from 8:30 a.m. to 5:30 p.m. EST each day. If the Committee completes its work before 5:30 p.m., the meeting will adjourn early.

ADDRESSES: The meeting will be held at the Tower Building at 1101 Wootton Parkway, Lower-Level Conference Room, Rockville, Maryland 20852 and will be accessible by webcast. Members of the public must register for the meeting by 5:00 p.m. EST on October 29, 2024. Registered webcast participants will receive webcast access information prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Violet Woo, Designated Federal Officer, Advisory Committee on Minority Health, OMH, HHS, Tower Building, 1101 Wootton Parkway, Suite 100, Rockville, Maryland 20852. Phone: 240-453-6816; email: OMH-ACMH@hhs.gov.

SUPPLEMENTARY INFORMATION: Establishment of the ACMH is mandated under section 1707(c) of the PHS Act (42 U.S.C 300u-6(c)) to provide advice to the Deputy Assistant Secretary for Minority Health on the development of goals and program activities related to OMH's duties.

The topic to be discussed during the meeting is the implementation of the updated Office of Management and Budget (OMB) federal race and ethnicity data collection standards. The focus will be opportunities for engagement with racial, ethnic, and tribal community-level organizations to support increased awareness of the race and ethnicity data collection standards and their intended goals within their communities. The recommendations will be given to the Deputy Assistant Secretary for Minority Health to inform efforts related to implementation of the revised OMB standards. Information on OMB's updated federal race and ethnicity data collection standards can be found on this website: [spd15revision.gov](https://www.spd15revision.gov).

The meeting is open to the public. Any individual who wishes to attend the meeting must register by sending an email to OMH-ACMH@hhs.gov by 5:00 p.m. EST on October 29, 2024. Each registrant should provide their name, affiliation, email address, days attending, if planning to provide public verbal comments or printed statement, and if participation is in-person or via webcast. Registrants will receive webcast access information via email. Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should contact OMH-ACMH@hhs.gov and reference this meeting. Requests for special accommodation should be made during registration or at least ten (10) business days prior to the meeting.

Registered members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to two minutes per registered speaker during the time allotted. Individuals of the public may also submit and distribute electronic or printed statements or material(s) related to this meeting's topic. Written statements or material(s) should be double-spaced with one-inch margins and not exceed two pages in length. Any content beyond the two-page limit will not be presented to the Committee. Individuals planning to submit electronic or printed material should email the material to OMH-ACMH@hhs.gov at least ten (10) business days prior to the meeting.

Violet Woo,

Designated Federal Officer, Advisory Committee on Minority Health.

[FR Doc. 2024-23582 Filed 10-10-24; 8:45 am]

BILLING CODE 4150-29-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: November 7–8, 2024.

Time: 8:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Address: Hyatt Place Georgetown, 2121 M Street, Washington, DC 20037.

Meeting Format: In Person.

Contact Person: Todd Everett White, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–3962, todd.white@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Medical Imaging.

Date: November 7–8, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Krystyna H. Szymczyk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–4198, szymczyk@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cancer Diagnosis and Treatments (CDT).

Date: November 7–8, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Victor A. Panchenko, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 802B2, Bethesda, MD 20892, (301) 867–5309, victor.panchenko@nih.gov.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.

Date: November 7–8, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: The Bethesda Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Meeting Format: In Person.

Contact Person: Michael Patrick O'Connell, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 867–5309, oconnellmp@mail.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cell Biology, Developmental Biology, and Bioengineering.

Date: November 7, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, 301–613–5228, capraramg@mail.nih.gov.

Name of Committee: Integrative, Functional and Cognitive Neuroscience

Integrated Review Group; Neurobiology of Motivated Behavior Study Section.

Date: November 7–8, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Janita N. Turchi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 402–4005, turchij@mail.nih.gov.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: November 7–8, 2024.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Christine Jean DiDonato, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1014J, Bethesda, MD 20892, (301) 435–1042, didonatocj@csr.nih.gov.

Name of Committee: Aging and Neurodegeneration Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: November 7–8, 2024.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, 301–435–1203, laurent.taupenot@nih.gov.

Name of Committee: Infectious Diseases and Immunology A Integrated Review Group; Innate Immunity B Study Section.

Date: November 7–8, 2024.

Time: 9:30 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: In Person and Virtual Meeting.

Contact Person: Bakary Drammeh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 805–P, Bethesda, MD 20892, (301) 435–0000, drammehbs@csr.nih.gov.

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Aging, Injury, Musculoskeletal, and Rheumatologic Disorders Study Section.

Date: November 7–8, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Nketi I. Forbang, MD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1006K1, Bethesda, MD 20892, (301) 594–0357, forbangni@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 7, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23542 Filed 10–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Ancillary 2025/01 Review Meeting.

Date: November 12, 2024.

Time: 10:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Address: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892.

Meeting Format: Virtual Meeting.

Contact Person: Chiguang Feng, Ph.D., Scientific Review Officer, Scientific Review Officer, Scientific Review Branch, Extramural Program, Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Boulevard, Bethesda, MD 30892, (301) 451–7766, chiguang.feng@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: October 8, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23632 Filed 10–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Novel Approaches for Radiation Biodosimetry Assays and Devices Development (U01 Clinical Trial Not Allowed).

Date: November 12–13, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20892 (Video Assisted Meeting).

Contact Person: Michael M. Opata, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G22, Rockville, MD 20892, 240–627–3319, michael.opata@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 7, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23543 Filed 10–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Scientific Counselors, NIA, October 22, 2024, 8 a.m. to October 24, 2024, 11:30 a.m., National Institutes of Health, Biomedical Research Center, 251 Bayview Boulevard, Baltimore, MD, 21224 which was published in the **Federal Register** on July 9, 2024, 89 FR 56395.

The following FRN is being amended to change the meeting times from 8 a.m.–2 p.m. to 8 a.m.–4:30 p.m. on October 22, 2024; from 8 a.m.–6 p.m. to 8 a.m.–5 p.m. on October 23, 2024; from 8 a.m.–11:30 a.m. to 8 a.m.–1:30 p.m. on October 24, 2024. The meeting is partially closed to the public.

Dated: October 8, 2024.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–23636 Filed 10–10–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–0361.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the

information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Treatment Episode Data Set (TEDS) (OMB No. 0930–0335)—Revision

The Center for Behavioral Health Statistics and Quality (CBHSQ) at the Substance Abuse and Mental Health Services Administration (SAMHSA) is requesting an extension with changes to the combined data collection of the Treatment Episode Data Set (TEDS), the Mental Health Client Level Data (MH–CLD), and the Mental Health Treatment Episode Data Set (MH–TEDS) (OMB No. 0930–0335), which expires on December 31, 2024.

TEDS collects episode-level data on clients aged 12 and older receiving substance use treatment services from publicly funded facilities. MH–CLD collects demographic, clinical, and National Outcome Measures data on clients receiving mental health and support services funded or operated by the State Mental Health Agencies (SMHAs). MH–TEDS is an alternative reporting method to MH–CLD. It collects episode-level data on clients receiving mental health treatment services from publicly funded facilities. MH–TEDS data can be converted to MH–CLD format.

Under section 505 of the Public Health Service Act (42 U.S.C. 290aa–4), CBHSQ is authorized to collect annual data on the national incidence and prevalence of the various forms of mental illness and substance abuse. CBHSQ is also authorized to collect data on the number and variety of public and nonprofit private mental health and substance use treatment programs and the number and demographic characteristics of individuals receiving treatment through such programs. In addition, States, receiving fundings from SAMHSA's Community Mental Health Services Block Grant (MHBG) and Substance Use Prevention, Treatment, and Recovery Services Block Grant (SUPTRS BG) (formally known as the Substance Abuse Prevention and Treatment Block Grant (SABG)), utilize TEDS and MH–CLD/MH–TEDS data to meet the block grant reporting mandate and requirement.

SAMHSA is requesting OMB approval of revisions to the TEDS/MH–CLD/MH–

TEDS data collections, to include changes to the following instruments:

Proposed changes to TEDS/MH-TEDS:

- Add a combined TEDS/MH-TEDS State Crosswalk to map the data elements, codes, and categories in the state system to the appropriate TEDS/MH-TEDS data elements, codes, and categories; to obtain contextual information, including state data collection protocol and reporting capabilities and data footnotes; and to collect information on the state TEDS/MH-TEDS reporting characteristics, framework, and scope.
- Add Fentanyl and Xylazine in the list of Detailed Drug Code to improve the comprehensiveness and greater details of the substance recorded.
- Remove the term “Crack” from the existing option of “Cocaine/Crack” under the “Substance Use” data field.
- Revise existing “Gender” data field to “Sex” and add “Sexual Orientation” and “Gender Identity” (SOGI) under the SuDS section to provide inclusive measures. This revision aligns with both SAMHSA’s efforts in enhancing behavioral health equities among diverse populations and the latest OMB approved BG Reporting requirement (OMB No. 0930–0168). All SUPTRS BG tables which collect/report gender and sexual orientation information have been updated and OMB approved.
- Revise terms with negative connotations to non-stigmatizing terms. Examples include changing the word “abuse” to “use,” “detoxification” to “withdrawal management,” and “Medication-Assisted Opioid Therapy” to “Medications for Opioid Use

Disorder.” These revisions align with the current edition of The Diagnostic and Statistical Manual of Mental Disorders (5th ed., American Psychiatric Association, 2013), and the White House Office of National Drug Control Policy 2017 Memo on “Changing Federal Terminology regarding Substance Use and Substance Use Disorders.”

- Original “TEDS and MH-TEDS/MH-CLD Admission and Update/Discharge Data Elements” form with combined TEDS/MH-TEDS and MH-CLD data elements is separated into two documents to be more user friendly and improve clarity. Data elements are reorganized in the order of the code number to facilitate clearer mapping. Other minor modifications are made to enhance language consistency and clarity. For example, all “SABG” are updated to “SUPTRS BG.”

Proposed changes to MH-CLD:

- Add the MH-CLD State Crosswalk to map the data elements, codes, and categories in the state system to the appropriate MH-CLD data elements, codes, and categories; to obtain contextual information, including state data collection protocol and reporting capabilities, and data footnotes; and to collect information the state MH-CLD reporting characteristics, framework, and scope.
- Revise existing “Gender” data field to “Sex” and add SOGI as optional reporting data fields to provide inclusive measures. These revisions align with both SAMHSA’s efforts in enhancing behavioral health equities among diverse populations and the latest OMB approved BG Reporting

requirement (OMB No. 0930–0168). All MHBG tables and related URS tables which collect/report gender and sexual orientation information have been updated and OMB approved.

- Add a new “School attendance status at admission or start of the reporting period” as a required data field to assess the changes and outcomes of clients receiving mental health treatment and support services through SMHAs.

• Add optional reporting tables for Type of Funding Support, Mental Health Block Grant-Funded Services, and Veteran Status.

- Replace existing data elements “Substance Use Problem” and “Substance Abuse Diagnosis” with non-stigmatizing terms of “Substance Use Disorder” and “Substance Use Diagnosis” to help reduce stigma and support treatment for substance use disorders. These revisions align with the current edition of The Diagnostic and Statistical Manual of Mental Disorders (5th ed., American Psychiatric Association, 2013), where “abuse” has been replaced by “use.” These revisions also align with the White House Office of National Drug Control Policy 2017 Memo on “Changing Federal Terminology regarding Substance Use and Substance Use Disorders.”

- Data Elements are reorganized in the order of the code number to facilitate clearer mapping. Make minor modifications to MH-CLD data elements to enhance language consistency and clarity.

The estimated annual burden for the TEDS/MH-CLD/MH-TEDS activities is as follows:

Type of activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours	Wage rate	Total hour cost
TEDS Admission Data	52	4	208	55	11,440	\$30.28	\$346,403
TEDS Discharge/Update Data	52	4	208	55	11,440	30.28	346,403
TEDS State Data Crosswalk	52	1	52	12	624	53.21	33,203
MH-CLD BCI Data ..	35	1	35	105	3,675	30.28	111,279
MH-CLD SHR Data	34	1	34	35	1,190	30.28	36,033
MH-CLD State Data Crosswalk	35	1	35	24	840	53.21	44,696
MH-TEDS Admissions Data	19	4	76	55	4,180	30.28	126,570
MH-TEDS Discharge/Update Data	19	4	76	55	4,180	30.28	126,570
MH-TEDS State Data Crosswalk	19	1	19	40	760	53.21	40,440
State Total .....	.....	.....	.....	.....	38,329	.....	1,211,597

Send comments to SAMHSA Reports Clearance Officer, 5600 Fisher Lane, Room 15E57A, Rockville, MD 20852 or email a copy to samhsapra@samhsa.hhs.gov. Written comments should be received by December 10, 2024.

Alicia Broadus,
Public Health Advisor.

[FR Doc. 2024–23611 Filed 10–10–24; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2024–0784]

Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0013

AGENCY: Coast Guard, DHS.

ACTION: Sixty-day notice requesting comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0013, Plan Approval and Records for Load Lines; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 10, 2024.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2024–0784] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: Commandant (CG–6P), ATTN: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave SE, Stop 7710, Washington, DC 20593–7710.

FOR FURTHER INFORMATION CONTACT: A.L. Craig, Office of Privacy Management, telephone 202–475–3528, fax 202–372–8405, or email hqs-dg-m-cg-61-pii@uscg.mil

for questions on these documents.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. 3501 *et seq.*, chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) the practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, USCG–2024–0784, and must be received by December 10, 2024.

Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate

comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Information Collection Request

Title: Plan Approval and Records for Load Lines—Title 46 CFR Subchapter E.

OMB Control Number: 1625–0013.

Summary: This information collection is required to ensure that certain vessels are not overloaded—as evidenced by the submerging of their assigned load line. In general, vessels over 150 gross tons or 24 meters (79 feet) in length engaged in commerce on international or coastwise voyages by sea are required to obtain a Load Line Certificate.

Need: 46 U.S.C. 5101 to 5116 provides the Coast Guard with the authority to enforce provisions of the International Load Line Convention, 1966. Title 46 CFR subchapter E—Load Lines, contains the relevant regulations.

Forms: None.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Hour Burden Estimate: The estimated burden has increased from 687 hours to 782 hours a year, due to an increase in the estimated annual number of respondents.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: October 3, 2024.

Kathleen Claffie,

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2024–23593 Filed 10–10–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–R8–ES–2023–0084; FXES11140800000–245–FF08ECAR00]

Draft Environmental Impact Statement for a General Conservation Plan for the Desert Tortoise in California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; notice of public meetings; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), provide this notice to open a public review period and announce public meetings in accordance with the National Environmental Policy Act. We have prepared a draft environmental impact statement to evaluate the impacts on the human environment related to our proposal to approve and use a general conservation plan for the federally threatened desert tortoise (*Gopherus agassizii*) in California to streamline the incidental take permitting process under the Endangered Species Act. We invite comment from the public and local, State, Tribal, and Federal agencies.

DATES: *Submitting Comments:* You may submit comments via U.S. mail or <https://www.regulations.gov/>.

- *Online:* Comments submitted at <https://www.regulations.gov/> must be received by 11:59 p.m. eastern time on December 10, 2024.

- *U.S. mail:* Hardcopy comments must be received or postmarked on or before December 10, 2024. (See **ADDRESSES.**)

Virtual Public Meetings: The Service will hold virtual public meetings on November 12, 2024, from 10 a.m. to 11:30 a.m. Pacific Time, and on November 13, 2024, from 6 p.m. to 8:30 p.m. Pacific Time. For more information, see Public Comments and Virtual Public Meetings under **SUPPLEMENTARY INFORMATION.**

ADDRESSES:

Obtaining Documents: The document this notice announces, as well as any comments and other materials that we receive, will be available for public inspection online in Docket No. FWS–R8–ES–2023–0084 at <https://www.regulations.gov/>.

Submitting Comments: You may submit comments by one of the following methods:

- *Online:* <https://www.regulations.gov/>. Follow the instructions for submitting comments on Docket No. FWS–R8–ES–2023–0084.

- *U.S. mail:* Public Comments Processing; Attn: Docket No. FWS–R8–ES–2023–0084; U.S. Fish and Wildlife Service; MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

We will post all comments on <https://www.regulations.gov/>. This generally means that we will post online any personal information that you provide. We request that you submit comments by only one of the methods above. For additional information about submitting comments, see Public Comments and Virtual Public Meetings under **SUPPLEMENTARY INFORMATION.**

Public Meetings: A link and access instructions for the virtual public

meetings will be posted to <https://www.fws.gov/office/carlsbad-fish-and-wildlife> at least 1 week prior to the public meeting dates.

Reviewing U.S. Environmental Protection Agency Comments on the Draft Environmental Impact Statement: See EPA’s Role in the EIS Process under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT:

Peter Sanzenbacher, by telephone at 442–222–0165 or by email at peter.sanzenbacher@fws.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), have prepared a draft environmental impact statement (DEIS) pursuant to the requirements of the National Environmental Policy Act of 1969, as amended (NEPA; 42 U.S.C. 4321 *et seq.*), to analyze the effects on the human environment of approving and using a general conservation plan (GCP) for the federally threatened desert tortoise (*Gopherus agassizii*) to streamline the incidental take permitting process in California. This notice of availability opens a public comment period on the DEIS and announces public meetings. The U.S. Bureau of Land Management (Bureau) is serving as a cooperating agency under NEPA, as some lands under consideration for mitigation activities are administered by the Bureau.

Background

Section 9 of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits the “take” of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538 and 16 U.S.C. 1533, respectively). The ESA’s implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term “take” means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct” (16 U.S.C. 1532(19)). The regulations define “harm” as “an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns,

including breeding, feeding, or sheltering” (50 CFR 17.3). Regulations at 50 CFR 17.3 further define “harass” as “an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering.”

Under section 10(a)(1)(B) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. The implementing regulations for incidental take permits define “incidental taking” as “any taking otherwise prohibited, if such taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity” (50 CFR 17.3). Section 10(a)(2)(B) of the ESA lists the criteria for the Service’s issuance of incidental take permits to non-Federal entities. If the applicant meets the following criteria, the Service must issue an incidental take permit:

1. The taking will be incidental;
2. The applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking;
3. The applicant will ensure that adequate funding for the plan will be provided;
4. The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
5. The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the conservation plan in support of issuance of an incidental take permit.

Desert Tortoise General Conservation Plan

The Service proposes to approve and use a GCP that would provide specific direction regarding how to best minimize, mitigate, and monitor the effects of incidental take to applicants seeking ESA section 10(a)(1)(B) permits for the desert tortoise within a defined permit area. Under standard practices, applicants are responsible for developing the “conservation plan” required by section 10(a)(2)(A) of the ESA; the development of the conservation plans and iterative reviews require substantial time and effort, both for the applicant and Service staff. The Service then must prepare a NEPA document for public review, address any comments received from the public, conduct an internal consultation pursuant to section 7(a)(2) of the ESA, and conclude the NEPA process before reaching a decision on whether to issue the incidental take permit.

In almost every incidental take permit that the Service has processed since the listing of the desert tortoise in 1990 (April 2, 1990; 55 FR 12178), the applicant and Service agreed on the most appropriate means of minimizing, mitigating, and monitoring the effects of take on desert tortoises soon after the applicant contacted us. However, the standard practices described in the previous paragraph generally require at least 12 to 24 months to complete. A streamlined approach to the process, with more direction upfront from Service staff, would result in more effective means of minimizing and mitigating impacts to desert tortoises and allow staff to expend more time on implementing recovery work, with overall concomitant positive effects on the recovery of the species. Such a process would also provide a higher degree of certainty to applicants.

Within the GCP planning area, we propose to cover commercial, agricultural, residential, industrial, and infrastructure activities within the defined permit area. The permit area generally encompasses non-Federal lands outside of desert tortoise conservation areas. The GCP would also cover the operations and maintenance of existing non-Federal facilities, such as utilities' transmission and distribution lines. The Service intends the covered activities to be inclusive; that is, we will consider for coverage any future activity that has the same general effects on the desert tortoise as those described in the GCP. The Service will retain the right to recommend that the non-Federal entity pursue an individual incidental take permit if the scope of the proposed activity is likely to affect desert tortoises in a manner that we have not considered in the GCP.

Additionally, the permit area includes existing rights-of-way in the California desert where the Federal agency no longer has discretionary authority; consequently, interagency consultation, pursuant to section 7(a)(2) of the ESA, does not apply in these areas. The GCP would apply to such rights-of-way that lie within conservation areas. Within conservation areas, the GCP would be available only for projects intended to improve the safety and functionality of the existing right-of-way; the Service will not consider its use appropriate if the proposed project changes the basic function of the existing right-of-way.

We define "permit area" and "mitigation area" in the GCP. The permit area includes the locations where the incidental take permits deriving from the GCP would be available to applicants. The permit area is comprised of non-Federal lands

outside of desert tortoise conservation areas in southern Inyo County, eastern Kern County, northern Los Angeles County, the desert portion of San Bernardino County, eastern Riverside County, eastern San Diego County, and portions of Imperial County and the existing non-Federal rights-of-way across Federal lands under certain circumstances.

The required mitigation for issuance of an incidental take permit would occur within the boundaries of the mitigation area. The mitigation area generally includes "desert tortoise conservation areas," which the recovery plan for the desert tortoise describes as Bureau conservation lands (e.g., California Desert National Conservation Lands and areas of critical environmental concern) as identified in the California Desert Conservation Area Plan, as amended by the Desert Renewable Energy Conservation Plan, National Park Service lands, and other conservation areas or easements managed for desert tortoises.

The Mojave population of desert tortoise is the only species proposed for coverage under the GCP. The Service listed the Mojave population of desert tortoise (all desert tortoises north and west of the Colorado River in Arizona, Utah, Nevada, and California) as threatened on April 2, 1990. We designated critical habitat for the desert tortoise in California, Nevada, Arizona, and Utah in a final rule published February 8, 1994 (59 FR 5820).

The GCP would include an analysis of impacts to the desert tortoise that are likely to result from covered activities. We anticipate that incidental take permits under the GCP would result in the take of few desert tortoises. We have reached that conclusion because, since the listing of the desert tortoise in 1990, we have issued 14 incidental take permits for the desert tortoise in the planning area that have resulted in the translocation of approximately 52 desert tortoises. We are unaware of any desert tortoises that died during permitted activities.

Additionally, we have limited the GCP's permit area to portions of the desert where conservation of the desert tortoise in the long term is infeasible, with the exception of non-Federal rights-of-way that comprise a negligible portion of the planning area. Based on analysis in the original and revised recovery plans for the desert tortoise, we consider recovery of the desert tortoise to be infeasible in the permit area because most of the land there is in private ownership. It would be practically and financially impossible to secure and manage habitat in that area,

which also frequently includes rural development and its associated impacts to desert tortoises.

We have not proposed a numerical limit on the number of desert tortoises that use of the GCP may affect. Instead, if five large desert tortoises die because of activities for which incidental take was permitted under the GCP in any calendar year, we will assess the adequacy of the minimization measures in the GCP and the specific measures associated with individual incidental take permits. If administrative changes to the minimization measures in the GCP or the specific measures associated with the individual incidental take permits are not practical, we will not approve additional incidental take permits in that calendar year unless we amend the GCP. We would track the aggregate amount of incidental take and make that information available to the public.

The biological goals of the GCP would focus on minimizing the amount of take of desert tortoises and maximizing the conservation benefits of the mitigation that results from the issuance of incidental take permits. To minimize the number of desert tortoises that proposed actions would kill or injure, the Service would require permittees to implement standard methods, such as fencing work areas, surveying for individuals within project areas, translocating desert tortoises to suitable off-site habitat, implementing worker education programs, implementing measures to manage predators on site, and contributing to the regional management program for common ravens (*Corvus corax*). Over the period of time that the GCP would be available for use, the Service would update protocols for various protective measures, such as testing for disease as new information and improved methods become available.

To mitigate the effects of take and maximize conservation benefits for desert tortoises, the GCP would provide applicants with several options, such as land acquisition (securing and conserving habitat), non-acquisition (restoration and enhancement of habitat), purchase of mitigation bank credits, other actions needed to protect and conserve desert tortoises, or a combination of these activities. The Service would require that all mitigation occur within the conservation areas, as defined in the recovery plan for the desert tortoise and mapped in the GCP, that will contribute to long-term conservation of desert tortoise.

National Environmental Policy Act Compliance

Public Scoping Period

On July 17, 2023 (88 FR 45437), in accordance with NEPA, we published a **Federal Register** notice to open a public scoping period and announce our intention to prepare an EIS to evaluate the impacts on the human environment related to our proposal to approve and use a GCP for the federally threatened desert tortoise. We took comments until August 31, 2023, and also held three public meetings during the scoping period.

Draft Environmental Impact Statement

The Service, with input from the Bureau as a cooperating agency, and after full consideration of all comments received during the public scoping period and during the meetings, has prepared a DEIS to evaluate the impacts of the proposed GCP action on the human environment, consistent with the purpose and goals of NEPA. This DEIS was prepared pursuant to the Council on Environmental Quality's (CEQ) implementing NEPA regulations at 40 CFR parts 1500–1508, which became effective on May 20, 2022 (April 20, 2022, 87 FR 23453), and in compliance with the amendments to NEPA included in the Fiscal Responsibility Act of 2023 (Pub. L. 118–5, 137 Stat. 10 (2023)). The DEIS analyzes the proposed action and a reasonable range of alternatives to the proposed action. The environmental consequences of each alternative, including the direct, indirect, and cumulative effects, were analyzed to determine if significant impacts to the human environment would occur. On May 1, 2024, CEQ published a final rule amending the NEPA implementing regulations (89 FR 35442). The final rule became effective on July 1, 2024, and applies to NEPA processes that begin after that date (40 CFR 1506.12). The NEPA process for this GCP began in July 2023.

We analyzed three alternatives in detail in the DEIS.

Alternative 1—No-Action Alternative: Under the no-action alternative, the Service would not approve and use the GCP to streamline the incidental take permit process for the desert tortoise in California. The Service would continue to evaluate and process individual applications for incidental take permits on a case-by-case basis and prepare a NEPA document for each incidental take permit application; this process generally takes 12 to 24 months to complete.

Alternative 2—Proposed Action: The proposed action is the Service's approval and use of the GCP for the desert tortoise in California. The GCP would streamline the permitting process for incidental take permits by providing clear direction to project proponents regarding the appropriate measures to minimize the incidental take of desert tortoises in the permit area and to mitigate incidental take in the mitigation area. The approximately 15.2-million-acre (ac) planning area to be covered by the GCP comprises a large portion of the desert tortoise's range in California, including portions of Inyo, Kern, Los Angeles, San Bernardino, Riverside, San Diego, and Imperial Counties. Within the planning area, the Service has identified a permit area, which includes approximately 2.6 million ac of non-Federal lands outside of desert tortoise conservation areas and existing non-Federal rights-of-way across Federal lands where proponents can apply for incidental take permits for the desert tortoise for covered activities. The Service also has identified an approximately 8.6-million-ac mitigation area on Bureau conservation lands (e.g., areas of critical environmental concern, California Desert National Conservation Lands), National Park Service lands, and other conservation areas or easements managed for desert tortoises where mitigation resulting from issuance of incidental take permits under the GCP would occur.

Alternative 3—Action Alternative: Under alternative 3, the Service would pursue approval of a GCP for the desert tortoise to facilitate the issuance of incidental take permits, as described under alternative 2. The permit area, covered activities in the permit area, and measures to reduce the level of impact from covered activities would be as described under the proposed action. Under this alternative, mitigation would only occur on lands within desert tortoise conservation areas within National Park Service lands, California Desert National Conservation Lands administered by the Bureau, and non-Federal lands that either are in conservation management or that are acquired for conservation management. Other lands included in the mitigation area for the proposed action, such as areas of critical environmental concern, would not be eligible for mitigation; this would reduce mitigation area lands to approximately 7.7 million ac.

EPA's Role in the EIS Process

The EPA is charged under section 309 of the Clean Air Act with reviewing all Federal agencies' EISs and commenting on the adequacy and acceptability of the

environmental impacts of proposed actions. Under the CEQ NEPA regulations, EPA is also responsible for administering the EIS filing process. EPA is also publishing a notice in the **Federal Register** announcing this DEIS. The publication date of EPA's notice of availability is the official beginning of the public comment period. EPA serves as the repository (EIS database) for EISs prepared by Federal agencies. You may search for EPA comments on EISs, along with EISs themselves, at <https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search>.

Public Comments and Virtual Public Meetings

Submitting Comments

You may submit your comments and materials on the draft GCP and the DEIS by one of the methods in **ADDRESSES**. We specifically request information on the following:

1. Biological information, analysis, and relevant data concerning the desert tortoise, other wildlife, and ecosystems.
2. Potential effects that the proposed GCP could have on the desert tortoise, and other endangered or threatened species, and their habitats, including the interaction of the effects of covered activities with climate change and other stressors.
3. Adequacy of the GCP to minimize and mitigate the impact of the taking on desert tortoise, including but not limited to conservation measures, conditions on covered activities, and adaptive management procedures.
4. Potential effects that the proposed action could have on other aspects of the human environment, including effects on plants and animals, water resources, and aesthetic, historic, cultural, economic, social, environmental justice, climate change, or health effects.
5. The alternatives analysis conducted by the Service, including the alternatives analyzed, the range of alternatives analyzed, and the alternatives considered but not analyzed in detail.
6. The presence of historic properties—including archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns—in the proposed permit area, which are required to be considered in project planning by the National Historic Preservation Act.
7. Cumulative effects, which are effects on the environment that result from the incremental effects of the action when added to the effects of other past, present, and reasonably

foreseeable actions, as well as any connected actions that are closely related and should be discussed in the same DEIS.

8. The alternatives, information, and analyses submitted during the public scoping period and the summary thereof.

9. Other information relevant to the GCP and its impacts on the human environment.

Virtual Public Meetings

We will conduct two virtual public meetings. See **DATES** and **ADDRESSES** for the dates and times. During the virtual public meetings, the Service and Bureau will present information pertinent to the GCP and give the public the opportunity to ask questions about the draft GCP and DEIS. Oral or written comments will not be accepted during the meeting; written comments may be submitted by one of the methods listed in **ADDRESSES**.

Reasonable Accommodations

Persons needing reasonable accommodations to participate in the public meetings should contact the Service's Carlsbad Fish and Wildlife Office, using one of the methods listed in **ADDRESSES**. To allow sufficient time to process requests, please make contact at least 15 days before the public meetings. Information regarding this proposed action is available in alternative formats upon request.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed in **ADDRESSES**. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might be made publicly available at any time. Although you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. 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. Comments and materials we receive, as well as references for supporting documentation we used in preparing the DEIS, will be available for public inspection online in Docket No. FWS-R8-ES-2023-0084 at <https://www.regulations.gov/> (see **FOR FURTHER INFORMATION CONTACT**).

Next Steps and Decision To Be Made

After public review and comment, the Service will evaluate the GCP, DEIS, and any comments received to determine whether the GCP provides an adequate basis for meeting the requirements of section 10(a)(2)(B) of the ESA for future permit applications submitted under the GCP. The decision whether to approve and use the GCP will also be informed by the data, analyses, and findings in the EIS and public comments received on the DEIS and GCP. The Service will document its determinations in an ESA section 10 findings document, ESA section 7 biological opinion, and NEPA record of decision that will be developed at the conclusion of the ESA and NEPA compliance processes. FWS expects to submit a final EIS (FEIS) for publication in the **Federal Register** by May 2025. At least 30 days after the FEIS is published, we expect that the Service will complete a record of decision on the GCP in accordance with applicable timeframes established in 40 CFR 1506.11 (2022) and issue a decision on the GCP. The current estimate for the issuance of record of decision is July 2025.

Authority

We provide this notice in accordance with the requirements of NEPA and its implementing regulations (40 CFR 1503.1 and 1506.6; 2022).

Michael J. Senn,

Assistant Regional Director—Ecological Services, California-Great Basin Region, U.S. Fish and Wildlife Service, Sacramento, California.

[FR Doc. 2024-23573 Filed 10-10-24; 8:45 am]

BILLING CODE 4333-15-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_NM_FRN_MO4500183052]

Notice of Availability for the Organ Mountains-Desert Peaks National Monument Proposed Resource Management Plan and Final Environmental Impact Statement, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan

(RMP) and Final Environmental Impact Statement (EIS) for the Organ Mountains-Desert Peaks National Monument (Monument) and by this notice is announcing the start of the 30-day protest period for the Proposed RMP.

DATES: This notice announces a 30-day protest period to the BLM on the Proposed RMP beginning on the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) of the Proposed RMP and Final EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays. Protests must be postmarked or electronically submitted on the BLM's ePlanning website during the 30-day protest period.

ADDRESSES: The Proposed RMP, Final EIS, and associated documents are available on the BLM ePlanning project website at: <https://eplanning.blm.gov/eplanning-ui/project/92170/510>. Documents pertinent to this proposal may also be examined at the BLM Las Cruces District Office, 1800 Marquess Street, Las Cruces, New Mexico 88005.

Instructions for filing a protest with the BLM for the Proposed RMP and Final EIS for the Monument can be found at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest> and at 43 CFR 1610.5-2.

FOR FURTHER INFORMATION CONTACT:

BLM RMP Project Manager Patrick Rich at 405-579-7154 or prich@blm.gov or acting Monument Manager Lane Hauser at 575-525-4358 or lhauser@blm.gov. Individuals in the United States who are deaf, deaf-blind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Patrick Rich. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The decision area is located in Doña Ana County, New Mexico, and encompasses approximately 496,591 acres of BLM-managed public lands. Resources on Monument lands administered by the BLM within the decision area are currently managed under the 1993 Mimbres RMP, as amended, and additional guidance directed in Presidential Proclamation 9131.

The BLM identified, analyzed, and considered mitigation to address reasonably foreseeable impacts associated with land use allocations and resource management goals and

objectives employed to develop the alternatives, in accordance with 40 CFR 1502.14(e).

The BLM proactively coordinated the NEPA and land use planning processes early in the planning effort to ensure compliance with applicable procedural requirements under the Endangered Species Act (16 U.S.C. 1536) and section 106 of the National Historic Preservation Act (54 U.S.C. 306108), as provided in 36 CFR 800.2(d)(3), including public involvement requirements of section 106.

On December 1, 2021, the BLM initiated government-to-government consultation with 13 federally recognized Tribes with historic or cultural resources within the area potentially affected by the Proposed RMP. In accordance with Executive Order 13175, BLM Manual section 1780, and other Departmental policies, the BLM considered Tribal concerns, including potential impacts to Indian trust assets and cultural resources, throughout the land use planning process.

The BLM invited Tribal Nations; Federal, State, and local agencies; and stakeholders that demonstrated interest in or that could have been impacted by the RMP, to participate in the planning process and, if eligible, to participate as cooperating agencies. Ten eligible entities accepted the BLM's invitation to join the RMP planning effort as cooperating agencies.

On June 22, 2023, the BLM published a Notice of Intent in the **Federal Register** (88 FR 40846), notifying the public of a formal scoping period and soliciting public participation. The BLM held six public scoping meetings in and around Las Cruces, New Mexico, during July 2023.

On April 5, 2024, the BLM published an NOA in the **Federal Register** (89 FR 24030), announcing a 90-day public comment period (April 5, 2024, through July 5, 2024) and the availability of the Draft EIS and Draft RMP for review and comment. The BLM held two in-person public meetings and two virtual public meetings in Las Cruces, New Mexico, during June 2024.

Proposed RMP

The Final EIS documents analysis of environmental impacts associated with the five alternatives considered for management of Monument lands, to include the 10 congressionally designated wilderness areas located within the Monument's boundaries. The Proposed RMP provides five land use management alternatives. Each alternative consists of distinct land use allocations and resource management

goals, objectives, and management direction focused on protecting Monument objects of scientific and historic interest, preserving wilderness character, and the conservation of natural resources, resource values, and wildlife habitat. The Proposed RMP (Alternative E) was developed in response to public comments received on the Draft EIS and RMP during the 90-day public comment period and is based, primarily, on land use allocations and resource management goals and objectives found in Alternative C (Draft EIS Preferred Alternative).

The five alternatives analyzed in the Final EIS are as follows:

- *Alternative A (No Action):* Maintains the 1993 Mimbres RMP management direction. Incorporates Monument management direction from Presidential Proclamation 9131.
- *Alternative B (Protection-focused):* Protects objects of scientific and historic interest. Protects, preserves, and enhances habitat, natural resources, and resource values while providing limited recreation and travel opportunities. Most proactive in promoting land use management activities focused on preservation, restoration, and enhancement.
- *Alternative C (Draft Preferred):* Protects Monument objects of scientific and historic interest. Institutes preservation management principles for designated wilderness. Provides an objective approach to land use management, employing conservation management principles for wildlife habitat, natural resources, and resource values. Employs targeted preservation goals and objectives, while allowing recreation uses that promote sustained socioeconomic progression.
- *Alternative D (Recreation-focused):* Emphasizes opportunities for resource uses, such as recreation, off-highway vehicle and mechanized use, and livestock grazing, while maintaining ecological function to protect Monument resources, objects, and values. Institutes preservation management principles for designated wilderness.
- *Alternative E (Proposed):* Institutes similar land use allocations and resource management goals and objectives as Alternative C. Provides additional flexibility in the management of natural resources, while protecting Monument objects and preserving wilderness character. Emphasizes the importance of future implementation and activity-level planning efforts, such as integrated travel/transportation and recreation area management planning, wilderness management plans, rangeland management plans, habitat

management plans, and cultural resource and Monument object inventory and management.

The BLM New Mexico State Director has selected Alternative E as the "Proposed RMP alternative." Alternative E was designed to protect Monument objects, preserve wilderness character, and conserve natural and cultural resources, resource values, and wildlife habitat, while allowing for compatible uses on Monument lands. The Proposed RMP alternative includes important conservation and preservation measures designed to protect Monument objects of scientific and historic interest, as well as other resources and resource values, including:

- *Wilderness areas (239,596-acres):* Emphasizes preservation of wilderness character, with allowance for compatible uses;
- *Areas of Critical Environmental Concern (ACEC):* Designates the Doña Ana Mountains ACEC (1,427 acres) and the Organ/Franklin Mountains ACEC (36,658 acres);
- *Special Recreation Management Area (SRMA):* Designates the Doña Ana Mountains SRMA (5,858 acres) and the Organ Mountains SRMA (36,658 acres);
- *Soils:* provides for protection and active management of soils, while limiting soil disturbing activities;
- *Vegetative communities:* provides for the conservation and restoration of reference vegetative communities;
- *Wildlife:* preserves and restores native habitat, while enhancing wildlife corridors and connectivity;
- *Visual resources:* preserves high value visual resources through protective management goals and objectives;
- *Livestock grazing:* establishes goals and objectives developed to ensure appropriate protection of Monument objects, preservation of wilderness character, and conservation of natural resources and resource values;
- *Travel management (Monument):* establishes use allocations and management goals and objectives limiting motorized vehicle use to designated roads and non-motorized mechanized vehicle use to designated roads and trails on the Monument, as directed in Presidential Proclamation 9131;
- *Travel management (wilderness):* establishes preservation goals and objectives, in accordance with the Wilderness Act, that prohibit motorized vehicle use or non-motorized mechanized vehicle use in designated wilderness areas; and
- *Lands and realty:* provides protection of Monument objects,

preservation of wilderness character, and conservation of natural resources, resource values, and wildlife habitat through establishment of right-of-way exclusion and avoidance areas across the Monument.

Protest of the Proposed RMP

The BLM's planning regulations state that any person who participated in the preparation of the RMP and has an interest that will or might be adversely affected by approval of the Proposed RMP may protest its approval to the BLM Director. Protest of the Proposed RMP constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an Approved RMP.

All protests must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section earlier or submitted electronically through the BLM ePlanning project website, as previously described. Protests submitted electronically by any means other than the ePlanning project website will be invalid unless a protest is also submitted as a hard copy. The BLM Director will render a written decision on each protest. The Director's decision shall be the final decision of the Department of the Interior. Responses to valid protest issues will be compiled and documented in a Protest Resolution Report that will be made available following the protest resolution online at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>. Upon resolution of protests, the BLM will issue a Record of Decision and Approved RMP.

Before including your phone number, email address, or other personal identifying information in your protest, you should be aware that your entire protest—including your personal identifying information—may be made publicly available at any time. While you can ask the BLM in your protest to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2, 43 CFR 1610.5)

Melanie G. Barnes,

BLM New Mexico State Director.

[FR Doc. 2024-23428 Filed 10-10-24; 8:45 am]

BILLING CODE 4331-23-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500180774]

Notice of Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Cascade-Siskiyou National Monument in Oregon/Washington and California

AGENCY: Bureau of Land Management.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended, and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan (RMP) and Final Environmental Impact Statement (EIS) for the Cascade-Siskiyou National Monument (CSNM) and by this notice is announcing the start of a 30-day protest period of the Proposed RMP.

DATES: This notice announces a 30-day protest period to the BLM on the Proposed RMP beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) of the Proposed RMP/Final EIS in the **Federal Register**. The EPA usually publishes its NOAs on Fridays. Protests must be postmarked or electronically submitted on the BLM's ePlanning site during the 30-day protest period.

ADDRESSES: The Proposed RMP and Final EIS is available on the BLM ePlanning project website at <https://eplanning.blm.gov/eplanning-ui/project/2023675/510> and at the BLM Medford District, 3040 Biddle Rd, Medford, OR 97504; and the BLM Klamath Falls Field Office, 2795 Anderson Avenue, Bldg. #25, Klamath Falls, OR 97603.

Instructions for filing a protest with the BLM for the CSNM can be found at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest> and at 43 CFR 1610.5-2. Protests must be submitted at the ePlanning website listed above or to: BLM Director, Attention: Protest Coordinator (HQ210), P.O. Box 151029, Lakewood, CO 80215.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki Haskett, Program Manager, telephone (458)-246-8861; address 3040 Biddle Rd, Medford, OR 97504; email blm_csnm_rmp@blm.gov. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY,

TDD, or TeleBraille) to access telecommunications relay services for contacting Ms. Haskett. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The CSNM boundary, as identified by Presidential Proclamation No. 9564, constitutes the planning area for this RMP. The planning area is 170,407 acres and includes lands within Jackson and Klamath Counties in Oregon, and Siskiyou County in California. The CSNM's decision area is the approximately 113,500 acres of BLM-administered lands within the planning area. While most of the BLM-administered lands are within the BLM Ashland and Klamath Falls Field Offices in Oregon, approximately 5,000 acres are located within the BLM Redding Field Office in California.

The BLM's current RMPs for lands in the decision area do not address all the legal mandates related to management of the congressionally designated National Conservation Lands (*i.e.*, Soda Mountain Wilderness; the Jenny Creek and Spring Creek Wild and Scenic Rivers; the Applegate Trail, which is part of the California National Historic Trail; and the Pacific Crest National Scenic Trail) and the lands included in President Obama's enlargement of the monument boundary. In addition, some aspects of the existing RMPs covering the planning area need to be updated to be consistent with current BLM policies.

The RMP's underlying purpose (40 CFR 1502.13) is to provide a management framework, including objectives and management direction, that guides the BLM's management of the decision area to protect and restore the resources, objects, and values for which the area was designated.

Proposed Action and Alternatives

The Cascade-Siskiyou National Monument Draft RMP and EIS 90-day public comment period began on April 5, 2024, and ended on July 5, 2024. The BLM held four public meetings during the public comment period. The BLM considered and incorporated in the Proposed RMP, as appropriate, comments received from the public, consulting Tribes, cooperating agencies, and internal BLM review. Public comments resulted in the addition of clarifying text, minor changes to the existing alternatives, and a Proposed RMP that is within the range of alternatives and effects analyzed in the Draft RMP/EIS. In addition to the

Proposed RMP (Alternative E), the Final EIS analyzed Alternative A (the no action alternative) and three action alternatives (Alternatives B, C, and D) from the Draft EIS.

Alternative A, the no action alternative, represents current management from the 2008 Cascade-Siskiyou National Monument Approved RMP, the 2016 Southwestern Oregon Approved RMP, and the 1993 Redding Approved RMP. In addition to the existing RMPs, there are several non-discretionary designations established by Congress that apply to lands in the planning area and are not reflected in the current RMPs but are part of the no action alternative.

Alternative B emphasizes flexibility in planning-level direction, promotes intensive, active management to protect monument resources, and maximizes the potential for an array of discretionary actions that are compatible with the protection of CSNM objects and values.

Alternative C emphasizes flexibility in planning-level direction but promotes a moderate level of active management for protection, maintenance, and restoration of CSNM resources, and sets some limitations on management actions and tools available.

Alternative D would rely primarily on natural ecosystem processes that would allow plant community dynamics to unfold without active intervention. Exceptions include the management of young conifer stands (plantations) that are a product of past timber harvest and thinning around legacy trees and along wildfire evacuation routes.

Since the publication of the Draft RMP/EIS, the BLM has developed Alternative E, the Proposed RMP, based largely on Alternative C, the preferred alternative in the Draft RMP/EIS, and to a lesser extent components from the other alternatives. Similar to Alternative C, the Proposed RMP emphasizes flexibility in planning-level direction but promotes a moderate level of active management for protection, maintenance, and restoration of CSNM resources, and sets some limitations on management actions and tools available. The Proposed RMP would not carry forward any Areas of Critical Environmental Concern (ACEC) or Research Natural Areas. The BLM determined that special management attention would be provided by management direction in the plan from other designations and management areas that apply monument-wide and would adequately protect the resource or value. The BLM determined that the entire monument holds historic, cultural, fish and wildlife, and scenic

values that meet the relevance and importance criteria for an ACEC. The Proposed RMP/Final EIS are designed to protect the monument's objects of scientific and historic interest outlined in Presidential Proclamations 7318 and 9564, which would safeguard these resources or values.

The Proposed RMP was developed based on the consideration of public comments, cooperating agency input, and Tribal consultation; updates to the best available science and information; and by combining elements of the alternatives analyzed in the Draft RMP/EIS. Alternative E, the Proposed RMP, is within the range of alternatives considered in the Draft RMP/EIS.

In addition to the analysis of Alternative E, the BLM made other changes that are summarized in Appendix T: Summary of Notable Changes.

Protest of the Proposed RMP

The BLM planning regulations state that any person who participated in the preparation of the RMP and has an interest that will or might be adversely affected by approval of the Proposed RMP may protest its approval to the BLM Director. Protest on the Proposed RMP constitutes the final opportunity for administrative review of the proposed land use planning decisions prior to the BLM adopting an approved RMP. Instructions for filing a protest regarding the Proposed RMP with the BLM Director may be found online at <https://www.blm.gov/programs/planning-and-nepa/public-participation/filing-a-plan-protest> and at 43 CFR 1610.5–2. All protests must be in writing and mailed to the appropriate address, as set forth in the ADDRESSES section earlier or submitted electronically through the BLM ePlanning project website as described previously. Protests submitted electronically by any means other than the ePlanning project website will be invalid unless a protest is also submitted as a hard copy. The BLM Director will render a written decision on each protest. The Director's decision shall be the final decision of the Department of the Interior. Responses to valid protest issues will be compiled and documented in a Protest Resolution Report made available following the protest resolution online at: <https://www.blm.gov/programs/planning-and-nepa/public-participation/protest-resolution-reports>. Upon resolution of protests, the BLM will issue a Record of Decision and Approved RMP.

(Authority: 40 CFR 1501.9, 40 CFR 1506.9, 43 CFR 1610.2, 43 CFR 1610.5)

Barry R. Bushue,
State Director.

[FR Doc. 2024–23440 Filed 10–10–24; 8:45 am]

BILLING CODE 4331–24–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1359]

Certain Portable Battery Jump Starters and Components Thereof (II); Notice of a Commission Determination To Review in Part and, on Review, To Affirm a Final Initial Determination Finding No Violation; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part and, on review, to affirm a final initial determination (“FID”) of the presiding administrative law judge (“ALJ”) finding no violation of section 337. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Namo Kim, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3459. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 18, 2023, based on a complaint filed on behalf of the NOCO Company (“NOCO”) of Glenwillow, Ohio. 88 FR 23686–87 (Apr. 18, 2023). The complaint, as amended, alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (“section 337”), based on the importation into the United States, the sale for importation, and/or the sale within the United States after importation of certain portable battery jump starters and components thereof

by reason of infringement of certain claims of U.S. Patent Nos. 9,770,992 (“the ‘992 patent”); 10,328,808 (“the ‘808 patent”); 10,981,452 (“the ‘452 patent”); 11,254,213 (“the ‘213 patent”); and 11,447,023 (“the ‘023 patent”), as well as common law trade dress infringement, false designation of origin, false advertising, and unfair competition, the threat or effect of which is to destroy or substantially injure an industry in the United States. *Id.* at 23686. The amended complaint further alleges that a domestic industry exists. *Id.* The Commission instituted two separate investigations and defined the scope of the present investigation as whether there is a violation of section 337 based on the allegations of infringement of the asserted claims of the ‘992, ‘808, ‘452, ‘213, and ‘023 patents as to the accused products identified in the notice of investigation.

The notice of investigation named 19 respondents, and the Office of Unfair Import Investigations (“OUII”) is also named as a party. *Id.* at 23687. The 19 respondents are organized into the following four groups:

(1) Shenzhen Take Tools Co. Ltd. of Shenzhen, China; Shenzhenshi Dianjia Technology Co., Ltd., d/b/a Yesper Direct (Hong Kong Haowei Technology Co. Ltd.) of Hong Kong, China; and Guangzhou Sihao Trading Co., Ltd., d/b/a Snailhome (Audew) also d/b/a Shenzhen Xinshu Trading Co. Ltd. of Shenzhen, China (collectively, the “Non-Appearing Respondents”);

(2) Shenzhen Winplus Shenzhen Pinwang Industrial Technology Co., Ltd. of Shenzhen, China; Winplus North America, Inc. of Costa Mesa, California; and Winplus NA, LLC of Costa Mesa, California (collectively, the “Stipulated Respondents”);

(3) Shenzhen Carku Technology Co., Ltd. (“Carku”) of Shenzhen, China; Aukey Technology Co., Ltd. (“Aukey”) of Shenzhen, China; Metasee LLC (“Metasee”) of Pearland, Texas; Ace Farmer LLC (“Ace Farmer”) of Houston, Texas; Shenzhen Gooloo E-Commerce Co., Ltd. (“Gooloo Ecommerce”) of Shenzhen, China; Gooloo Technologies LLC (“Gooloo Technologies”) of Shenzhen, China; Shenzhen Konghui Trading Co., Ltd., d/b/a Hulkman Direct (“Konghui”) of Shenzhen, China; Hulkman LLC (“Hulkman”) of Santa Clara, California; Shenzhenshi Daosishangmao Youxiangongsi, d/b/a Fanttik Direct (“Daosi”) of Shenzhen, China; Shenzhenshi Xinmeitemuxiangbao Zhuangyouxiangongsi, d/b/a Thikpo (Spanarci) (“Xinmeite”) of Shenzhen, China; ChangShaHongMaoKai KeJiYouXianGongSi, d/b/a

TopdonStarter (“HongMaoKai”) of Changsha, China; Shenzhenshi Shoudiankejijouxiangongsi, d/b/a Solvtin (“Shoudian”) of Shenzhen, China (collectively, the “Carku Respondents”); and

(4) ADC Solutions Auto LLC, d/b/a Type S Auto (“ADC”) of Costa Mesa, California. *Id.* at 23686–87.

On June 23, 2023, the Commission amended the complaint and notice of investigation to add infringement allegations as to claims 1–13, 15–30, 32, 33, 35–44, and 46–57 of U.S. Patent No. 11,584,243 (“the ‘243 patent”). Order No. 5 (May 26, 2023), *unreviewed by* Comm’n Notice (June 26, 2023).

On December 21, 2023, the Commission terminated the investigation as to the following asserted claims: (i) claims 2, 4–9, 11–13, and 15–21 of the ‘992 patent; (ii) claims 2–10, 12–15, and 17 of the ‘808 patent; (iii) claims 2–16 of the ‘452 patent; (iv) claims 2–16 of the ‘213 patent; (v) claims 2–4, 6–18, 20–23, 25–28, 31, 33, 35–38, and 41–53 of the ‘023 patent; (vi) claims 3–9, 15–17, 19–25, 29, 30, 32, 33, 35–44, 46–49, 51–53, and 55–57 of the ‘243 patent. Order No. 18 (Nov. 27, 2023), *unreviewed by* Comm’n Notice (Dec. 21, 2023).

On February 7, 2024, the Commission terminated the investigation as to the ‘452 patent and the ‘213 patent. Order No. 24 (Jan. 9, 2024), *unreviewed by* Comm’n Notice (Feb. 7, 2024).

On March 11, 2024, the Commission terminated the investigation as to asserted claims 5, 24, 29–30, and 40 of the ‘023 patent and asserted claims 10–13, 26–28, and 50 of the ‘243 patent, and as to the Non-Appearing Respondents and the Stipulated Respondents. Order No. 26 (Feb. 9, 2024), *unreviewed by* Comm’n Notice (March 11, 2024).

On February 26 to March 1, 2024, the ALJ held an evidentiary hearing, with an additional hearing on March 14, 2024. The ‘023, ‘243, ‘992 and ‘808 patents remained asserted in the investigation as of the evidentiary hearing.

On July 5, 2024, the ALJ issued the FID finding no violation of section 337 with respect to the remaining asserted patents. Specifically, the FID finds that all asserted claims of the four patents are invalid as obvious under 35 U.S.C. 103. The FID finds that certain accused products infringe the asserted claims of the ‘023 and ‘243 patents, none of the accused products infringe the ‘992 and ‘808 patent, and none of the adjudicated redesigns put forth by the Carku Respondents and ADC (collectively, “Respondents”) infringe any of the four asserted patents. The FID also finds that the asserted claims of the ‘023 and ‘243

patents have not been shown to be invalid under 35 U.S.C. 112 based on lack of written description or lack of enablement and have not been shown to be unenforceable. The FID does not address invalidity under 35 U.S.C. 112 or unenforceability for the ‘992 and ‘808 patents because the parties did not raise these issues. Lastly, the FID finds that the domestic industry requirement, both the technical prong and the economic prong, is satisfied for all four asserted patents.

On July 19, 2024, the ALJ issued a Recommended Determination (“RD”) recommending, should the Commission find a violation of section 337, that the Commission issue: (1) a limited exclusion order against Respondents (*i.e.*, the remaining respondents); and (2) cease-and-desist orders against the following respondents: ADC, Metasee, Gooloo, Konghui, Xinmeite, Shoudian, HongMaoKai, and Daosi. The RD further recommends that the Commission set a 100 percent bond during the period of Presidential review.

Also on July 19, 2024, NOCO petitioned for Commission review of the FID’s findings on the ‘023 and ‘243 patents concerning: (1) construction of the claim terms “USB input circuit,” “USB charge circuit,” and “USB input connector” (collectively, “the USB terms”); (2) non-infringement with respect to the accused Carku and ADC products; and (3) invalidity. On the same day, Respondents contingently petitioned for Commission review of the FID’s findings on the ‘023 and ‘243 patents concerning: (1) infringement with respect to the accused Carku and ADC products; (2) validity under § 112; and (3) NOCO’s satisfaction of the domestic industry requirement. Further on the same day, OUII contingently petitioned for Commission review of the FID’s findings on the ‘023 and ‘243 patents concerning: (1) infringement with respect to the accused ADC products and (2) additional non-infringement grounds concerning the accused Carku products. No party petitioned for review of the issues on non-infringement and invalidity as to the ‘992 and ‘808 patents, and enforceability as to the ‘023 and ‘243 patents.

On July 25, 2024, the Commission published its post-RD **Federal Register** notice seeking submissions on public interest issues raised by the relief recommended by the ALJ should the Commission find a violation. 89 FR 60451–52 (July 25, 2024). No responses from the public were filed. Similarly, no parties have submitted a statement on the public interest pursuant to

Commission Rule 210.50(a)(4), 19 CFR 210.50(a)(4).

On July 29, 2024, NOCO responded to Respondents' and OUII's contingent petitions for review of the FID. On the same day, Respondents responded to NOCO's petition (but did not respond to OUII's contingent petition), and OUII responded to NOCO's and Respondents' petitions.

The Commission, having reviewed the record in this investigation, including the FID and the parties' petitions and responses thereto, has determined to review in part and, on review, to affirm the FID's finding of no violation. In particular, the Commission has determined to review and, on review, to clarify the FID's jurisdictional findings by explaining that the Commission's investigative authority is statutory and that the terms "subject matter jurisdiction," "personal jurisdiction," and "in rem jurisdiction" are not relevant to the Commission's investigative authority under section 337. The Commission has also determined to review and, on review, to affirm with supplemental analysis the FID's construction of the USB terms recited in the '023 and '243 patents. The Commission has further determined to review and, on review, to affirm with supplemental analysis the FID's findings that the asserted claims of the '023 and the '243 patents are invalid under 35 U.S.C. 103 and are not invalid under 35 U.S.C. 112. Lastly, the Commission has determined to review and, on review, to take no position with respect to the economic prong of the domestic industry requirement. The Commission has determined not to review the remainder of the FID.

The Commission issues its opinion herewith setting forth its determinations on certain issues. The investigation is terminated.

The Commission vote for this determination took place on October 7, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: October 7, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024-23548 Filed 10-10-24; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Training & Readiness Accelerator II

Notice is hereby given that, on September 4, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Training & Readiness Accelerator II ("TREx II") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Agile Decision Sciences, LLC, Huntsville, AL; AI Strategy Corp, Babylon, NY; Air-Quality Remote-Sensing Consulting, LLC, Madison, AL; Alaka'i Services Group, Inc., Honolulu, HI; Amazon Web Services, Inc., Seattle, WA; Augustine Consulting, Inc., Hamilton, NJ; Auriga Space, Inc., San Francisco, CA; Avarint, LLC, Buffalo, NY; Bishop Ascendant, Inc., Caldwell, NJ; CALIBRE Systems, Inc., Alexandria, VA; CLogic Defense LLC, Jacksonville, FL; Core4ce LLC, Reston, VA; Crowdbotics Corp., Berkeley, CA; Davidson Technologies, Inc., Huntsville, AL; Deep Analytics, LLC, Montpelier, VT; Design West Technologies, Inc., Tustin, CA; DICE Defense LLC, Orlando, FL; DRS Sustainment Systems, Inc., Bridgeton, MO; Dynepic, Inc., Reno, NV; Echodyne Corp., Kirkland, WA; Edge Case Research, Inc., Pittsburgh, PA; Ernst and Young, LLP, New York, NY; Gigantor Technologies, Inc., Melbourne Beach, FL; HAVIK Solutions, LLC, San Diego, CA; HyperBlox Inc., Nashua, NH; IEC Infrared Systems, LLC, Middleburg Heights, OH; Integrated Consultants, Inc., San Diego, CA; Integris Composites, Inc., Goleta, CA; Intelligent Decision Systems, Inc., dba IDSI, Chantilly, VA; International Business Machines Corp., Bethesda, MD; JackTech, LLC, Washington, DC; JIRACOR LLC, Orlando, FL; LMI Consulting, LLC, Tysons, VA; Meroxa, Inc., San Jose, CA; MetroStar Systems, LLC, Reston, VA; Nautilus Defense, LLC, Pawtucket, RI; Nebula Compute, Inc., Wilkes Barre, PA; Open Source Systems, LLC, Suwanee, GA; Programmed Response, LLC, Huntsville, AL; Public Spend Forum LLC, Washington, DC; Quantum Improvements Consulting, LLC,

Orlando, FL; Quoherent, Inc., Huntsville, AL; Response AI Solutions LLC, Arlington, VA; RoGO Fire, LLC, dba RoGO Communications, Westminster, CO; Safire Technology Group, Inc., Tysons, VA; Shearwater Technology, Inc., Washington, IL; Siemens Government Technologies, Inc., Reston, VA; Snowflake Inc., Bozeman, MT; SPARC Research, LLC, Warrenton, VA; Sterling Computers Corp., North Sioux City, SD; Symbiosis.io, LLC, Smyrna, GA; Terida, LLC, Pinehurst, NC; Third Coast Federal, Inc., South Bend, IN; Treble One, LLC, Dayton, OH; Trenchant Analytics, LLC, Great Falls, VA; Trex Enterprises Corp., El Cajon, CA; Via Science, Inc., Somerville, MA; VicForms, LLC, Frackville, PA; and Enquire AI, Inc., Washington, DC, have been added as parties to this venture.

Also, Solid State Scientific Corp., Hollis, NH, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TREx II intends to file additional written notifications disclosing all changes in membership.

On February 17, 2023, TREx II filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 2023 (88 FR 38536).

The last notification was filed with the Department on April 19, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 28, 2024 (89 FR 54045).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-23627 Filed 10-10-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—1EdTech Consortium, Inc.

Notice is hereby given that, on July 16, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), 1EdTech Consortium, Inc. ("1EdTech Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alabama Institute for Deaf and Blind, East Talladega, AL; Education Assessment System, Arlington, VA; University of Georgia, Athens, GA; School Harbor, Phoenix, AZ; Ivy Tech Community College, Indianapolis, IN; MyEducator LLC, Orem, UT; Mountain Brook Schools, Mountain Brook, AL; Uinta County School District #1, Evanston, WY; St. Charles CUSD 303, St. Charles, IL; Swedish National Agency for Education (Statens skolverk), Stockholm, SWEDEN; Massachusetts Institute of Technology, Cambridge, MA; and Vestavia Hills City Schools, Vestavia Hills, AL, have been added as parties to this venture.

Also, Washington State Community and Technical Colleges System, Olympia, WA; Pearl, Richmond, VA; New Hanover County Schools, Wilmington, NC; and Edge Factor Inc., Ontario, CANADA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and 1EdTech Consortium intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, 1EdTech Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on April 29, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52089).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-23594 Filed 10-10-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Z-Wave Alliance

Notice is hereby given that, on July 15, 2024, pursuant to section 6(a) of the National Cooperative Research and

Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Z-Wave Alliance, Inc. (the "Joint Venture") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, EcoDim, Doetinchem, Gelderland, NETHERLANDS; Hank Smart Tech Co. Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Leak Intelligence LLC, Franklin, TN; M2M Services, Hoofddorp, NETHERLANDS; Keaton Chia (University of California, San Diego (Kleissl Lab)), La Jolla, CA; B-Smartfoils, Rauenberg, GERMANY; HAB Home Intelligence, Arlington, TX; Shenzhen Neo Electronics Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Shenzhen Sunricher Technology Limited, Shenzhen, PEOPLE'S REPUBLIC OF CHINA; and Springs Window Fashions, LLC, Middleton, WI, have been added as parties to the venture.

Also, Atsumi Electric, Shizuoka, JAPAN; B-Smart Integration, Rauenberg, GERMANY; GOAP Racunalniski inzeniring in avtomatizacija procesov d.o.o. Nova Gorica, Solkan, SLOVENIA; Shenzhen Shyugi Technology Co., Ltd., Guangdong, PEOPLE'S REPUBLIC OF CHINA; ZoneSystems.est, Khobar City, SAUDI ARABIA; and Ochsner Clinic Foundation, New Orleans, LA, have withdrawn as parties to the venture.

No other changes have been made in either the membership or the planned activity of the venture. Membership in this venture remains open, and the Joint Venture intends to file additional written notifications disclosing all changes in membership.

On November 19, 2020, the Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 1, 2020 (85 FR 77241).

The last notification was filed with the Department on June 14, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on July 29, 2024 (89 FR 60918).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.
[FR Doc. 2024-23595 Filed 10-10-24; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc.

Notice is hereby given that, on August 19, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Shenzhen Topway Video Communication Co., Ltd., Shenzhen, Guangdong, PEOPLE'S REPUBLIC OF CHINA; and Henan Cable TV Network Group Co., Ltd., Zhengzhou, PEOPLE'S REPUBLIC OF CHINA, have been terminated as parties to this venture.

No other changes have been made in either the membership or planned activity of the venture. Membership in this venture remains open, and CableLabs intends to file additional written notifications disclosing all changes in membership.

On August 8, 1988, CableLabs filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on May 17, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52096).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.
[FR Doc. 2024-23619 Filed 10-10-24; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Biopharmaceutical Manufacturing Preparedness Consortium

Notice is hereby given that, on July 11, 2024, pursuant to section 6(a) of the National Cooperative Research and

Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Biopharmaceutical Manufacturing Preparedness Consortium (“BioMaP-Consortium”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Arena BioPharma Consulting LLC, Athens, GA; ReechPharma LLC, Newark, CA; Repligen Corp., Waltham, MA; RexSter Technologies, Inc., Acton, MA; VJ Technologies, Inc., Bohemia, NY; Altor Safety LLC, Valley Cottage, NY; Anverra Pharma LLC, Mt. Pleasant, SC; Arranat Bio MA LLC, Watertown, MA; BioTechnique LLC, York, PA; Celltheon, Union City, CA; CHO Plus, Inc., South San Francisco, CA; Cocoon Bioscience S.L., Derio, SPAIN; CONTINUUS Pharmaceuticals, Inc., Woburn, MA; Convergence, Oklahoma City, OK; DNA Script, Daly City, CA; Evonik Corp., Piscataway, NJ; Gerresheimer Glass, Inc., Vineland, NJ; Innoviva Specialty Therapeutics, Waltham, MA; KBI Biopharma, Durham, NC; Orexo AB, Morristown, NJ; Persist AI Formulations Corp., West Sacramento, CA; Phenom Pharmaceuticals LLC, Miami Beach, FL; Shionogi, Inc., Florham Park, NJ; Solaris Vaccines, Inc., Fort Collins, CO; Spring Discovery, Inc., San Carlos, CA; Sublime LLC, Ann Arbor, MI; Watson-Marlow, Inc., Wilmington, MA; Apotex Corp., Weston, FL; Avid Bioservices, Inc., Tustin, CA; Burrell International Group LLC, Washington, DC; Dark Wolf Solutions LLC, Herdon, VA; GENEVATIONUS LLC, Sacramento, CA; Gusmer Enterprises, Inc., Mountainside, NJ; Integrated Pharma Services, Rockville, MD; Replicate Bioscience, San Diego, CA; Seqirus, Inc., Holly Springs, NC; Signet Healthcare Management LLC, New York, NY; Sterigenics Radiation Technologies LLC, Oak Brook, IL; The Albert B. Sabin Vaccine Institute, Inc., Washington, DC; Virica Biotech, Ottawa, CANADA; Agile GxP Technologies, Providence, RI; Allied Technologies and Consulting LLC, Frederick, MD; Global Key Solutions Corp., Dalton, PA; Industrial Info Resources, Inc., Sugar Land, TX; Prince Sterilization Services LLC, Pine Brook, NJ; Curia Global, Inc., Albany, NY; Donaldson Company, Inc., Bloomington, MN; GCM Pharma, St. Louis, MO; Photosynthetic B.V., Amsterdam, NETHERLANDS; Revagenix, Inc., San Francisco, CA;

Agno Pharmaceuticals LLC, Bethlehem, PA; BioAnalysis LLC, Philadelphia, PA; Cornerstone Government Affairs, Inc., Washington, DC; Cytophage Technologies, Inc., Winnipeg, CANADA; Humanetics Corp., Edina, MN; NorthX Biologics AB, Matfors, SWEDEN; Novavax, Inc., Gaithersburg, MD; Quantiscope PBC, Salt Lake City, UT; Stoic Bio, Inc., San Diego, CA; and Sunflower Therapeutics PBC, Hingham, MA, have been added as parties to this venture.

Also, Quantum Four Labs LLC, Arcadia, CA, has withdrawn as party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the BioMaP-Consortium intends to file additional written notifications disclosing all changes in membership.

On January 5, 2024, the BioMaP-Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26923).

The last notification was filed with the Department on April 12, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52097).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23597 Filed 10–10–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on August 2, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), PXI Systems Alliance, Inc. (“PXI Systems”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Wuhan Pusaisi Electronics Co., Ltd (Pultiwave), Wuhan City, PEOPLE’S

REPUBLIC OF CHINA, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on May 23, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 24, 2024 (89 FR 52508).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23615 Filed 10–10–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Rare Earth Technologies

Notice is hereby given that, on July 18, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Consortium for Rare Earth Technologies (“CREaTe”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Watts & Fisher Pty Ltd, Mandurah, WA; Alkemio, San Francisco, CA; Fluid Photonics Corporation, Lindenhurst, NY; MTL Corp., Bloomington, MN; and Precision Combustion, Inc., North Haven, CT, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CREaTe intends to file additional written notifications disclosing all changes in membership.

On April 22, 2022, CREaTe filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29384).

The last notification was filed with the Department on April 12, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 28, 2024 (89 FR 54042).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23599 Filed 10–10–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—R Consortium, Inc.

Notice is hereby given that, on September 23, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), R Consortium, Inc. (“R Consortium”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Novartis, Hanover, NJ, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and R Consortium intends to file additional written notifications disclosing all changes in membership.

On September 15, 2015, R Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 2, 2015 (80 FR 59815).

The last notification was filed with the Department on April 22, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52090).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23625 Filed 10–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Silicon Integration Initiative, Inc.

Notice is hereby given that, on July 24, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Silicon Integration Initiative, Inc. (“Si2”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Vaire Computing Ltd, London, UNITED KINGDOM; Simple EDA Global Services OÜ, Aaspere, ESTONIA; Moore Threads Inc., San Diego, CA; Enable Design System, Inc., Seoul, REPUBLIC OF KOREA; and D2S, Inc., San Jose, CA, have been added as parties to this venture.

Also, Intento Design S.A.S, Paris, FRANCE; United Semiconductor Japan Co., Ltd, Yokohama, JAPAN; Raon Solution, Ochang-eup, REPUBLIC OF KOREA; Silicon Technologies Inc., Midvale, UT; Semiconductor Components Industries, LLC, DBA ON Semiconductor Corporation (onsemi), Phoenix, AZ; and Raytheon Company, Plano, TX, have withdrawn as parties to this venture.

Additionally, the following members have changed their names: Analog Rails, Tempe, AZ, to Western Semiconductor; HW21, San Francisco, CA, to Generation Alpha (GenAlpha).

Finally, Cadence Design Systems, Inc., Bracknell, UNITED KINGDOM, has purchased Pulsic, Ltd.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Si2 intends to file additional written notifications disclosing all changes in membership.

On December 30, 1988, Si2 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456).

The last notification was filed with the Department on July 19, 2023. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on October 5, 2023 (88 FR 69234).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23614 Filed 10–10–24; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bytecode Alliance Foundation

Notice is hereby given that, on August 12, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Bytecode Alliance Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Interuniversitair Micro-Electronica Centrum vzw, Leuven, BELGIUM, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Bytecode Alliance Foundation intends to file additional written notifications disclosing all changes in membership.

On April 20, 2022, Bytecode Alliance Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29379).

The last notification was filed with the Department on June 6, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 24, 2024 (89 FR 52509).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23622 Filed 10–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rapid Response Partnership Vehicle**

Notice is hereby given that, on July 11, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Rapid Response Partnership Vehicle (“RRPV”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Esperovax, Inc., Plymouth, MI; Genomic Expression, Inc., Beverly, MA; ID Biologics, Inc., Nashville, TN; MPS Medical, Inc., Brea, CA; QuidelOrtho Corp., San Diego, CA; Sinergium Biotech S.A., Buenos Aires, ARGENTINA; Somatek, San Diego, CA; True Diagnostics, Inc., Carlsbad, CA; VaxSyna, Inc., Franklin, NH; Burrell International Group LLC, Washington, DC; Cellular Technology, Ltd., Shaker, OH; QIAGEN LLC, Germantown, MD; RAISONANCE, Inc., Greenwood Village, CO; Canaria Technologies Pty, Ltd., Brisbane, AUSTRALIA; Elarex, Inc., Burlington, CANADA; Gila Diagnostics, Inc., Phoenix, AZ; IIT Research Institute, Chicago, IL; ImmunoServ, Cardiff, UNITED KINGDOM; OraSure Technologies, Inc., Bethlehem, PA; Vaccine Company, Inc., Bethesda, MD; Visby Medical, Inc., San Jose, CA; Global Life Science Solutions USA LLC dba Cytiva, Marlborough, MA; Pathway Policy Group LLC, McLean, VA; PSC Biotech Corporation, Pomona, CA; Q-VANT Biosciences, Inc., Forestdale, MA; Seqirus, Inc., Holly Springs, NC; The Rector and Visitors of the University of Virginia, Charlottesville, VA; Gusmer Enterprises, Inc., Mountainside, NJ; Azure Medical, Inc., La Verne, CA; Cellphire Therapeutics, Inc., Rockville, MD; CorDx, Inc., San Diego, CA; The University of Central Florida Board of Trustees, Orlando, FL; The Albert B. Sabin Vaccine Institute, Inc., Washington, DC; InFlo Medical, Irvine, CA; Shionogi, Inc., Florham Park, NJ; Agno Pharmaceuticals LLC, Bethlehem, PA; Astute Crew LLC, San Lorenzo, CA; CONTINUUS Pharmaceuticals, Inc., Woburn, MA; Cornerstone Government Affairs, Inc., Washington, DC; Cytophage

Technologies, Inc., Winnipeg, CANADA; Decoy Therapeutics, Cambridge, MD; Emergex USA Corp., Doylestown, PA; Emergo Therapeutics, Chapel Hill, NC; GE Medical Systems Information Technologies, Inc. dba GE Healthcare Technology & Innovation Center, Niskayuna, NY; GRI Technology Solutions LLC, San Mateo, CA; Humanetics Corp., Minneapolis, MN; North X Biologics AB, Matfors, SWEDEN; Novavax, Inc., Gaithersburg, MD; Photosynthetic B.V., Amsterdam, NETHERLANDS; Pioneer Vaccine, Inc., Daejeon, REPUBLIC OF KOREA; Quantiscope PBC, Salt Lake City, UT; Validated Cloud, Inc., Waltham, MA; Vivaldi Biosciences, Inc., Fort Collins, CO; Wheeler Bio, Inc., Oklahoma, OK; A-Alpha Bio, Inc., Seattle, WA; Prosetta Biosciences, Inc., San Francisco, CA; Revagenix, Inc., San Francisco, CA; University of Texas Medical Branch at Galveston, Galveston, TX; AlbaNY labs LLC, Rensselaer, NY; AI Proteins, Inc., Boston, MA; Appel Sauce Studios LLC, Menlo Park, CA; Microbiologics, Inc., Saint Cloud, MN; POP Biotechnologies, Buffalo, NY; Southern Research Institute, Birmingham, AL; and SPOC Proteomics, Inc., Scottsdale, AZ, have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RRPV intends to file additional written notifications disclosing all changes in membership.

On January 05, 2024, RRPV filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 16, 2024 (89 FR 26928).

The last notification was filed with the Department on April 12, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52095).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23591 Filed 10–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE**Antitrust Division****Notice Pursuant to the National Cooperative Research and Production Act of 1993—TM Forum**

Notice is hereby given that, on July 23, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301

et seq. (“the Act”), TM Forum, a New Jersey Non-Profit Corporation (“the Forum”), filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Alesia Labs, Ciudad de Mexico, MEXICO; Bluestone PIM, Tønsberg, NORWAY; caspera-lab, Draveil, FRANCE; Converge Information and Communications Technology Solutions, Inc., Angeles City, PHILIPPINES; EZECON Co., Ltd., Khan Doun Penh, CAMBODIA; Hestia Solutions OU, Tallinn, ESTONIA; IDI Billing Solutions, Victor, NY; Indian Institute of Technology Bhilai, Durg, INDIA; Infobip, London, UNITED KINGDOM; Integrated Telecom Company, Riyadh, SAUDI ARABIA; Irem Gamzeli Aktas, Zagreb, CROATIA; Kraken Technologies Limited, London, UNITED KINGDOM; Libyan Academy For Telecom and Informatics, Misurata, LIBYA; Navimentum Information System Ltd., Wuhan, PEOPLE’S REPUBLIC OF CHINA;

PricewaterhouseCoopers International Limited, London, UNITED KINGDOM; PRIME FiBER, LLC, Coppell, TX; RADCOM, Tel Aviv, ISRAEL; Rede Nacional de Ensino e Pesquisa, Botafogo, BRAZIL; Safaricom PLC, Nairobi, KENYA; Sand Technologies, Ebene, MAURITIUS; SHENZHEN MASTERCOM TECHNOLOGY CO.,LTD, Shenzhen, PEOPLE’S REPUBLIC OF CHINA; SHENZHEN NETINFO INTELLIGENT TECHNOLOGIES CO., LTD., Shenzhen, PEOPLE’S REPUBLIC OF CHINA; SHENZHEN YUNSHAN TECHNOLOGY CO., LTD., Shenzhen, PEOPLE’S REPUBLIC OF CHINA; SMART COMMUNICATIONS, INC., Makati City, PHILIPPINES; Telesat LEO Inc., Ottawa, CANADA; Universidad Austral, Pilar, ARGENTINA; University College Cork, Cork, IRELAND; VC4 B.V., Alkmaar, NETHERLANDS; and Y Corporation Limited, London, UNITED KINGDOM, have been added as parties to this venture.

Also, A-OSS Consulting GmbH, Wien, AUSTRIA; ATC IP LLC, Marlborough, MA; Balance ICT Limited, Farnborough, UNITED KINGDOM; Brillio, Edison, NJ; Bruhati Solutions Ltd, Maidenhead, UNITED KINGDOM; Business-intelligence of Oriental Nations Corporation Ltd., Beijing, PEOPLE’S REPUBLIC OF CHINA; Chorus New Zealand Limited, Wellington, NEW ZEALAND; Connectbase, Westborough, MA; Delta

Partners FZ LLC, Dubai, UNITED ARAB EMIRATES; F2V CONSEIL, Lyon, FRANCE; Fujitsu, Kawasaki, JAPAN; Gn0man, Glen Ellyn, IL; IO-Transform Ltd, London, UNITED KINGDOM; Jisc Services Limited, Didcot, UNITED KINGDOM; Maxis Broadband Sdn Bhd, Kuala Lumpur, MALAYSIA; M-net Telekommunikations GmbH, Nürnberg, GERMANY; Ncell, Bagmati, NEPAL; Nuevatel PCS de Bolivia, La Paz, BOLIVIA; Paus TV (barndoor Technology Limited), Liverpool, UNITED KINGDOM; Separate Reality Ltd, Newcastle Upon Tyne, UNITED KINGDOM; Telecom Consultants—TCOVA, Kerava, FINLAND; Telecom Italia Sparkle S.p.A., Rome, ITALY; TEOCO Corporation, Fairfax, VA; Tracfone Wireless, Inc, Miami, FL; and Workato Europe SA, Barcelona, SPAIN, have withdrawn as parties to this venture.

Additionally, the following members have changed their names: Viettel Corporation to Viettel Group, Hanoi, VIETNAM; CGI Info Systems Management Consulting Inc. to CGI Information Systems and Management Consultants Inc., Toronto, CANADA; Intraway Corp to Symphonica, Capital Federal, ARGENTINA; NATEC RD LLC to MEF.DEV, Funchal, PORTUGAL; and TalkTalk Group to PlatformX Communications (PXC), Salford, UNITED KINGDOM.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on April 19, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52088).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23613 Filed 10–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on July 15, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1933, 15 U.S.C. 4301 *et seq.* (“the Act”), Petroleum Environmental Research Forum (“PERF”) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, CDM Smith Inc., Houston, TX, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PERF intends to file additional written notifications disclosing all changes in membership.

On February 10, 1986, PERF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on June 2, 2023. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 22, 2023 (88 FR 57129).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23598 Filed 10–10–24; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Global Synchronizer Foundation

Notice is hereby given that, on September 18, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Global Synchronizer Foundation (“GSF”) has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the identities of the parties to the venture are: Global Blockchain Business Council, Geneva, SWITZERLAND; IntellectEU, Miami, FL; Tradeweb Markets LLC, New York, NY; SBI Digital Asset Holdings Co., Ltd., Tokyo, JAPAN; Calastone Limited, London, UNITED KINGDOM; EquiLend, New York, NY; 7RIDGE Limited, London, UNITED KINGDOM; Broadridge Financial Solutions, Lake Success, NY; BitAlpha, Inc., Miami, FL; Cumberland SV, LLC, Chicago, IL; Digital Asset (Switzerland), GmbH, Zurich, SWITZERLAND; Euroclear SA/NV, Brussels, BELGIUM; Kaleido, Inc., Raleigh, NC; Lending Market Technologies, Miami, FL; Moody’s Investors Service, New York, NY; MPC Holding, Inc., Concord, NH; Obsidian Systems, Claymont, DE; Taurus SA, Geneva, SWITZERLAND; and Liberty City Ventures, New York, NY. The general area of GSF’s planned activity is to raise, budget, and spend funds in support of running a “SuperValidator Node” on the Canton Network (the financial industry’s first privacy-enabled blockchain network); to support the operation of the Canton Network through acting as a synchronizer; and to undertake such other activities as may from time to time be appropriate to further such purpose. Membership in GSF remains open, and GSF intends to file additional written notifications disclosing all changes in membership.

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23624 Filed 10–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Utility Broadband Alliance, Inc.

Notice is hereby given that, on July 23, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Utility Broadband Alliance, Inc., (“UBBA”) has filed written notifications simultaneously

with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, M.Gear, West Covina, CA; and Palo Alto Networks, Santa Clara, CA, have been added as parties to this venture. Also, Amdocs Management Ltd., London, UNITED KINGDOM; and Alpha Wireless, Laois, IRELAND, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UBBA intends to file additional written notifications disclosing all changes in membership.

On May 4, 2021, UBBA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 10, 2021 (86 FR 30981).

The last notification was filed with the Department on April 26, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 28, 2024 (89 FR 54041).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-23604 Filed 10-10-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Open Group, L.L.C.

Notice is hereby given that, on August 21, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Open Group, LLC ("TOG") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alpha Data, Inc., Littleton, CO; American Rheinmetall Systems, Biddeford, ME; AngloGold Ashanti North America, Inc., Greenwood Village, CO; Brandywine Communications, Santa Ana, CA;

Cargill, Inc., Wayzata, MN; CesiumAstro, Inc., Austin, TX; Defense Standardization Program Office, Ft. Belvoir, VA; EA Consulting France, Suresnes, FRANCE; Eleven Six Ltd, Abu Dhabi, UNITED ARAB EMIRATES; Fuse Integration, Inc., San Diego, CA; Icono Digital, Lima, PERU; IT Training Academy SA, Geneva, SWITZERLAND; ManTech International Corporation, Herndon, VA; Momentum World, LLC, Santa Clara, CA; Nagoya University, Nagoya, JAPAN; Power Device Corporation, Bohemia, NY; PTS Expeditionary Communications, Inc., Huntsville, AL; Reideate B.V., Amsterdam, THE NETHERLANDS; Reticulate Micro, Inc., Palm Bay, FL; SUSE, LLC, Pleasant Grove, UT; TBM Council, Bellevue, WA; TerraneXus, Perth, AUSTRALIA; Thales Defense & Security, Inc., Clarksburg, MD, Universidade Federal de Campina Grande (LIEC), Campina Grande, BRAZIL; VICOR Corporation, Andover, MA; VIStology, Mashpee, MA; Wellcoms Drilling & Geology Sarl, Maisonneuve, FRANCE; and Zooey GmbH, Bern, SWITZERLAND, have been added as parties to this venture.

Also, Actenum Corporation, Vancouver, CANADA; Agile Architects NV, Kontich, BELGIUM; ANELLO Photonics Inc., Santa Clara, CA; arcasg, Bogota, COLOMBIA; C3RiOS Systems, Inc., Montreal, CANADA; CAE USA, Inc., Arlington, TX; Cephas Consulting Corp., Tustin, CA; Cepsa, Madrid, SPAIN; COMPETENSIS, Fontaines St Martin, FRANCE; Cornet Technology, Inc., Springfield, VA; DAR Solutions, LLC, Rockford, IL; Dee Ann IT Consulting LLP, Nalagandla, INDIA; Elsevier, Inc., New York, NY; FIOS Insight, LLC, Houston, TX; Flare Solutions Limited, Portsmouth, UNITED KINGDOM; FLIR Systems, Inc., Wilsonville, OR; Freedom Power Systems, Inc., Cedar Park, TX; GooBiz—Goal Oriented Business, Cergy, FRANCE; Hargrove Controls + Automation, LLC, Mobile, AL; Indra Soluciones Tecnologías de la Información S.L.U., Alcobendas, SPAIN; MTN Group Management Services, Johannesburg, SOUTH AFRICA; Naval Information Warfare Center Atlantic, North Charleston, SC; Onyx Data, LLC, Engelwood, CO; Orion Technologies, LLC, Orlando, FL; PGS Geophysical AS, Oslo, NORWAY; PIARA, Inc., Pittsburgh, PA; RADA Technologies, LLC, Germantown, MD; Rebellion Defense, Inc., Washington, DC; The MathWorks, Inc., Natick, MA; Tomahawk Robotics, Inc., Melbourne, FL; Trusted Systems Consulting Group, Cupertino, CA; VisibleRisk, Inc., New

York, NY; and XMPPro, Inc., Dallas, TX, have withdrawn as parties to this venture.

Additionally, the following members have changed their names: Micro Focus (US) to Micro Focus Limited, Downingtown, PA; and Security Express, Pty Ltd to Reasonable Security Institute, Roseville, AUSTRALIA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and TOG intends to file additional written notifications disclosing all changes in membership.

On April 21, 1997, TOG filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 13, 1997 (62 FR 32371).

The last notification was filed with the Department on May 2, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52087).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024-23626 Filed 10-10-24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Information Warfare Research Project Consortium

Notice is hereby given that, on July 12, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Information Warfare Research Project Consortium ("IWRP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3 Reasons Consulting LLC, Mechanicsville, VA; Aeyon LLC, Vienna, VA; Davis Defense Group, Inc., Stafford, VA; Knexus Research LLC, Oxon Hill, MD; LeoLabs Federal, Inc., Chantilly, VA; Nooks LLC, Arlington, VA; Ocean Specialists, Inc., Stuart, FL; Planned Systems International, Inc., Columbia, MD; SpinSys-Dine LLC, Scottsdale, AZ; TekSynap Corp., Reston, VA; and Virtual Service Operations

LLC, Sterling, VA, have been added as parties to this venture.

Also, Avaya Federal Solutions, Fairfax, VA; Bowhead Professional Solutions LLC, Springfield, VA; ClearShark LLC, Hanover, MD; Computer Technologies Consultants, Inc., McLean, VA; Dux Global, Inc. dba EXEPRON, Lafayette, LA; Ellis & Watts Global Industries, Inc., Batavia, OH; Ericsson, Inc., Plano, TX; Exium, Inc., Allen, TX; Federated Wireless, Inc., Arlington, VA; Feith Systems & Software, Inc., Fort Washington, PA; Home2Office Computing Solutions, Inc. dba C3 Networx, San Diego, CA; INDUS Technology, Inc., San Diego, CA; InterSystems Corp., Cambridge, MA; IT Consulting Partners LLC, Jackson, WY; McAfee Public Sector LLC, Columbia, MD; MFGS, Inc., McLean, VA; MicroStrategy Services Corp., Vienna, VA; Octo Consulting Group, Inc., Reston, VA; Perspecta, Inc., Chantilly, VA; ReefPoint Group LLC, Annapolis, MD; SecureG, Inc., Herndon, VA; Sertainty Corp., Nashville, TN; ThunderCat Technology LLC, Reston, VA; Two Six Labs LLC, Arlington, VA; Ultramain Systems, Inc., Albuquerque, NM; and Ventech Solutions, Inc., Columbus, OH, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IWRP intends to file additional written notifications disclosing all changes in membership.

On October 15, 2018, IWRP filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on October 23, 2018 (83 FR 53499).

The last notification was filed with the Department on April 3, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52097).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23603 Filed 10–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Satellite Services Association

Notice is hereby given that, on July 23, 2024, pursuant to section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Mobile Satellite Services Association (“MSSA”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, Digital Locations Inc., Watchung, NJ; ULAK HABERLESME A.S., Çankaya, TURKEY; and Druid Software, Bray, IRELAND, have joined as parties to the venture.

No other changes have been made in either the membership or the planned activity of the venture. Membership in MSSA remains open and MSSA intends to file additional written notifications disclosing all changes in membership.

On April 26, 2024, the Joint Venture filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 21, 2024 (89 FR 52089).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23590 Filed 10–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on August 21, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (the “Act”), Pistoia Alliance, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Osthus GmbH, Aachen, GERMANY; QunaSys, Bunkyo, JAPAN; BioLizard, Gent, BELGIUM; and Medable, Palo Alto, CA, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research

project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on May 28, 2024. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 28, 2024 (89 FR 54046).

Suzanne Morris,
Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23618 Filed 10–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Rust Foundation

Notice is hereby given that, on August 12, 2024, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Rust Foundation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Accelerant Limited, Lower Hutt, NEW ZEALAND; Astral Software Inc., Brooklyn, NY; and Zed Industries, Denver, CO, have been added as parties to this venture.

Also, ParaState Labs, Inc., Lewes, DE, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Rust Foundation intends to file additional written notifications disclosing all changes in membership.

On April 14, 2022, Rust Foundation filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 2022 (87 FR 29384).

The last notification was filed with the Department on June 3, 2024. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 24, 2024 (89 FR 52509).

Suzanne Morris,

Deputy Director Civil Enforcement Operations, Antitrust Division.

[FR Doc. 2024–23620 Filed 10–10–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Michael Berman, D.O.; Decision and Order

On July 6, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Michael Berman, D.O., of Rancho Mirage, California (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 1, Attachment A, at 1, 10. The OSC proposed the revocation of Registrant's DEA Certificate of Registration (registration) No. BB3337905, alleging that Registrant has committed such acts as would render his registration inconsistent with the public interest. *Id.* at 2–3 (citing 21 U.S.C. 823(g)(1), 824(a)(4)).

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* at 8–9 (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.¹ “A default, unless excused, shall be deemed to constitute a waiver of the registrant's/applicant's right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to

support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

I. Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted.² Registrant is deemed to have admitted, and the Agency finds, that from at least January 12, 2021, through at least August 26, 2021, Registrant issued numerous controlled substance prescriptions to undercover DEA Task Force Officers without first conducting an appropriate evaluation, performing a physical examination, taking a patient history, establishing a proper medical justification, or obtaining informed consent. RFAAX 1, Attachment A, at 2–8. Registrant further admits, and the Agency finds, that after prescribing, Registrant failed to properly monitor the undercovers by appropriately addressing red flags of abuse and diversion. *Id.*

A. Prescribing to UC1

Between January 12, 2021, and August 26, 2021, Registrant issued prescriptions for mixed amphetamine salts 30 mg, a Schedule II stimulant, and hydrocodone/acetaminophen 10/325 mg, a Schedule II opioid, to an undercover DEA Task Force Officer (UC1). RFAAX 1, Attachment A, at 3.

On January 12, 2021, February 18, 2021, April 2, 2021, and June 24, 2021, Registrant prescribed UC1 mixed amphetamine salts 30 mg to treat Attention Deficit Hyperactivity Disorder (ADHD), but repeatedly did so without conducting an appropriate evaluation. *Id.* at 3–5. Specifically, Registrant: (1) failed, during the initial visit, to address UC1's ADHD questionnaire, despite UC1 reporting minimal symptoms of ADHD; (2) repeatedly failed to perform adequate physical examinations of UC1; and (3) repeatedly failed to take a patient history. *Id.* Accordingly, Registrant repeatedly failed to establish a proper medical justification for prescribing mixed amphetamine salts to UC1. *Id.* Registrant also repeatedly failed to obtain UC1's informed consent by informing UC1 of the benefits, risks, and reasons for prescribing mixed amphetamine salts. *Id.*

² The Agency need not adjudicate the criminal violations alleged in the instant OSC. *Ruan v. United States*, 142 S. Ct. 2,370 (2022) (decided in the context of criminal proceedings).

On July 23, 2021, and August 26, 2021, Registrant prescribed UC1 mixed amphetamine salts 30 mg and hydrocodone/acetaminophen 10/325 mg, but in both instances did so without conducting an appropriate evaluation. *Id.* at 5–6. In both instances, Registrant again failed to perform an adequate physical examination of UC1 and failed to take a patient history. *Id.* Accordingly, Registrant failed in both instances to establish a proper medical justification for prescribing mixed amphetamine salts and hydrocodone/acetaminophen to UC1. *Id.* Registrant also failed in both instances to obtain UC1's informed consent by informing UC1 of the benefits, risks, and reasons for prescribing mixed amphetamine salts and hydrocodone/acetaminophen. *Id.*

Throughout Registrant's treatment of UC1, Registrant failed to properly monitor UC1's medication compliance and failed to appropriately address red flags of abuse and/or diversion. *Id.* at 3–6. Specifically, when UC1 tested negative for all drugs on a urine drug test, despite reporting that he/she was taking mixed amphetamine salts and hydrocodone/acetaminophen, Registrant failed to discuss the test results with UC1. *Id.* at 3. Further, Registrant repeatedly failed to address UC1's regular receipt of the highest dosages of oxycodone, hydrocodone/, alprazolam, carisoprodol, and mixed amphetamine salts from different physicians, as indicated on the California Controlled Substance Utilization, Review and Evaluation System (CURES). *Id.* at 3–6.³ Finally, when provided with UC1's prior medical file, Registrant failed to address the diversion red flag that UC1 tried hydrocodone/acetaminophen and carisoprodol (“Soma”) that he/she had obtained from a friend. *Id.* at 5.

B. Prescribing to UC2

Between February 9, 2021, and April 20, 2021, Registrant issued prescriptions for mixed amphetamine salts 30 mg to an undercover DEA Special Agent (UC2). *Id.* at 6.

On February 9, 2021, March 10, 2021, and April 20, 2021, Registrant prescribed UC2 mixed amphetamine

³ Registrant also failed to address that: (1) UC1 received hydrocodone/acetaminophen from a different physician between the January 12, 2021, and February 18, 2021 visits; (2) UC1 received alprazolam, hydrocodone/acetaminophen, and mixed amphetamine salts from different physicians between the February 18, 2021, and April 2, 2021 visits; and (3) UC1 received alprazolam, hydrocodone/acetaminophen, and mixed amphetamine salts from different physicians between the April 2, 2021, and June 24, 2021 visits. *Id.* at 4–5.

¹ Based on the Government's submissions in its RFAA dated October 16, 2023, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the Declaration from a DEA Diversion Investigator (DI) indicates that on July 12, 2023, the DI personally left a copy of the OSC along with her business card at Registrant's registered address. RFAAX 1, at 1–2. The DI also stated in her Declaration that on August 22, 2023, Registrant's attorney contacted her and noted that Registrant received the OSC and business card. *Id.* at 2. Additionally, the Declaration from a DEA Group Supervisor (GS) indicates that on July 14, 2023, the GS sent a copy of the OSC via certified mail to Registrant's registered address and emailed a copy of the OSC to Registrant's registered email address. RFAAX 2, at 2; *see also id.*, at Attachment A.

salts 30 mg to treat ADHD. *Id.* at 6–8.⁴ As with UC1, Registrant repeatedly issued the mixed amphetamine salts prescriptions without conducting an appropriate evaluation. *Id.* Specifically, Registrant: (1) failed, during the initial visit, to address UC2's ADHD questionnaire, despite UC2 reporting minimal symptoms of ADHD; (2) repeatedly failed to perform adequate physical examinations of UC2; and (3) repeatedly failed to take a patient history. *Id.* Accordingly, Registrant repeatedly failed to establish a proper medical justification for prescribing mixed amphetamine salts to UC2. *Id.* Registrant also repeatedly failed to obtain UC2's informed consent by informing UC2 of the benefits, risks, and reasons for prescribing mixed amphetamine salts. *Id.*

Throughout Registrant's treatment of UC2, Registrant failed to properly monitor UC2's medication compliance and failed to appropriately address red flags of abuse and/or diversion. *Id.* at 6–8. For example, Registrant failed to appropriately address UC2's negative urine drug screen, UC2's admission that he/she diverted drugs to his/her boyfriend, and UC2's CURES report, which showed that UC2 filled controlled substance prescriptions at multiple pharmacies and regularly received the highest dosages of hydrocodone/acetaminophen, alprazolam, mixed amphetamine salts, oxycodone, and diazepam. *Id.* at 7.

DEA consulted with an independent medical expert who reviewed recordings of the undercover visits with Registrant described above. *Id.* at 8. The medical expert concluded that Registrant's prescribing “violated the minimum medical standards applicable to the practice of medicine in California.” *Id.* Registrant is deemed to have admitted, and the Agency finds, that the controlled substance prescriptions described above were not issued for a legitimate medical purpose or in the usual course of professional practice. *Id.*

II. Discussion

A. The Five Public Interest Factors

Under the Controlled Substances Act (CSA), “[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration

under [21 U.S.C. 823] inconsistent with the public interest as determined under such section.” 21 U.S.C. 824(a). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant's] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant's] conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

The Agency considers these public interest factors in the disjunctive. *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall v. Drug Enf't Admin.*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.*, 58 FR 37507, 37508 (1993).

While the Agency has considered all of the public interest factors in 21 U.S.C. 823(g)(1),⁵ the Government's evidence in support of its *prima facie* case for revocation of Registrant's registration is confined to Factors B and D. See RFAAX 1, Attachment A, at 2–3. Moreover, the Government has the burden of proof in this proceeding. 21 CFR 1301.44.

Here, the Agency finds that the Government's evidence satisfies its *prima facie* burden of showing that Registrant's continued registration would be “inconsistent with the public interest.” 21 U.S.C. 824(a)(4).

⁵ As to Factor A, the record contains no evidence of a recommendation from any state licensing board or professional disciplinary authority. 21 U.S.C. 823(g)(1)(A). Nonetheless, an absence of such evidence “does not weigh for or against a determination as to whether continuation of the [registrant's] DEA certification is consistent with the public interest.” *Roni Dreszer, M.D.*, 76 FR 19434, 19444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of an offense under either federal or state law “relating to the manufacture, distribution, or dispensing of controlled substances.” 21 U.S.C. 823(g)(1)(C). However, Agency cases have found that “the absence of such a conviction is of considerably less consequence in the public interest inquiry” and is therefore not dispositive. *Dewey C. MacKay, M.D.*, 75 FR 49956, 49973 (2010). Finally, as to Factor E, the Government's evidence fits squarely within the parameters of Factors B and D and does not raise “other conduct which may threaten the public health and safety.” 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

Factors B and D

Evidence is considered under Public Interest Factors B and D when it reflects compliance (or non-compliance) with laws related to controlled substances and experience dispensing controlled substances. See *Sualeh Ashraf, M.D.*, 88 FR 1095, 1097 (2023); *Kareem Hubbard, M.D.*, 87 FR 21156, 21162 (2022). In the current matter, the Government has alleged that Registrant violated both federal and state law regulating controlled substances. RFAAX 1, Attachment A, at 1–2. Specifically, under federal regulations, a prescription for a controlled substance is valid only if “issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 CFR 1306.04(a). As for state law, California regulations also require that “[a] prescription for a controlled substance shall only be issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his or her professional practice.” Cal. Health & Safety Code sec. 11153(a). Additionally, California regulations define unprofessional conduct to include, as relevant here: violating or attempting to violate any provision of the Medical Practice Act; gross negligence; repeated negligent acts; incompetence; and “[p]rescribing, dispensing, or furnishing [controlled substances] without an appropriate prior examination and a medical indication.” Cal. Bus. & Prof. Code secs. 2234, 2242(a).

Here, Registrant has admitted, and the Agency finds, that Registrant repeatedly issued prescriptions for controlled substances without conducting appropriate evaluations, establishing a medical justification for the controlled substances prescribed, or obtaining informed consent. RFAAX 1, Attachment A, at 3–8. Further, Registrant has admitted, and the Agency finds, that Registrant repeatedly failed to properly monitor the two undercovers' medication compliance and failed to appropriately address red flags of abuse and/or diversion. *Id.* DEA's medical expert concluded, and thus the Agency finds, that Registrant's prescribing “violated the minimum medical standards applicable to the practice of medicine in California.” *Id.* at 8. Registrant has further admitted, and the Agency finds, that none of the above-referenced controlled substance prescriptions were issued for a legitimate medical purpose in the usual course of professional practice. As such, the Agency finds that Registrant violated 21 CFR 1306.04(a); California

⁴ The OSC notes that on March 10, 2021, Registrant prescribed UC2 60 tablets of Adderall 30 mg. *Id.* at 7. Adderall is a brand name for amphetamine-dextroamphetamine, a Schedule II controlled substance.

Health & Safety Code sec. 11153(a); and California Business & Professions Code secs. 2234, 2242(a).

Accordingly, the Agency finds that Factors B and D weigh in favor of revocation of Registrant's registration and thus finds Registrant's continued registration to be inconsistent with the public interest in balancing the factors of 21 U.S.C. 823(g)(1). The Agency further finds that Registrant failed to provide any evidence to rebut the Government's *prima facie* case.

III. Sanction

Where, as here, the Government has established grounds for revocation, the burden shifts to the registrant to show why he can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18882, 18910 (2018). To establish that he can be entrusted with registration, a registrant must both accept responsibility and demonstrate that he has undertaken corrective measures. *Holiday CVS, L.L.C., dba CVS Pharmacy Nos 219 and 5195*, 77 FR 62316, 62339 (2012) (internal quotations omitted). Trust is necessarily a fact-dependent determination based on individual circumstances; therefore, the Agency looks at factors such as the acceptance of responsibility, the credibility of that acceptance as it relates to the probability of repeat violations or behavior, the nature of the misconduct that forms the basis for sanction, and the Agency's interest in deterring similar acts. *See, e.g., Robert Wayne Locklear, M.D.*, 86 FR 33738, 33746 (2021).

Here, Registrant failed to answer the allegations contained in the OSC and did not otherwise avail himself of the opportunity to refute the Government's case. As such, Registrant has made no representations as to his future compliance with the CSA nor made any demonstration that he can be entrusted with registration. Moreover, the evidence presented by the Government shows that Registrant violated the CSA, further indicating that Registrant cannot be entrusted.

Accordingly, the Agency will order the revocation of Registrant's registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BB3337905 issued to Michael Berman, D.O. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Michael Berman, D.O., to renew or modify this registration, as well as any

other pending application of Michael Berman, D.O., for additional registration in California. This Order is effective November 12, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 2, 2024, 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**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024-23513 Filed 10-10-24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

William J. Mack, M.D.; Decision and Order

On March 21, 2024, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to William J. Mack, M.D., of Leawood, Kansas (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 3. The OSC proposed the revocation of Registrant's Certificate of Registration No. BM8877473, alleging that Registrant's registration should be revoked because Registrant is "currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of Kansas, the state in which [he is] registered with DEA." *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 2.¹ "A

¹ Based on the Government's submissions in its RFAA dated May 3, 2024, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the Government's Notice of Service of Order to Show Cause indicates that Registrant was

default, unless excused, shall be deemed to constitute a waiver of the [registrant's] right to a hearing and an admission of the factual allegations of the [OSC]." 21 CFR 1301.43(e).

Further, "[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67." *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant's default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant's default, the factual allegations in the OSC are admitted. According to the OSC, Registrant's Kansas medical license was suspended on January 30, 2024. RFAAX 2, at 2. According to Kansas online records, of which the Agency takes official notice, Registrant's Kansas medical license is under a "Previous" status with the "License Type" listed as "Cancelled—Suspended."² Kansas Board of Healing Arts Licensee & Registrant Profile Search, <https://www.kansas.gov/ssrv-ksbhada/search.html> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice medicine in Kansas, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by

personally served with the OSC on March 26, 2024. RFAAX 1, at 1, 3.

² Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding—even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute the Agency's finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration, at dea.addo.attorneys@dea.gov.

State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, D.O.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, D.O.*, 43 FR 27616, 27617 (1978).³

According to Kansas statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the packaging, labeling or compounding necessary to prepare the substance for that delivery” Kan. Stat. Ann. sec. 65–4101(l) (2024). Further, a “practitioner” includes, among others, “a person licensed to practice medicine and surgery” *Id.* sec. 65–4101(ll).

Here, the undisputed evidence in the record is that Registrant lacks authority to practice medicine in Kansas. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in Kansas. Thus, because Registrant lacks authority to practice medicine in Kansas and, therefore, is not authorized to handle controlled substances in Kansas, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate

³ This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR at 71371–72; *Sheran Arden Yeates, D.O.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.*, 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.*, 53 FR 11919, 11920 (1988); *Frederick Marsh Blanton*, 43 FR 27617.

of Registration No. BM8877473 issued to William J. Mack, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of William J. Mack, M.D., to renew or modify this registration, as well as any other pending application of William J. Mack, M.D., for additional registration in Kansas. This Order is effective November 12, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 2, 2024, 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**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–23515 Filed 10–10–24; 8:45 am]

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Robert P. Hansen, M.D.; Decision and Order

On November 29, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause (OSC) to Robert P. Hansen, M.D., of Fresno, California (Registrant). Request for Final Agency Action (RFAA), Exhibit (RFAAX) 2, at 1, 4. The OSC proposed the revocation of Registrant’s Certificate of Registration No. BH4921727, alleging that Registrant’s registration should be revoked because Registrant is “currently without authority to prescribe, administer, dispense, or otherwise handle controlled substances in the State of California, the state in which [he is] registered with DEA.” *Id.* at 2 (citing 21 U.S.C. 824(a)(3)).

The OSC notified Registrant of his right to file with DEA a written request for hearing, and that if he failed to file such a request, he would be deemed to have waived his right to a hearing and be in default. *Id.* at 2–3 (citing 21 CFR 1301.43). Here, Registrant did not

request a hearing. RFAA, at 3.¹ “A default, unless excused, shall be deemed to constitute a waiver of the registrant’s/applicant’s right to a hearing and an admission of the factual allegations of the [OSC].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant’s default pursuant to 21 CFR 1301.43(c), (f), 1301.46. RFAA, at 1; *see also* 21 CFR 1316.67.

Findings of Fact

The Agency finds that, in light of Registrant’s default, the factual allegations in the OSC are admitted. According to the OSC, effective August 18, 2023, Registrant surrendered his California physician and surgeon license. RFAAX 2, at 2. According to California online records, of which the Agency takes official notice, Registrant’s California physician and surgeon license remains surrendered.² California DCA License Search, <https://search.dca.ca.gov> (last visited date of signature of this Order). Accordingly, the Agency finds that Registrant is not licensed to practice as a physician in

¹ Based on the Government’s submissions in its RFAA dated February 26, 2024, the Agency finds that service of the OSC on Registrant was adequate. Specifically, the included Declaration from a DEA Diversion Investigator (DI) indicates that on January 10, 2024, Registrant was successfully served a copy of the OSC via email to his registered email address, as the email was not returned as undeliverable. RFAAX 1, at 1, 3; *Mohammed S. Aljanaby, M.D.*, 82 FR 34552, 34552 (2017) (finding that service by email satisfies due process where the email is not returned as undeliverable and other methods have been unsuccessful). The DI notes in the Declaration that Registrant was mailed a copy of the OSC on or about December 8, 2023, but on January 10, 2024, the mailing was returned as undeliverable. RFAAX 1, at 1.

² Under the Administrative Procedure Act, an agency “may take official notice of facts at any stage in a proceeding—even in the final decision.” United States Department of Justice, Attorney General’s Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), “[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.” Accordingly, Registrant may dispute the Agency’s finding by filing a properly supported motion for reconsideration of findings of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by email to the other party and to Office of the Administrator, Drug Enforcement Administration at dea.addo.attorneys@dea.gov.

California, the state in which he is registered with DEA.

Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under 21 U.S.C. 823 “upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.” With respect to a practitioner, DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner’s registration. *See, e.g., James L. Hooper, M.D.*, 76 FR 71371, 71372 (2011), *pet. for rev. denied*, 481 F. App’x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 FR 27616, 27617 (1978).³

According to California statute, “dispense” means “to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, furnishing, packaging, labeling, or compounding necessary to prepare the substance for that delivery.” Cal. Health & Safety Code sec. 11010 (West 2024). Further, a “practitioner” means a person “licensed, registered, or otherwise permitted, to distribute, dispense, conduct research with respect to, or administer, a controlled substance in the course of professional practice or research in [the] state.” *Id.* sec. 11026(c).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice as a physician in

California. As discussed above, an individual must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant currently lacks authority to practice as a physician in California and, therefore, is not currently authorized to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, the Agency will order that Registrant’s DEA registration be revoked.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BH4921727 issued to Robert P. Hansen, M.D. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Robert P. Hansen, M.D., to renew or modify this registration, as well as any other pending application of Robert P. Hansen, M.D., for additional registration in California. This Order is effective November 12, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 2, 2024, 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**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

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DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Janet S. Pettyjohn, D.O.; Decision and Order

On June 21, 2023, the Drug Enforcement Administration (DEA or Government) issued an Order to Show Cause and Immediate Suspension of Registration (OSC/ISO) to Janet S. Pettyjohn, D.O., of Tampa, Florida (Registrant). Request for Final Agency

Action (RFAA), Exhibit (RFAAX) 2, at 1. The OSC/ISO informed Registrant of the immediate suspension of her DEA registration, Control No. AP6641713,¹ pursuant to 21 U.S.C. 824(d), alleging that Registrant’s continued registration constitutes “‘an imminent danger to the public health or safety.’” *Id.* (quoting 21 U.S.C. 824(d)). The OSC/ISO also proposed the revocation of Registrant’s registration, alleging that Registrant’s continued registration is inconsistent with the public interest. *Id.* (citing 21 U.S.C. 823(g)(1), 824(a)(4)).

The OSC/ISO notified Registrant of her right to file with DEA a written request for hearing within 30 days after the date of receipt of the OSC/ISO. RFAAX 2, at 6. The OSC/ISO also notified Registrant that if she failed to file such a request, she would be deemed to have waived her right to a hearing and be in default. *Id.* (citing 21 CFR 1301.43). Here, Registrant did not request a hearing. RFAA, at 1–2.² “A default, unless excused, shall be deemed to constitute a waiver of the [registrant’s] right to a hearing and an admission of the factual allegations of the [OSC/ISO].” 21 CFR 1301.43(e).

Further, “[i]n the event that a registrant . . . is deemed to be in default . . . DEA may then file a request for final agency action with the Administrator, along with a record to support its request. In such circumstances, the Administrator may enter a default final order pursuant to [21 CFR] § 1316.67.” *Id.* § 1301.43(f)(1). Here, the Government has requested final agency action based on Registrant’s default pursuant to 21 CFR 1301.43(c), (f), because Registrant has not timely requested a hearing nor filed an Answer to the June 21, 2023 OSC/ISO. *See also id.* § 1316.67.

I. Findings of Fact

The Agency finds that, in light of Registrant’s default, the factual allegations in the OSC/ISO are admitted. 21 CFR 1301.43(e). Accordingly, Registrant admits that between August 2021 and February 2023, she issued 60 prescriptions for controlled substances to six individuals without conducting

¹ This registration expired on March 31, 2024. RFAAX 1. The fact that a registrant allows her registration to expire during the pendency of an administrative enforcement proceeding does not impact the Agency’s jurisdiction or prerogative to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 FR 68474, 68479 (2019).

² Based on the Government’s submissions in its RFAA dated December 18, 2023, the Agency finds that service of the OSC/ISO on Registrant was adequate. Attached to the Government’s RFAA is the Declaration of a DEA Diversion Investigator asserting that on June 21, 2023, the OSC/ISO was served on Registrant’s counsel, who confirmed receipt. RFAAX 3, appendix A, at 1.

³ This rule derives from the text of two provisions of the Controlled Substances Act (CSA). First, Congress defined the term “practitioner” to mean “a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.” 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner’s registration, Congress directed that “[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.” 21 U.S.C. 823(g)(1). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, DEA has held repeatedly that revocation of a practitioner’s registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper*, 76 FR 71371–72; *Sheran Arden Yeates, D.O.*, 71 FR 39130, 39131 (2006); *Dominick A. Ricci, D.O.*, 58 FR 51104, 51105 (1993); *Bobby Watts, D.O.*, 53 FR 11919, 11120 (1988); *Frederick Marsh Blanton*, 43 FR 27617.

medical examinations, evaluating the individuals, or maintaining any medical documentation to support the prescriptions. RFAAX 2, at 2–5.

Registrant also admits that among these 60 prescriptions, nine were issued in response to text messages requesting the prescriptions. *Id.* Registrant further admits that, for all 60 prescriptions, her conduct reflects negative experience in prescribing controlled substances and that her conduct was outside the usual course of professional practice. *Id.* at 1–3.

A. Prescribing to S.G.

Registrant admits that from August 21, 2021, to February 9, 2023, Registrant issued to S.G. 27 prescriptions containing hydromorphone³ and/or alprazolam⁴ without conducting a medical examination or evaluation of S.G. and without maintaining any medical documentation to support the prescriptions. RFAAX 2, at 3.

B. Prescribing to L.P.

Registrant admits that from January 5, 2022, to January 23, 2023, Registrant issued to L.P. 12 prescriptions containing oxycodone,⁵ hydromorphone, and/or alprazolam, including one hydromorphone prescription that was issued in response to a text message requesting the prescription, without conducting a medical examination or evaluation of L.P. and without maintaining any medical documentation to support the prescriptions. RFAAX 2, at 3–4.

C. Prescribing to C.P.–C.

Registrant admits that from February 3, 2022, to February 13, 2023, Registrant issued to C.P.–C. 14 prescriptions containing oxycodone and/or alprazolam, including one oxycodone prescription that was issued in response to a text message requesting the prescription, without conducting a medical examination or evaluation of C.P.–C. and without maintaining any medical documentation to support the prescriptions. RFAAX 2, at 4.

D. Prescribing to J.A.

Registrant admits that on January 12, 2023, and February 16, 2023, Registrant issued to J.A. two prescriptions for oxycodone, each of which were issued in response to text messages requesting the prescriptions, without conducting a medical examination or evaluation of

J.A. and without maintaining any medical documentation to support the prescriptions. RFAAX 2, at 4.

E. Prescribing to DC

Registrant admits that from February 24, 2022, to January 12, 2023, Registrant issued to DC four prescriptions containing oxycodone, methadone,⁶ and/or alprazolam. RFAAX 2, at 4–5. Specifically, Registrant admits that on February 24, 2022, and January 12, 2023, Registrant issued to DC two prescriptions for oxycodone in response to text messages requesting the prescriptions. *Id.* at 5. Registrant admits that on March 5, 2022, she issued to DC a prescription for alprazolam in response to a text message requesting the prescription. *Id.* Registrant admits that on December 29, 2022, she issued to DC a prescription for methadone in response to a text message requesting the prescription. *Id.* Registrant issued each of these prescriptions to DC without conducting a medical examination or evaluation of DC and without maintaining any medical documentation to support the prescriptions. *Id.*

F. Prescribing to J.D.

Registrant admits that on February 3, 2023, Registrant issued to J.D. a prescription for oxycodone in response to a text message requesting the prescription and without conducting a medical examination or evaluation of J.D. or maintaining any medical documentation to support the prescription. RFAAX 2, at 5.

II. Discussion

A. 21 U.S.C. 823(g)(1): The Five Public Interest Factors

Under the Controlled Substances Act (CSA), “[a] registration . . . to . . . dispense a controlled substance . . . may be suspended or revoked by the Attorney General upon a finding that the registrant . . . has committed such acts as would render his registration under [section 823 of this title] inconsistent with the public interest as determined under such section.” 21 U.S.C. 824(a)(4). In making the public interest determination, the CSA requires consideration of the following factors:

(A) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(B) The [registrant’s] experience in dispensing, or conducting research with respect to controlled substances.

(C) The [registrant’s] conviction record under Federal or State laws relating to the

manufacture, distribution, or dispensing of controlled substances.

(D) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(E) Such other conduct which may threaten the public health and safety.

21 U.S.C. 823(g)(1).

When making this determination, DEA considers the public interest factors in the disjunctive. *Robert A. Leslie, M.D.*, 68 FR 15227, 15230 (2003). Each factor is weighed on a case-by-case basis. *Morall v. Drug Enf’t Admin.*, 412 F.3d 165, 173–74 (D.C. Cir. 2005). Any one factor, or combination of factors, may be decisive. *David H. Gillis, M.D.*, 58 FR 37507, 37508 (1993).

While the Agency has considered all the public interest factors of 21 U.S.C. 823(g)(1),⁷ the Government’s evidence in support of its *prima facie* case for sanction is confined to Factors B and D. *See generally* RFAAX 2. The Government has the burden of proof in this proceeding. 21 CFR 1301.44.

Here, the Agency finds that the Government satisfied its *prima facie* burden of showing that Registrant’s continued registration would be “inconsistent with the public interest.” 21 U.S.C. 824(a)(4).

1. Factors B and D

Evidence is considered under Factors B and D when it reflects compliance or non-compliance with laws related to controlled substances and experience dispensing controlled substances. *See Kareem Hubbard, M.D.*, 87 FR 21156, 21162 (2022). In the current matter, the Government has alleged that Registrant has violated both Federal and Florida law regulating controlled substances. RFAAX 2, at 1–2.

According to the CSA’s implementing regulations, a lawful controlled

⁷ As to Factor A, there is no record evidence of disciplinary action against Registrant’s State medical license. 21 U.S.C. 823(g)(1)(A). State authority to practice medicine is “a necessary, but not a sufficient condition for registration. . . .” *Robert A. Leslie, M.D.*, 68 FR at 15230. Therefore, “[t]he fact that the record contains no evidence of a recommendation by a State licensing board does not weigh for or against a determination as to whether continuation of the [Registrant’s] DEA certification is consistent with the public interest.” *Roni Dreszer, M.D.*, 76 FR 19434, 19444 (2011). As to Factor C, there is no evidence in the record that Registrant has been convicted of any Federal or State law offense “relating to the manufacture, distribution, or dispensing of controlled substances.” 21 U.S.C. 823(g)(1)(C). However, as Agency cases have noted, “the absence of such a conviction is of considerably less consequence in the public interest inquiry” and is therefore not dispositive. *Dewey C. MacKay, M.D.*, 75 FR 49956, 49973 (2010). As to Factor E, the Government’s evidence fits squarely within the parameters of Factors B and D and does not raise “other conduct which may threaten the public health and safety.” 21 U.S.C. 823(g)(1)(E). Accordingly, Factor E does not weigh for or against Registrant.

³ Hydromorphone is a schedule II opioid. 21 CFR 1308.12(b)(1)(vii).

⁴ Alprazolam is a schedule IV depressant. 21 CFR 1308.14(c)(2).

⁵ Oxycodone is a schedule II opioid. 21 CFR 1308.12(b)(1)(xiv).

⁶ Methadone is a schedule II opioid. 21 CFR 1308.12(c)(15).

substance order or prescription is one that is “issued for a legitimate medical purpose by an individual practitioner acting in the usual course of his professional practice.” 21 CFR 1306.04(a). A “practitioner must establish and maintain a *bona fide* doctor-patient relationship in order to act ‘in the usual course of . . . professional practice’ and to issue a prescription for a ‘legitimate medical purpose.’” *Dewey C. Mackay, M.D.*, 75 FR at 49973. Here, Registrant admits that her prescribing of controlled substances was outside the usual course of professional practice and that her conduct reflects negative experience in prescribing controlled substances. RFAAX 2, at 1–3.

Regarding the standards for adequacy of medical records, Florida law requires that medical documentation must “contain sufficient information to identify the patient, support the diagnosis, justify the treatment and document the course and results of treatment accurately, by including, at a minimum, patient histories; examination results; test results; records of drugs prescribed, dispensed, or administered; reports of consultations and hospitalizations; and copies of records or reports or other documentation obtained from other health care practitioners. . . .” Fla. Admin. Code section 64B8–9.003(3); RFAAX 2, at 2. Florida law also requires that medical documentation contain “sufficient detail to clearly demonstrate why the course of treatment was undertaken.” *Id.* section 64B8–9.003(2); RFAAX 2, at 2. Here, Registrant admits that she issued 60 prescriptions for controlled substances to six individuals without maintaining any medical documentation whatsoever to justify the prescribing of controlled substances. RFAAX 2, at 2–5.

Prior to prescribing a controlled substance for acute pain, Florida law requires practitioners to maintain “accurate and complete” medical documentation that includes, but is not limited to, the patient’s medical history and physical examination; diagnostic results; consultations; treatment objectives; discussion of risks and benefits; treatments; medications; instructions and agreements; drug testing results; and periodic reviews. Fla. Stat. section 456.44(3); Fla. Admin. Code section 64B8–9.013(2); RFAAX 2, at 2. Here, not only does Registrant admit that she issued 60 prescriptions for controlled substances to six individuals without maintaining any medical documentation, she admits she never conducted the physical examinations she was required to

document. RFAAX 2, at 2–5. Registrant further admits that nine of these prescriptions were issued in response to text messages requesting the controlled substances. *Id.*

Based on Registrant’s admissions, the Agency finds that from August 21, 2021, to February 16, 2023, Registrant issued 60 prescriptions to six individuals outside the usual course of professional practice and in violation of Federal and State laws. 21 CFR 1306.04(a); Fla. Stat. section 456.44(3); Fla. Admin. Code sections 64B8–9.003(2)–(3), 64B8–9.013(2).

In sum, the Agency finds Registrant’s continued registration to be inconsistent with the public interest after balancing the factors of 21 U.S.C. 823(g)(1). The Agency also finds that Registrant failed to provide sufficient mitigating evidence to rebut the Government’s *prima facie* case.

III. Sanction

Where, as here, the Government has established sufficient grounds to revoke Registrant’s registration, the burden shifts to the registrant to show why she can be entrusted with the responsibility carried by a registration. *Garret Howard Smith, M.D.*, 83 FR 18882, 18910 (2018). “[T]rust is necessarily a fact-dependent determination based” on individual circumstances; therefore, the Agency looks at factors such as “the acceptance of responsibility and the credibility of that acceptance as it relates to the probability of repeat violations or behavior.” *Robert Wayne Locklear, M.D.*, 86 FR 33738, 33746 (2021). To be effective, acceptance of responsibility must be unequivocal. *Mohammed Asgar, M.D.*, 83 FR 29569, 29573 (2018). When a registrant has committed acts inconsistent with the public interest, she must both accept responsibility and demonstrate that she has undertaken corrective measures. *Holiday CVS, L.L.C., d/b/a CVS/Pharmacy Nos. 219 and 5195*, 77 FR 62316, 62339 (2012) (internal quotations omitted).

Here, Registrant did not request a hearing, submit a corrective action plan, respond to the OSC/ISO, or otherwise avail herself of the opportunity to refute the Government’s case. As such, Registrant has made no representations as to her future compliance with the CSA, has not demonstrated that she can be entrusted with registration, and has not accepted responsibility for the misconduct. Accordingly, the Agency will order the revocation of Registrant’s registration.

Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C.

824(a), I hereby revoke DEA Certificate of Registration No. AP6641713 issued to Janet S. Pettyjohn, D.O. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(g)(1), I hereby deny any pending applications of Janet S. Pettyjohn, D.O., to renew or modify this registration, as well as any other pending application of Janet S. Pettyjohn, D.O., for additional registration in Florida. This Order is effective November 12, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on October 2, 2024, 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**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–23511 Filed 10–10–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request, Sectoral Strategies and Employer Engagement Portfolio, New Collection

AGENCY: Office of the Assistant Secretary for Policy, Chief Evaluation Office, Department of Labor.

ACTION: Notice of information collection; request for comment.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95). 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

is properly assessed. Currently, the Department of Labor is soliciting comments concerning the collection of data about the Sectoral Strategies and Employer Engagement Portfolio. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before December 10, 2024.

ADDRESSES: You may submit comments by either one of the following methods: *Email:* ChiefEvaluationOffice@dol.gov; *Mail or Courier:* Evan Murphy, Chief Evaluation Office, OASP, U.S. Department of Labor, Room S-2312, 200 Constitution Avenue NW, Washington, DC 20210. *Instructions:* Please submit one copy of your comments by only one method. All submissions received must include the agency name and OMB Control Number identified above for this information collection. Comments, including any personal information provided, become a matter of public record. They will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT:

Evan Murphy by email at ChiefEvaluationOffice@dol.gov or by phone at (202) 693-0224.

SUPPLEMENTARY INFORMATION:

I. Background: The Chief Evaluation Office (CEO) of the U.S. Department of Labor (DOL) intends to design and conduct an evaluation to document the implementation and assess the success of the three grant programs within the Sectoral Strategies and Employer Engagement Portfolio (SSEEP): Building Pathways to Infrastructure Jobs Grant (BP), Nursing Expansion Grant (NEG), and Critical Sectors Job Quality Grant (Critical Sectors). The goal of this project is to build knowledge about sector strategies. The SSEEP evaluation includes three components: (1) an implementation evaluation to understand program implementation, partnership development, and lessons for all 34 BP and 25 NEG grantees as well as all 5 Tier 2 Critical Sectors grantees; (2) an impact and cost-benefit evaluability assessment of the Building Pathways to Infrastructure Jobs Grant (BP) and Nursing Expansion Grant (NEG) programs to examine the feasibility of conducting a rigorous evaluation with these grant programs, and; (3) a formative study to identify effective strategies for reducing barriers to employment, engaging and working in partnership with employers, and

applying the U.S. Department of Labor's Good Jobs Principles to critical sector occupations.

This **Federal Register** Notice provides the opportunity to comment on proposed data collection instruments that will be used in the implementation evaluation: a grantee survey for the BP and NEG grantees, a grantee survey for CS grantees, a partner survey, an employer survey, and semi-structured site visit discussion guides for program staff, partners, employers, and participants.

1. *Grantee Survey for BP and NEG Grantees.* We will field a survey to the 34 BP grantees and 25 NEG grantees. The grantee survey will systematically collect information on program operations and the types of activities and services provided across grantees. The grantee survey will be designed to primarily elicit closed-ended responses to help ensure comparability and completeness of responses and to allow for statistical summaries and analysis. The survey will be modular such that each topic and questions within that topic can be tailored to the specific aspects of each grant program. The grantee survey will be programmed and administered online using ConfirmIT or a similar survey program.

2. *Grantee Survey for CS grantees.* We will field a survey to the five Critical Sectors Tier 2 grantees. Similar to the survey for NEG and BP grantees, this survey will systematically collect information on program operations and the types of activities and services provided across grantees. The grantee survey will be designed to primarily elicit closed-ended responses to help ensure comparability and completeness of responses and to facilitate analysis. The survey will be modular such that each topic and questions within that topic can be tailored to the specific aspects of each grant program. The grantee survey will be programmed using ConfirmIT or a similar survey software, and will be administered by study team members over the phone with grantee representatives.

3. *Partner Survey.* We will field a survey to a subset of partners identified by grantees in response to the grantee survey and from their grant applications. The partner survey will contribute important information about the nature of partnerships between partner organizations and lead grantee organizations. The survey will be modular such that each topic and questions within that topic can be tailored to the specific aspects of each grant program. The partner survey will be programmed and administered

online using ConfirmIT and fielded to partners of BP and NEG grantees.

4. *Employer Survey.* We will field a survey to employers identified by grantees in response to the grantee survey. The employer survey will contribute important data about employer engagement strategies, employer roles in the sector strategies grant programs, and employer perceptions of the program. The survey will be modular such that each topic and questions within that topic can be tailored to the specific aspects of each grant program. The employer survey will be programmed through ConfirmIT and administered by evaluation team members over phone/webinar to help obtain complete, clear responses.

5. *Semi-structured discussion guides for program staff, partners, employers, and participants.* We will conduct site visits to approximately 17 grantees across the BP, NEG, and Critical Sectors programs. Site visits will document the program context, program organization and staffing, program components including education/training activities and support services, and other relevant aspects of sector strategies programs. During the visits, site teams will interview key grantee administrators, program staff, partners (e.g., training providers, support service providers), and employers using discussion guides. During these site visits, we will also conduct semi-structured interviews with program participants. The discussion guides will also include guides for follow-up phone interviews. In the final year of the grant, we will conduct semi-structured follow-up phone calls with grantee staff to document changes that occurred after our visits, lessons and sustainability plans.

II. Desired Focus of Comments:

Currently, the Department of Labor is soliciting comments concerning the above data collection for the Sectoral Strategies and Employer Engagement Portfolio Program Evaluation. DOL is particularly interested in comments that do the following:

- evaluate whether the proposed collection of information is necessary for the proper performance functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's burden estimate of the proposed information collection, including the validity of the methodology and assumptions;
- 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—for example, permitting electronic submissions of responses.

III. Current Actions: At this time, the Department of Labor is requesting

clearance for the grantee survey, partner survey, employer survey, and semi-structured site visit discussion guides for grantee staff, partners, employers, and participants.

Type of Review: New information collection request.

OMB Control Number: 1290–0NEW.

Affected Public: Individuals or households.

Comments submitted in response to this request will be summarized and/or 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.

ESTIMATED ANNUAL BURDEN HOURS

Type of instrument (form/activity)	Number of respondents	Number of responses per respondent	Total number of responses	Average burden time per response (hours)	Estimated burden hours
Grantee survey for BP and NEG	¹ 20	1	20	1.5	30
Grantee survey for CS	² 2	1	2	1.5	3
Partner survey	³ 98	1	98	.5	49
Employer survey	⁴ 98	1	98	.5	49
Semi-structured site visit discussion guide: grantee staff ...	⁵ 34	1	34	1.5	51
Semi-structured site visit discussion guide: partners	⁶ 17	1	17	1	17
Semi-structured site visit discussion guide: employers	⁷ 11	1	11	1	11
Semi-structured site visit discussion guide: participants	⁸ 23	1	23	1	23
Semi-structured follow-up phone interview guide	⁹ 8	1	8	1.5	12
Total	311	.....	311	.....	244

¹ Assumes 100% response rate from 59 grantees involved in the BP and NEG implementation study over the three-year clearance period. This number is rounded up from 19.67.

² Assumes 100% response rate from 5 grantees involved in the CS implementation study over the three-year clearance period. This number is rounded up from 1.67.

³ Assumes approximately 5 partners per 59 grantees over the three-year clearance period. This number has been rounded down from 98.33.

⁴ Assumes approximately 5 employers per 59 grantees over the three-year clearance period. This number has been rounded up from 98.33.

⁵ Assumes approximately 6 staff per site visit grantee for approximately 17 site visits over the three-year clearance period.

⁶ Assumes approximately 3 partners per site visit grantee for approximately 17 site visits over the three-year clearance period.

⁷ Assumes approximately 2 employers per site visit grantee for approximately 17 site visits over the three-year clearance period. This number has been rounded down from 11.33.

⁸ Assumes approximately 4 worker-participants per site visit grantee for approximately 17 site visits over the three-year clearance period. This number has been rounded up from 22.67.

⁹ Assumes 2 staff members per 12 grantees (six each from BP & NEG) over the three-year clearance period.

Alix Gould-Werth,

Chief Evaluation Officer, U.S. Department of Labor.

[FR Doc. 2024–23527 Filed 10–10–24; 8:45 am]

BILLING CODE 4510–HX–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Federal Council on the Arts and the Humanities

Arts and Artifacts Indemnity Panel Advisory Committee

AGENCY: Federal Council on the Arts and the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, notice is hereby given that the Federal Council on the Arts and the Humanities will hold a meeting of the Arts and Artifacts International Indemnity Panel.

DATES: The meeting will be held on Thursday, November 14, 2024, from 12:00 p.m. until adjourned.

ADDRESSES: The meeting will be held by videoconference originating at the National Endowment for the Arts, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506, (202) 606–8322; evoyatzis@neh.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is for panel review, discussion, evaluation, and recommendation on applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities, for exhibitions beginning on or after January 1, 2025. Because the meeting will consider proprietary financial and commercial data provided in confidence by indemnity applicants, and material that is likely to disclose trade secrets or other privileged or confidential information, and because it is important to keep the values of objects to be indemnified and the

methods of transportation and security measures confidential, I have determined that that the meeting will be closed to the public pursuant to subsection (c)(4) of section 552b of title 5, United States Code. I have made this determination under the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated April 15, 2016.

Dated: October 7, 2024.

Jessica Graves,

Paralegal Specialist, National Endowment for the Humanities.

[FR Doc. 2024–23522 Filed 10–10–24; 8:45 am]

BILLING CODE 7536–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m., Thursday, October 17, 2024.

PLACE: via ZOOM.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

- Regular Board of Directors meeting.
- The General Counsel of the Corporation has certified that in her opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) permit closure of the following portion(s) of this meeting:
- Executive (Closed) Session

Agenda

- I. Call to Order
- II. Sunshine Act Approval of Executive (Closed) Session
- III. Executive Session: CEO Report
- IV. Executive Session: CFO Report
- V. Executive Session: General Counsel Report
- VI. Executive Session: CIO Report
- VII. Executive Session: Officer Performance Metrics
- VIII. Action Item: Approval of August 13 Audit Committee Meeting and August 15 Regular Board Meeting Minutes
- IX. Action Item: 2024 Delegation of Authority Revision
- X. Action Item: Acceptance of HUD Comprehensive Housing Counseling Grant Award
- XI. Discussion Item: FY2025–2027 Strategic Plan
- XII. Discussion Item: Revision to the Corporate Bylaws—Tenure Protection of Chief Audit Executive Position

PORTIONS OPEN TO THE PUBLIC:

Everything except the Executive (Closed) Session.

PORTIONS CLOSED TO THE PUBLIC:

Executive (Closed) Session.

CONTACT PERSON FOR MORE INFORMATION:

Jenna Sylvester, Paralegal, (202) 568–2560; jsylvester@nw.org.

Jenna Sylvester,
Paralegal.

[FR Doc. 2024–23702 Filed 10–9–24; 11:15 am]

BILLING CODE 7570–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meetings

TIME AND DATE: 4:00 p.m., Wednesday, October 16, 2024.

PLACE: via ZOOM.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Special Board of Directors meeting.

The General Counsel of the Corporation has certified that in her opinion, one or more of the exemptions set forth in the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) permit closure of the following portion(s) of this meeting:

- Executive (Closed) Session

Agenda

- I. Call to Order
- II. Sunshine Act Approval of Executive (Closed) Session
- III. Executive Session: GBP and DOA Resolution Revision

PORTIONS OPEN TO THE PUBLIC:

Everything except the Executive (Closed) Session.

PORTIONS CLOSED TO THE PUBLIC:

Executive (Closed) Session.

CONTACT PERSON FOR MORE INFORMATION:

Jenna Sylvester, Paralegal, (202) 568–2560; jsylvester@nw.org.

Jenna Sylvester,
Paralegal.

[FR Doc. 2024–23703 Filed 10–9–24; 11:15 am]

BILLING CODE 7570–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2024–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of October 14, 21, 28, and November 4, 11, 18, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at Anne.Silk@nrc.gov. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at

Betty.Thweatt@nrc.gov or Samantha.Miklaszewski@nrc.gov.

MATTERS TO BE CONSIDERED:

Week of October 14, 2024

There are no meetings scheduled for the week of October 14, 2024.

Week of October 21, 2024—Tentative

There are no meetings scheduled for the week of October 21, 2024.

Week of October 28, 2024—Tentative

Wednesday, October 30, 2024

1:00 p.m. Today and Tomorrow Across Region II Business Lines (Public Meeting) (Contact: Katie McCurry: 404–997–4438)

Additional Information: The meeting will be held in the 8th Floor Conference Center, Marquis One Tower, 245 Peachtree Center Avenue NE, Suite 1200, Atlanta, Georgia. The public is invited to attend the Commission's meeting in person or watch live via webcast at the web address—<https://video.nrc.gov/>.

Week of November 4, 2024—Tentative

There are no meetings scheduled for the week of November 4, 2024.

Week of November 11, 2024

Thursday, November 14, 2024

9:00 a.m. Strategic Programmatic Overview of the Operating Reactors and New Reactors Business Lines (Public Meeting) (Contact: Annie Ramirez: 301–415–6780)

Additional Information: The meeting will be held in the Commissioners' Hearing Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the web address—<https://video.nrc.gov/>.

Week of November 18, 2024—Tentative

There are no meetings scheduled for the week of November 18, 2024.

CONTACT PERSON FOR MORE INFORMATION:

For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at Wesley.Held@nrc.gov.

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: October 9, 2024.

For the Nuclear Regulatory Commission.

Wesley W. Held,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2024–23792 Filed 10–9–24; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–36, 50–321, and 50–366; NRC–2024–0147]

Southern Nuclear Operating Company; Edwin I. Hatch Nuclear Plant Units 1 and 2; Independent Spent Fuel Storage Installation; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an environmental assessment (EA) and a finding of no significant impact (FONSI) for an exemption request submitted by Southern Nuclear Operating Company (SNC) that would permit Edwin I. Hatch Nuclear Plant (Hatch) Units 1 and 2, to maintain and load 68M multi-purpose canisters (MPC) with continuous basket shims (CBS) in the HI-STORM 100 Cask System at its Hatch Units 1 and 2 independent spent fuel storage installation (ISFSI) in a storage condition where the terms, conditions, and specifications in the Certificate of Compliance (CoC) No. 1014, Amendment No. 11 are not met.

DATES: The EA and FONSI referenced in this document are available on October 11, 2024.

ADDRESSES: Please refer to Docket ID NRC–2024–0147 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–2024–0147. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to PDR.Resource@nrc.gov. For the convenience of the reader, instructions

about obtaining materials referenced in this document are 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 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: Heath Stroud, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–287–3664; email: Heath.Stroud@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is reviewing an exemption request from SNC, dated June 25, 2024, and supplemented on July 26, 2024. SNC is requesting an exemption, pursuant to section 72.7 of title 10 of the *Code of Federal Regulations* (10 CFR), "Specific exemptions," in paragraphs 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 72.214 that require SNC to comply with the terms, conditions, and specifications of the CoC No. 1014, Amendment No. 11. If approved, the exemption would allow SNC to maintain three loaded and to load five new MPC–68M–CBS in the HI-STORM 100 Cask System at the Hatch ISFSI in a storage condition where the terms, conditions, and specifications in the CoC No. 1014, Amendment No. 11, are not met.

II. Environmental Assessment

Background

Hatch is 32 kilometers (20 miles) east of Vidalia, Georgia. The plant is located on the southwest side of the Altamaha River. Unit 1 began operating in 1975 and Unit 2 began operating in 1979. SNC has been storing spent fuel in the Hatch ISFSI under a general license as authorized by 10 CFR part 72, subpart K, "General License for Storage of Spent Fuel at Power Reactor Sites." SNC currently uses the HI-STORM 100 Cask System under CoC No. 1014, Amendment No. 11 for dry storage of spent nuclear fuel in a specific MPC (*i.e.*, MPC–68M) at the Hatch ISFSI.

Description of the Proposed Action

The CoC is the NRC-approved design for each dry cask storage system. The proposed action would exempt the applicant from the requirements of 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and

72.214 only as these requirements pertain to the use of the MPC–68M–CBS in the HI-STORM 100 Cask System. The exemption would allow SNC to maintain three loaded and to load five new MPC–68M–CBS in the HI-STORM 100 Cask System at the Hatch ISFSI, despite the MPC–68M–CBS in the HI-STORM 100 Cask System not being in compliance with the terms, conditions, and specifications in the CoC No. 1014, Amendment No. 11.

The HI-STORM 100 Cask System CoC provides the requirements, conditions, and operating limits necessary for use of the system to store spent fuel. Holtec International (Holtec), the designer and manufacturer of the HI-STORM 100 Cask System, developed a variant of the design with CBS for the MPC–68M, known as MPC–68M–CBS. Holtec originally implemented the CBS variant design under the provisions of 10 CFR 72.48, which allows licensees to make changes to cask designs without a CoC amendment under certain conditions (listed in 10 CFR 72.48(c)). After evaluating the specific changes to the cask designs, the NRC determined that Holtec erred when it implemented the CBS variant design under 10 CFR 72.48, as this was not the type of change allowed without a CoC amendment. For this reason, the NRC issued three Severity Level IV violations to Holtec. However, SNC had previously loaded three MPC–68M–CBS in the HI-STORM 100 Cask System and plans to load five MPC–68M–CBS in the HI-STORM 100 Cask System beginning in April 2025. This exemption considers the storage of the three already loaded systems and the planned loading of the five canisters with the CBS variant basket design.

Need for the Proposed Action

SNC requested this exemption because SNC is currently out of compliance with NRC requirements, resulting from the previous loading of spent fuel into a storage system with the CBS variant basket design. This exemption would allow three already loaded MPC–68M–CBS in the HI-STORM 100 Cask System to remain in storage at the Hatch ISFSI. The exemption would also allow SNC to load five new MPC–68M–CBS in HI-STORM 100 Cask System at the Hatch ISFSI for the future loading campaign scheduled to begin in April 2025.

Approval of the exemption request would allow SNC to effectively manage the spent fuel pool margin and capacity to enable refueling and offloading fuel from the reactor. It would also allow SNC to effectively manage the availability of the specialized resources and equipment needed to support

competing fuel loading and operational activities at Hatch.

Environmental Impacts of the Proposed Action

This EA evaluates the potential environmental impacts of granting an exemption from the terms, conditions, and specifications in CoC No. 1014, Amendment No. 11. The exemption would allow three already loaded MPC–68M–CBS in the HI-STORM 100 Cask System to remain loaded at the Hatch ISFSI. The exemption would also allow five new MPC–68M–CBS to be loaded in the HI-STORM 100 Cask System in loading campaigns and maintained in storage at the Hatch ISFSI.

The potential environmental impacts of storing spent nuclear fuel in NRC-approved storage systems have been documented in previous assessments. On July 18, 1990 (55 FR 29181), the NRC amended 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The EA for the 1990 final rule analyzed the potential environmental impacts of using NRC-approved storage casks. The EA for the HI-STORM 100 Cask System, CoC No. 1014, Amendment No. 11, published in 2018 tiers off of the EA issued for the July 18, 1990, final rule (83 FR 63794). “Tiering” off earlier EAs is a standard process encouraged by the regulations implementing the National Environmental Policy Act of 1969 (NEPA) that entails the use of impact analyses of previous EAs to bound the impacts of a proposed action where appropriate. The Holtec HI-STORM 100 Cask System is designed to mitigate the effects of design basis accidents that could occur during storage. Considering the specific design requirements for the accident conditions, the design of the cask would prevent loss of containment, shielding, and criticality control. If there is no loss of containment, shielding, or criticality control, the environmental impacts would not be significant.

The exemptions requested by SNC at the Hatch site as they relate to CoC No. 1014, Amendment No. 11, for the HI-STORM 100 Cask System are limited to the use of the CBS variant basket design only for the three previously loaded canisters and planned loading of five canisters utilizing the CBS variant

basket design. The staff has determined that this change in the basket will not result in either radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the environmental assessment supporting the issuance of CoC No. 1014, Amendment No. 11. If the exemption is granted, there will be no significant change in the types or amounts of any effluents released, no significant increase in individual or cumulative public or occupational radiation exposure, and no significant increase in the potential for or consequences from radiological accidents. Accordingly, the Commission concludes that there would be no significant environmental impacts associated with the proposed action.

Alternative to the Proposed Action

The staff considered the no-action alternative. The no-action alternative (denial of the exemption request) would require SNC to unload spent fuel from the MPC–68M–CBS in the HI-STORM 100 Cask System to bring it in compliance with the CoC terms, conditions, and specifications in the CoC No. 1014, Amendment No. 11. Unloading the cask would subject station personnel to additional radiation exposure, generate additional contaminated waste, increase the risk of a possible fuel handling accident, and increase the risk of a possible heavy load handling accident. Furthermore, the removed spent fuel would need to be placed in the spent fuel pool, where it would remain until it could be loaded into an approved storage cask. SNC has rescheduled its 2024 loading campaign to April 2025, and further delay in the loading of this spent fuel into other casks could affect SNC’s ability to effectively manage the spent fuel pool capacity and reactor fuel offloading. Not allowing the planned future loading campaign could affect SNC’s ability to manage pool capacity, reactor fuel offloading, and refueling. It could also pose challenges to spent fuel heat removal and impact the availability of the specialized resources and equipment needed to support competing fuel loading and operational activities at Hatch, including spent fuel pool clean-up and refueling outages. SNC has ordered an additional five MPC–68M

canisters for the planned loading starting in April 2025, that comply with CoC No. 1014, Amendment No. 11. However, due to factors outside of SNC’s control, delivery of the compliant canisters is not guaranteed for the April 2025 loading.

The NRC has determined that the no-action alternative would result in undue potential human health and safety impacts that could be avoided by proceeding with the proposed exemption, especially given that the staff has concluded in NRC’s Safety Determination Memorandum, issued with respect to the enforcement action against Holtec regarding these violations, that fuel can be stored safely in the MPC–68M–CBS canisters.

Agencies Consulted

The NRC provided the Georgia Division of Natural Resources (DNR) and Georgia Emergency Management and Homeland Security Administration (GEMA) a copy of this draft EA for review by an email dated August 28, 2024. On September 25, 2024, Georgia DNR and GEMA provided its concurrence by email.

III. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements in 10 CFR part 51, which implement NEPA. Based upon the foregoing environmental assessment, the NRC finds that the proposed action of granting the exemption from the regulations in 10 CFR 72.212(a)(2), 72.212(b)(3), 72.212(b)(5)(i), 72.212(b)(11), and 72.214, which require the licensee to comply with the terms, conditions, and specifications of the CoC, in this case limited to the past and specific future loading of baskets with the CBS variant design, would not significantly impact the quality of the human environment. Accordingly, the NRC has determined that a FONSI is appropriate, and an environmental impact statement is not warranted.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS, as indicated.

Document description	ADAMS Accession No. or Federal Register notice
SNC’s request for exemption, dated June 25, 2024	ML24177A217.
SNC’s request for exemption, amended, dated July 26, 2024	ML24208A172.
Renewed Certificate of Compliance No. 1014, Amendment 11, dated June 29, 2023	ML23328A045 (Package).
Holtec International, Inc.—Notice of Violation; The U.S. Nuclear Regulatory Commission Inspection Report No. 07201014/2022–201, EA–23–044, dated January 30, 2024.	ML24016A190.

Document description	ADAMS Accession No. or Federal Register notice
10 CFR part 72 amendment to allow spent fuel storage in NRC-approved casks, dated July 18, 1990	55 FR 29181.
EA for part 72 amendment to allow spent fuel storage in NRC-approved casks, dated March 8, 1989	ML051230231.
Direct final rule for List of Approved Spent Fuel Storage Casks: Holtec International HI-STORM 100 Cask System CoC No. 1014, Certificate and Amendment Nos. 11 and 12, dated December 12, 2018.	83 FR 63794.
Safety Determination of a Potential Structural Failure of the Fuel Basket During Accident Conditions for the HI-STORM 100 and HI-STORM Flood/Wind Dry Cask Storage Systems, dated January 31, 2024.	ML24018A085.
NRC email to Georgia DNR and GEMA, "State's review of EA/FONSI for Hatch Exemption," dated August 28, 2024.	ML24274A068.
Georgia DNR and GEMA email response, "State's response regarding EA/FONSI for Hatch Exemption," dated September 25, 2024.	ML24274A067.

Dated: October 8, 2024.

For the Nuclear Regulatory Commission.

Christian Jacobs,

*Acting Chief, Storage and Transportation
Licensing Branch, Division of Fuel
Management, Office of Nuclear Material
Safety and Safeguards.*

[FR Doc. 2024-23630 Filed 10-10-24; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. MC2025-19; Order No. 7662]

Mail Classification Schedule

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is recognizing a recently filed Postal Service request to convert the experimental product offering USPS Connect Local Mail into a permanent product offering on the Mail Classification Schedule. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 12, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction and Overview
- II. Commission Action
- III. Ordering Paragraphs

I. Introduction and Overview

On October 3, 2024, the Postal Service filed a request with the Commission pursuant to 39 U.S.C. 3642 and 39 CFR

3045.18 to convert the experimental product offering USPS Connect Local Mail into a permanent product offering on the *Mail Classification Schedule*.¹ In support of its Request, the Postal Service filed the following documents:

- Attachment A to Request—Proposed Changes to the Mail Classification Schedule;
- Attachment B to Request—Market Test Quarterly Data Collection Reports;
- Attachment C to Request—Resolution of the Governors of the United States Postal Service; and
- Attachment D to Request—Statement of Supporting Justification

See Request, Attachments A through D.

The USPS Connect Local Mail market test was initially authorized by the Commission on January 4, 2022.² It was then extended through January 9, 2025.³ Order No. 6080 at 20. USPS Connect Local Mail is a derivative of First-Class Mail that functions as an alternative to long-distance, end-to-end mailing for use by business mailers who wish to send mail locally with regular frequency. *Id.* at 2. The Postal Service asserts that the USPS Connect Local Mail market test has proven successful and that it now wishes to insert the USPS Connect Local Mail product offering into the *Mail Classification Schedule* under section 1115 (Market

¹ United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, October 3, 2024 (Request). The Postal Service has previously filed two other requests to convert this experimental product into a permanent offering, both of which were denied. See Docket No. MC2023-12, Order Dismissing Without Prejudice Postal Service's Request to Convert USPS Connect Local Mail Market Test to a Permanent Offering, October 17, 2022, at 5-6 (Order No. 6301); Docket No. MC2023-12, Order Dismissing Without Prejudice the Postal Service's Revised Request to Convert USPS Connect Local Mail Market Test to a Permanent Offering, January 20, 2023 (Order No. 6423).

² Docket No. MT2022-1, Order Authorizing Market Test of Experimental Product—USPS Connect Local Mail, January 4, 2022 (Order No. 6080).

³ Docket No. MT2022-1, Order Authorizing Extension of USPS Connect Local Mail Market Test, December 13, 2023 (Order No. 6860).

Dominant Products: First-Class Mail: First-Class Mail Flats). Request at 5. The Postal Service maintains that the USPS Connect Local Mail product meets all the conditions in 39 U.S.C. 3642 and 39 CFR 3045.18 for adding a non-experimental product based on an experimental product to the product list. *Id.* at 6-8. The Postal Service also, as required by 39 CFR 3045.18(e), filed a separate notice of the instant request in Docket No. MT2022-1.⁴ The planned rate for USPS Connect Local Mail is \$2.95. See Request at 10.

II. Commission Action

The Commission establishes Docket No. MC2025-19 to consider the Postal Service's Request. Interested persons may submit comments on whether the Request is consistent with the policies of 39 U.S.C. 3642, 39 CFR 3045.18, and 39 CFR 3040.130 through .135. Comments are due by November 12, 2024.

The Request and related filings are available on the Commission's website (<http://www.prc.gov>). The Commission encourages interested persons to review the Request for further details.

The Commission appoints Joanne Diez to serve as Public Representative in this proceeding.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. MC2025-19 for consideration of the United States Postal Service Request to Convert USPS Connect Local Mail to a Permanent Offering, filed October 3, 2024.

2. Pursuant to 39 U.S.C. 505, Joanne Diez is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons are due by November 12, 2024.

⁴ Docket No. MT2022-1, United States Postal Service Notice of Request to Convert USPS Connect Local Mail to Permanent Offering, October 3, 2024.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,
Secretary.

[FR Doc. 2024-23585 Filed 10-10-24; 8:45 am]

BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2025-22 and K2025-21; MC2025-26 and K2025-25; MC2025-27 and K2025-26; MC2025-28 and K2025-27; MC2025-29 and K2025-28; MC2025-30 and K2025-29; MC2025-31 and K2025-30; MC2025-32 and K2025-31; MC2025-33 and K2025-32; MC2025-34 and K2025-33; MC2025-35 and K2025-34]

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:* October 15, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Summary of Proceeding(s)

I. Introduction

Pursuant to 39 CFR 3041.405, the Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal

Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2025-22 and K2025-21; *Filing Title:* Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 435 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* October 15, 2024.

2. *Docket No(s):* MC2025-26 and K2025-25; *Filing Title:* Priority Mail & USPS Ground Advantage Contract 374 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Alain Brou; *Comments Due:* October 15, 2024.

3. *Docket No(s):* MC2025-27 and K2025-26; *Filing Title:* Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 439 to Competitive

Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Almaroof Agoro; *Comments Due:* October 15, 2024.

4. *Docket No(s):* MC2025-28 and K2025-27; *Filing Title:* Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 440 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Maxine Bradley; *Comments Due:* October 15, 2024.

5. *Docket No(s):* MC2025-29 and K2025-28; *Filing Title:* Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 441 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Gregory S. Stanton; *Comments Due:* October 15, 2024.

6. *Docket No(s):* MC2025-30 and K2025-29; *Filing Title:* Priority Mail & USPS Ground Advantage Contract 375 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 15, 2024.

7. *Docket No(s):* MC2025-31 and K2025-30; *Filing Title:* Priority Mail & USPS Ground Advantage Contract 376 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Jana Slovinska; *Comments Due:* October 15, 2024.

8. *Docket No(s):* MC2025-32 and K2025-31; *Filing Title:* Priority Mail & USPS Ground Advantage Contract 377 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 15, 2024.

9. *Docket No(s):* MC2025-33 and K2025-32; *Filing Title:* Priority Mail & USPS Ground Advantage Contract 378 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 4, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative:* Christopher C. Mohr; *Comments Due:* October 15, 2024.

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

10. *Docket No(s)*: MC2025–34 and K2025–33; *Filing Title*: Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 442 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 4, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Jana Slovinska; *Comments Due*: October 15, 2024.

11. *Docket No(s)*: MC2025–35 and K2025–34; *Filing Title*: Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 443 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date*: October 4, 2024; *Filing Authority*: 39 U.S.C. 3642, 39 CFR 3035.105, and 39 CFR 3041.310; *Public Representative*: Gregory S. Stanton; *Comments Due*: October 15, 2024.

II. Summary of Proceeding(s)

None. See Section II for public proceedings.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2024–23584 Filed 10–10–24; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101262; File No. SR–GEMX–2024–36]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

October 7, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 24, 2024, Nasdaq GEMX, LLC (“GEMX” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to establish fees for its expanded co-location services, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 7, 2024.

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the 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 filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange’s expanded data center.³ As described in that filing, the Exchange’s current data center (“NY11”) in Carteret, NJ is undergoing an expansion (“NY11–4”) in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11–4, (iii) fees for power installation in NY11–4, and (iv) fees for power distribution unit options in NY11–4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half

Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts (“kW”), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11–4, an “Ultra High Density Cabinet,” with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11–4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11–4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11–4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁵ *Supra* note 3.

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11–4, the Super High Density Cabinet in NY11–4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ Securities Exchange Act Release No. 34–101074 (September 5, 2024), 89 FR 77920 (September 24, 2024) (SR–GEMX–2024–34).

(at the low end of the power density range for Ultra High Density Cabinets).

Installation Fee for Cabinets in NY11–4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11–4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11–4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11–4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11–4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11–4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹

Installation Fee for Cabinet Power in NY11–4

The cabinet power options for NY11–4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11–4 and one of these options must be selected for cabinets in NY11–4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11–4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11–4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11–4 and update the fee schedule accordingly. For NY11–4, the data center operator is bringing in these higher voltage power options and is likely to experience

increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11–4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units ("PDUs")¹¹ in NY11–4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3¹² power distribution units in NY11–4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle

or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁴ the Exchange anticipates opening NY11–4 Exchange access on November 11, 2024 and providing customers access on October 7, 2024. Customer orders will not be fee liable until customers are provided access to the space.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11–4, installation fees for power installation in NY11–4, and fees for power distribution unit options in NY11–4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11–4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11–4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁴ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹⁵ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693–\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁸ warranting a higher fee. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange,¹⁹ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the

Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11–4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11–4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11–4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11–4 are available to any customer

under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11–4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁰ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–GEMX–2024–36 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–GEMX–2024–36. 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

¹⁸ *Supra* note 10.

¹⁹ There are currently 17 exchanges offering options trading services. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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-GEMX-2024-36 and should be submitted on or before November 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,
Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101271; File No. SR-NASDAQ-2024-029]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Modify the Application of Bid Price Compliance Periods

October 7, 2024.

I. Introduction

On June 21, 2024, The Nasdaq Stock Market LLC ("Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to modify the application of the bid price compliance periods where a listed company takes an action to achieve compliance with the bid price requirement and that action causes non-

compliance with another listing requirement. The proposed rule change was published for comment in the **Federal Register** on July 9, 2024.³ On August 21, 2024, pursuant to Section 19(b)(2) of the Exchange Act,⁴ the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.⁵ On October 3, 2024, the Exchange filed Amendment No. 2⁶ to the proposed rule change.⁷ This order approves the proposed rule change, as modified by Amendment No. 2.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 2

The Exchange is proposing to amend Rule 5810(c)(3)(A) to modify the application of the bid price compliance periods where a listed company takes an action to achieve compliance with the \$1.00 minimum bid price continued listing requirement⁸ (the "Bid Price Requirement") and that action causes non-compliance with another listing requirement.⁹

³ See Securities Exchange Act Release No. 100461 (July 3, 2024), 89 FR 56457 ("Notice"). Comments received on the Notice are available on the Commission's website at: <https://www.sec.gov/comments/sr-nasdaq-2024-029/srnasdaq2024029.htm>.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 100791, 89 FR 68671 (Aug. 27, 2024) (designating October 7, 2024 as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change).

⁶ Amendment No. 1 to the proposed rule change was submitted on September 27, 2024, and it was subsequently withdrawn on October 3, 2024.

⁷ In Amendment No. 2, the Exchange (1) clarified the application of Rule 5810(c)(3)(H) in extending the ten consecutive day compliance period for regaining compliance with the minimum bid price requirement, (2) clarified that the failure to satisfy the requirements during the compliance period(s) applicable to the initial bid price deficiency will result in the issuance of a Staff Delisting Determination Letter, and (3) made other technical and non-substantive changes for readability. Because Amendment No. 2 does not materially alter the substance of the proposed rule change and makes clarifying modifications, Amendment No. 2 is not subject to notice and comment. The full text of Amendment No. 2 can be found on the Commission's website at: <https://www.sec.gov/comments/sr-nasdaq-2024-029/srnasdaq2024029-526675-1511382.pdf>.

⁸ The Exchange states that each tier of Nasdaq listed securities includes a requirement that specified securities maintain a \$1.00 minimum bid price. See Notice, *supra* note 3, at 56457, n.3 (citing to Rule 5550(a)(2) (Primary Equity Security listed on the Nasdaq Capital Market) and Rule 5450(a)(1) (Primary Equity Security listed on the Nasdaq Global or Global Select Markets)).

⁹ Rule 5810(c)(3)(A) states: "A failure to meet the continued listing requirement for minimum bid price shall be determined to exist only if the

The Exchange states that listed companies may effect a reverse stock split¹⁰ to regain compliance with the Bid Price Requirement. According to the Exchange, the reduction in the number of shares caused by the reverse stock split results in a proportional reduction in the number of Publicly Held Shares¹¹ and depending on how fractional shares are treated, may also reduce the number of holders of the company's securities.¹² As a result, the Exchange states that a reverse stock split used to regain compliance with the Bid Price Requirement may result in the company's non-compliance with other Exchange listing rules that require a certain number of holders and Publicly Held Shares.¹³ Upon a company's failure to satisfy the applicable holder or number of Publicly Held Shares requirement, Rule 5810(c)(2)(A) generally allows the company a 45-calendar day period to provide a plan to regain compliance to Nasdaq staff and Rule 5810(c)(2)(B) generally provides that Nasdaq staff may grant an extension of up to 180 calendar days for the company to achieve compliance.¹⁴

Currently, a company that regains compliance with the Bid Price Requirement by taking a corporate action (e.g., a reverse stock split) that results in the company's security falling below the numeric threshold for another Exchange listing requirement could be

deficiency continues for a period of 30 consecutive business days. Upon such failure, the Company shall be notified promptly and shall have a period of 180 calendar days from such notification to achieve compliance. Compliance can be achieved during any compliance period by meeting the applicable standard for a minimum of 10 consecutive business days during the applicable compliance period, unless Staff exercises its discretion to extend this 10 day period as discussed in Rule 5810(c)(3)(H). Rules 5810(c)(3)(A)(i) and (ii) also provide an additional 180 day compliance period for companies listed on Capital Markets, or Global Select or Global Market that transfer to Capital Markets, that are not in compliance with the bid price requirement prior to expiration of the first 180 day compliance period if certain requirements are met.

¹⁰ The Exchange states that reverse stock splits have the effect of increasing a company's stock price by consolidating the outstanding shares. See Notice, *supra* note 3, at 56457.

¹¹ Rule 5005(a)(35) defines "Publicly Held Shares" as: "shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding." See also e.g., Rules 5550(a)(3) and (4) (requiring 300 public holders and at least 500,000 Publicly Held Shares for Primary Equity Securities listed on the Nasdaq Capital Market) and Rules 5450(a)(2), 5450(b)(1)(B), 5450(b)(2)(B) and 5450(b)(3)(B) (requiring 400 total holders and, depending on other characteristics of the company, either 750,000 or 1.1 million Publicly Held Shares for Primary Equity Securities listed on the Nasdaq Global Market).

¹² See Notice, *supra* note 3, at 56457.

¹³ See *id.*

¹⁴ See *id.* at 56457, n.5.

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

granted additional time of up to 180 calendar days from initial notification by Nasdaq staff to regain compliance with the newly created deficiency.¹⁵ Nasdaq believes that it is not appropriate for a company to receive additional time to cure non-compliance with such newly violated listing standard.¹⁶ Accordingly, Nasdaq states that it is proposing this rule change to prevent companies from benefiting from additional time for the subsequent deficiency that was ultimately caused by the company's non-compliance with the Bid Price Requirement.¹⁷

Under the proposed rule, such company will not be considered to have regained compliance with the Bid Price Requirement if the company takes an action to achieve compliance and that action results in the company's security falling below the numeric threshold for another Exchange listing requirement without regard to any compliance periods otherwise available for that other listing requirement.¹⁸ In such event, the company will continue to be considered non-compliant until both: (i) the other deficiency is cured and (ii) thereafter the company meets the bid price standard for a minimum of ten consecutive business days, unless Nasdaq staff exercises its discretion to extend this ten day period as discussed in Rule 5810(c)(3)(H). If the company does not demonstrate compliance with (i) and (ii) during the compliance period(s) applicable to the initial bid price deficiency, Nasdaq will issue a Staff Delisting Determination Letter.¹⁹

¹⁵ Nasdaq provided the following example of how its current rules work for a Nasdaq Capital Market listed company seeking to regain compliance with a bid price deficiency. Company A with 1,600,000 Publicly Held Shares attempts to regain compliance with the Bid Price Requirement by effecting a reverse stock split at a ratio of 1-for-4, which would initially increase the Company A's stock price above \$1.00. *See id.* at 56457. Assuming Company A thereafter maintains a closing bid price above \$1.00 for ten consecutive business days, under current Rule 5810(c)(3)(A), Company A will achieve compliance with the Bid Price Requirement at the conclusion of the tenth consecutive business day. *See id.* However, in this example, at the same time that the reverse stock split increased Company A's stock price, the 1-for-4 reverse stock split also reduced the number of Publicly Held Shares from 1,600,000 to 400,000, causing Company A to no longer satisfy the minimum number of Publicly Held Shares required to remain listed on the Nasdaq Capital Market. *See id.* As a result, under these circumstances, the reverse stock split would allow Company A to regain compliance with the Bid Price Requirement of Rule 5550(a)(2) while at the same time causing non-compliance with the minimum Publicly Held Shares requirement of Rule 5550(a)(4). *See id.*

¹⁶ *See id.*

¹⁷ *See id.*

¹⁸ *See* proposed Rule 5810(c)(3)(A).

¹⁹ *See* proposed Rule 5810(c)(3)(A). The Exchange states that Company A described in footnote 15 above "would continue to be considered non-

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.²⁰ In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Exchange Act,²¹ which requires, among other things, 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 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 not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of meaningful listing standards²² for an exchange is of critical importance to financial markets and the investing public. Among other things, such listing standards help ensure that exchange-listed companies will have sufficient public float, investor base, and trading interest to provide the depth and liquidity to promote fair and orderly markets. Meaningful listing standards also are important given investor expectations regarding the nature of securities that have achieved an exchange listing, and the role of an exchange in overseeing its market and assuring compliance with its listing standards.²³

compliant with the Bid Price Requirement until both the new Publicly Held Shares deficiency is cured and thereafter the company maintains a \$1.00 bid price for a minimum of ten (10) consecutive business days." *See* Notice, *supra* note 3, at 56457–58. The Exchanges states that all of this must be accomplished during the compliance period applicable to the initial Bid Price Requirement deficiency. *See id.* at 56458. Accordingly, the proposed rule would not allow Company A to submit a plan to regain compliance with the Publicly Held Shares requirement and would instead require Company A to regain compliance with both rules within the applicable compliance period for the Bid Price Requirement pursuant to Rule 5810(c)(3)(A), unless extended pursuant to Rule 5810(c)(3)(H). *See id.*

²⁰ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

²¹ 15 U.S.C. 78f(b)(5).

²² The Commission notes that this reference to "listing standards" is referring to both initial and continued listing standards.

²³ *See, e.g.,* Securities Exchange Act Release Nos. 88716 (Apr. 21, 2020), 85 FR 23393 (Apr. 27, 2020) (SR-NASDAQ–2020–001) (Order Approving a Proposed Rule Change To Modify the Delisting Process for Securities With a Bid Price at or Below

As discussed above, currently, a company that regains compliance with the Bid Price Requirement by taking a corporate action (*e.g.*, a reverse stock split) that results in the company's security falling below the numeric threshold for another Exchange listing requirement could be granted additional time (up to 180 calendar days) to regain compliance with the newly created deficiency.²⁴ The Exchange believes that this scenario, as described in the examples provided in the Notice,²⁵ creates confusion for investors about a company's ability to maintain compliance with its listing rules thereby negatively impacting investor confidence in the market.²⁶ The Exchange believes that its proposal to address these concerns will protect investors and provide additional clarity to Exchange listed companies and market participants by preventing a company from receiving a compliance determination (for its initial bid price deficiency) and communicating to investors that it has regained compliance until it has cured both the new deficiency caused by its corporate action and thereafter its bid price deficiency during the compliance period applicable to the initial Bid Price Requirement deficiency.²⁷

The Exchange's proposal is reasonably designed to enhance its continued listing standards, particularly those involving issuers with securities that trade near or below the Bid Price Requirement that may be motivated to utilize reverse stock splits to inappropriately delay delisting, thereby protecting investors and the public

\$0.10 and for Securities That Have Had One or More Reverse Stock Splits With a Cumulative Ratio of 250 Shares or More to One Over the Prior Two-Year Period); 88389 (Mar. 16, 2020), 85 FR 16163 (Mar. 20, 2020) (SR-NASDAQ–2019–089) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 5815 To Preclude Stay During Hearing Panel Review of Staff Delisting Determinations in Certain Circumstances). *See also* Securities Exchange Act Release No. 81856 (Oct. 11, 2017), 82 FR 48296, 48298 (Oct. 17, 2017) (SR-NYSE–2017–31) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend the Listed Company Manual To Adopt Initial and Continued Listing Standards for Subscription Receipts) (stating that "[a]dequate standards are especially important given the expectations of investors regarding exchange trading and the imprimatur of listing on a particular market" and that "[o]nce a security has been approved for initial listing, maintenance criteria allow an exchange to monitor the status and trading characteristics of that issue . . . so that fair and orderly markets can be maintained.").

²⁴ *See supra* note 15 and accompanying text.

²⁵ *See supra* notes 15 and 20.

²⁶ *See* Notice, *supra* note 3, at 56457.

²⁷ *See id.* at 56458.

interest. In particular, the proposal reasonably addresses a gap in the Exchange's current continued listing standards that potentially allows an issuer to delay delisting, through corporate action taken to cure a Bid Price Requirement deficiency that then results in a deficiency in another numeric continued listing requirement, and thereby remain listed on the Exchange for an extended period of time despite not maintaining the Exchange standards required for continued listing.²⁸

Importantly, the Exchange's proposal also prevents a company from requesting or receiving a compliance determination for its initial Bid Price Requirement deficiency and communicating to investors that it has regained compliance with the Exchange's listing requirements until it has also cured any non-compliance with other numeric listing requirements caused by its actions to cure the initial Bid Price Requirement deficiency.²⁹ If the company does not meet both these requirements, in that order, during the compliance period applicable to the initial bid price deficiency, the Exchange will issue a Staff Delisting Determination Letter. Furthermore, while the Commission recognizes that the Exchange delisting process is in part designed to allow companies experiencing temporary financial and/or business issues to regain compliance with continued listing standards,³⁰ the proposal reasonably balances the intent of the delisting process with the need to prevent companies from taking advantage of the delisting process through multiple extensions to remain listed while failing to comply with the Exchange's continued listing standards,

contrary to the goal of protecting investors and the public interest.

Finally, the Commission notes that the comment letters received on the proposal were generally supportive.³¹

For the reasons discussed above, the Commission finds that this proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Exchange Act.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act,³² that the proposed rule change (SR–NASDAQ–2024–029), as modified by Amendment No. 2, be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³³

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23535 Filed 10–10–24; 8:45 am]

BILLING CODE 8011–01–P

³¹ See Letter from Joseph Corcoran, Managing Director, Associate General Counsel, Securities Industry and Financial Markets Association, dated July 30, 2024; Thomas H. Merritt, Deputy General Counsel, Virtu Financial, Inc., dated Aug. 5, 2025; Letter from Daniel Zinn, General Counsel, and Flavia Vehbiu, Deputy General Counsel, OTC Markets Group Inc., dated Sept. 17, 2024. See also Joint Letter from Christopher A. Iacovella, President and Chief Executive Officer, American Securities Association, Stephen Hall, Legal Director, Better Markets, Tyler Gellasch, President and CEO, Healthy Markets Association, John Ramsay, Chief Market Policy Officer, Investors Exchange LLC, Joseph Saluzzi, Partner, Themis Trading LLC, dated Aug. 23, 2024, at 2, n.4 (stating that recent Exchange proposals, including SR–NASDAQ–2024–029, to amend listing rules to address concerns regarding “listed penny stocks” “represent steps in the right direction”). The comment letters received also express support for additional proposals to enhance exchange listing standards to further address investor protection concerns, particularly those involving Nasdaq listed companies with low-priced securities. Nasdaq states that it is considering other changes to the delisting process applicable to companies that are non-compliant with the Bid Price Requirement and such changes will be subject to a separate rule filing. See Notice, *supra* note 3, at 56458, n.10. See, e.g., Securities Exchange Act Release No. 100767 (Aug. 19, 2024), 89 FR 68228 (Aug. 23, 2024) (SR–NASDAQ–2024–045) (Notice of Filing of Proposed Rule Change to Modify the Application of the Minimum Bid Price Compliance Periods and the Delisting Appeals Process for Bid Price Non-Compliance in Listing Rules 5810 and 5815 Under Certain Circumstances). In approving this proposal, the Commission is finding the proposal before us is consistent with the Exchange Act.

³² *Id.*

³³ 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101266; File No. SR–ISE–2024–47]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

October 7, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 24, 2024, Nasdaq ISE, LLC (“ISE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for its expanded co-location services. The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the 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 filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

²⁸ See *supra* note 20.

²⁹ Under the proposal, if the reverse split causes a new deficiency, the company will not be deemed compliant with the Bid Price Requirement even if it has a bid price above \$1.00 for ten consecutive days after the reverse split until the new deficiency is first cured, and thereafter the bid price requirement is met for ten consecutive business days or such additional time period pursuant to Rule 5810(c)(3)(H).

³⁰ The Exchange has stated, for example, that the bid price compliance periods are “designed to allow adequate time for a company facing temporary business issues, a temporary decrease in the market value of its securities, or temporary market conditions to come back into compliance with a bid price deficiency.” See Securities Exchange Act Release No. 87982 (Jan. 15, 2020), 85 FR 3736, 3737 (Jan. 22, 2020) (SR–NASDAQ–2020–001) (Notice of Filing of Proposed Rule Change to Modify the Delisting Process for Securities with a Bid Price Below \$0.10 and for Securities that Have Had One or More Reverse Stock Splits with a Cumulative Ratio of 250 or More to One over the Prior Two Year Period).

Exchange's expanded data center.³ As described in that filing, the Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11-4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets).

Installation Fee for Cabinets in NY11-4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11-4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11-4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11-4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11-4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11-4 include uniform, wider cabinets (32" W × 48" D × 91" H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹

Installation Fee for Cabinet Power in NY11-4

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units ("PDUs")¹¹ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3¹² power distribution units in NY11-4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide

³ Securities Exchange Act Release No. 34-101076 (September 5, 2024), 89 FR 77951 (September 24, 2024) (SR-ISE-2024-45).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁵ *Supra* note 3.

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11-4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁴ the Exchange anticipates opening NY11-4 Exchange access on November 11, 2024 and providing customers access on October 7, 2024. Customer orders will not be fee liable until customers are provided access to the space.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for

Ultra High Density Cabinets, an installation fee for cabinets in NY11-4, installation fees for power installation in NY11-4, and fees for power distribution unit options in NY11-4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11-4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693-\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11-4, including uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11-4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11-4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁸ warranting a higher fee. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the

Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange,¹⁹ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11-4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11-4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11-4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

¹⁹ There are currently 17 exchanges offering options trading services. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaq-trader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

¹⁴ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹⁵ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

¹⁸ *Supra* note 10.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11-4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11-4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁰ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-ISE-2024-47 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-ISE-2024-47. 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 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-ISE-2024-47 and should be submitted on or before November 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-23531 Filed 10-10-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101269; File No. SR-MRX-2024-37]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

October 7, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 24, 2024, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for its expanded co-location services.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/mrx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the 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 filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

Exchange's expanded data center.³ As described in that filing, the Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11-4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets).

Installation Fee for Cabinets in NY11-4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11-4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11-4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11-4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11-4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11-4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹

Installation Fee for Cabinet Power in NY11-4

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units ("PDUs")¹¹ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3¹² power distribution units in NY11-4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide

³ Securities Exchange Act Release No. 34-101077 (September 5, 2024), 89 FR 77904 (September 24, 2024) (SR-MRX-2024-36).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁵ *Supra* note 3.

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11-4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁴ the Exchange anticipates opening NY11–4 Exchange access on November 11, 2024 and providing customers access on October 7, 2024. Customer orders will not be fee liable until customers are provided access to the space.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for

Ultra High Density Cabinets, an installation fee for cabinets in NY11–4, installation fees for power installation in NY11–4, and fees for power distribution unit options in NY11–4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11–4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693–\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁸ warranting a higher fee. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the

Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other options exchanges that a market participant may connect to in lieu of the Exchange,¹⁹ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11–4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11–4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11–4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

¹⁹ There are currently 17 exchanges offering options trading services. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaq-trader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

¹⁴ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹⁵ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

¹⁸ *Supra* note 10.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11-4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11-4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁰ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-MRX-2024-37 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-MRX-2024-37. 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-MRX-2024-37 and should be submitted on or before November 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-23534 Filed 10-10-24; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101268; File No. SR-Phlx-2024-49]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

October 7, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 24, 2024, Nasdaq PHLX LLC ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for its expanded co-location services, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 7, 2024.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 200.30-3(a)(12).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.³ As described in that filing, the Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11-

4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11-4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets).

Installation Fee for Cabinets in NY11-4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11-4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11-4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11-4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11-4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11-4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door

and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹

Installation Fee for Cabinet Power in NY11-4

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units ("PDUs")¹¹ in NY11-4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3¹² power

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt

Continued

³ Securities Exchange Act Release No. 34-101079 (September 5, 2024), 89 FR 77931 (September 24, 2024) (SR-PHLX-2024-47).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁵ *Supra* note 4 [sic].

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

distribution units in NY11–4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁴ the Exchange anticipates opening NY11–4 Exchange access on November 11, 2024, and providing customers access on October 7, 2024. Customer orders will not be fee liable until customers are provided access to the space.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it

and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

¹⁴ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹⁵ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11–4, installation fees for power installation in NY11–4, and fees for power distribution unit options in NY11–4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11–4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693–\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as

discussed above,¹⁸ warranting a higher fee. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,¹⁹ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11–4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11–4, higher voltage power options will provide operational

¹⁸ *Supra* note 11.

¹⁹ There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 20% of the market share. See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated July 3, 2024), available at https://www.cboe.com/us/equities/market_statistics/. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11–4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11–4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11–4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in

the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-Phlx-2024-49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to file number SR-Phlx-2024-49. 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-Phlx-2024-49 and should be

submitted on or before November 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-23533 Filed 10-10-24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-101265; File No. SR-BX-2024-037]

Self-Regulatory Organizations; Nasdaq BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

October 7, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on September 24, 2024, Nasdaq BX, Inc. ("BX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to establish fees for its expanded co-location services, as described further below.

While these amendments are effective upon filing, the Exchange has designated the proposed amendments to be operative on October 7, 2024.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/bx/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

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 filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.³ As described in that filing, the Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to

different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11-4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets).

Installation Fee for Cabinets in NY11-4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11-4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11-4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11-4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940

installation fee.⁸ The cabinets in NY11-4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11-4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹

Installation Fee for Cabinet Power in NY11-4

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated operational efficiencies.¹⁰ As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units ("PDUs")¹¹ in NY11-4 as a convenience to customers. Rather

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11-4.

³ See Securities Exchange Act Release No. 34-100558 (July 18, 2024) [sic] Securities Exchange Act Release No. 34-101073 (September 5, 2024), 89 FR 77926 (September 24, 2024) (SR-BX-2024-035).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁵ *Supra* note 4 [sic].

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3¹² power distribution units in NY11–4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

Implementation

Although the timing is subject to change,¹⁴ the Exchange anticipates opening NY11–4 Exchange access on November 11, 2024, and providing customers access on October 7, 2024. Customer orders will not be fee liable until customers are provided access to the space.¹⁵

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

¹⁴ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹⁵ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11–4, installation fees for power installation in NY11–4, and fees for power distribution unit options in NY11–4 is reasonable. First, the Exchange's proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11–4 is reasonable because it is comparable to the Exchange's current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in NY11 (of \$3,693–\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are

reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁸ warranting a higher fee. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,¹⁹ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide

¹⁸ *Supra* note 11 [sic].

¹⁹ There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 20% of the market share. See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated July 3, 2024), available at https://www.cboe.com/us/equities/market_statistics/. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaq.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

uniform cabinets in NY11–4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11–4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11–4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11–4 are available to any customer under the same fees as any other customer, and any customer that wishes to order cabinets, power and PDUs in NY11–4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR–BX–2024–037 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–BX–2024–037. 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–BX–2024–037 and should be submitted on or before November 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–23530 Filed 10–10–24; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–101267; File No. SR–NASDAQ–2024–056]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish Fees for Its Expanded Co-Location Services

October 7, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on September 24, 2024, The Nasdaq Stock Market LLC (“Nasdaq” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to a proposal to establish fees for its expanded co-location services, as described further below.

While these amendments are effective upon filing, the Exchange has

²¹ 17 CFR 200.30–3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

designated the proposed amendments to be operative on October 7, 2024.

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/nasdaq/rules>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the 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 filed a proposal to expand its co-location services by offering new cabinet, power, and power distribution unit options in the Exchange's expanded data center.³ As described in that filing, the Exchange's current data center ("NY11") in Carteret, NJ is undergoing an expansion ("NY11-4") in response to demand for power and cabinets. The purpose of this proposed rule change is to establish fees for the expanded co-location services. Specifically, the Exchange proposes to establish (i) a monthly fee for Ultra High Density Cabinets, (ii) an installation fee for cabinets in NY11-4, (iii) fees for power installation in NY11-4, and (iv) fees for power distribution unit options in NY11-4.

Ultra High Density Cabinet

Currently, co-location customers have the option of obtaining cabinets of various sizes and power densities. Co-location customers may obtain a Half Cabinet,⁴ a Low Density Cabinet with power density less than or equal to 2.88 kilowatts ("kW"), a Medium Density Cabinet with power density greater than 2.88 kW and less than or equal to 5 kW, a Medium-High Density Cabinet with power density greater than 5 kW and

less than or equal to 7 kW, a High Density Cabinet with power density greater than 7 kW and less than 10 kW, and a Super High Density Cabinet with power density greater than 10 kW and less than or equal to 17.3 kW.

The Exchange filed a proposal to introduce a new cabinet choice in NY11-4, an "Ultra High Density Cabinet," with power density greater than 10 kW and less than or equal to 15 kW.⁵ The Ultra High Density Cabinet option will only be offered in NY11-4 because of the power configuration necessary for such cabinets, which is not possible or available in other portions of the data center due to different power distribution.⁶ In addition to the Ultra High Density Cabinet, the Exchange will offer the other, existing cabinet options in NY11-4, with the exception of the Low Density Cabinet and Half Cabinet due to a lack of demand for such cabinets. The ongoing monthly fees for the Super High Density Cabinet, High Density Cabinet, Medium-High Density Cabinet, and Medium Density Cabinet are the same in NY11 and NY11-4 and the Exchange is not proposing to modify such fees.

The Exchange proposes to establish an ongoing monthly fee of \$7,230 for the Ultra High Density Cabinets. To effectuate this change, the Exchange proposes to add the \$7,230 ongoing monthly fee for Ultra High Density Cabinets to its fee schedule in General 8, Section 1(a). The Exchange notes that the proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets).

Installation Fee for Cabinets in NY11-4

The Exchange proposes to establish a cabinet installation fee of \$5,940 for all cabinets in NY11-4. To effectuate this change, the Exchange proposes to add the proposed \$5,940 installation fee to

its fee schedule in General 8, Section 1(a) for Super High Density Cabinets, Ultra High Density Cabinets, High Density Cabinets, Medium-High Density Cabinets, and Medium Density Cabinets in NY11-4. In the existing data halls, customers may bring their own cabinets or use Exchange-provided cabinets. In NY11-4, because of the cooling system (hot aisle containment),⁷ all cabinets must be uniform and therefore, the Exchange will provide all cabinets, the cost of which is included in the \$5,940 installation fee.⁸ The cabinets in NY11-4 include certain features not included in cabinets provided by the Exchange in the existing data halls. Specifically, the cabinets in NY11-4 include uniform, wider cabinets (32" W x 48" D x 91" H), cable management, and a rear split door and combo lock. In addition, the proposed installation fee of \$5,940 is comparable to fees charged for similar products.⁹

Installation Fee for Cabinet Power in NY11-4

The cabinet power options for NY11-4 include: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, Phase 1 40 amp 240 volt, Phase 3 20 amp 415 volt, and Phase 3 32 amp 415 volt. These cabinet power options are specific to NY11-4 and one of these options must be selected for cabinets in NY11-4. The Exchange proposes to establish an installation fee of \$3,600 for Phase 1 cabinet power options in NY11-4 and an installation fee of \$4,560 for Phase 3 cabinet power options in NY11-4. To effectuate this change, the Exchange proposes to add the proposed fees to its fee schedule in General 8, Section 1(c). The Exchange also proposes not to charge an ongoing monthly fee for the cabinet power options in NY11-4 and update the fee schedule accordingly. For NY11-4, the data center operator is bringing in these higher voltage power options and is likely to experience increased power distribution efficiencies across the data center. The proposed power installation fees are higher in NY11-4 as compared to the existing data halls as the installation of the higher voltage power options costs more to the Exchange and is considered a premium product due to anticipated

⁷ The existing data halls utilize cold aisle containment to manage temperatures. Hot aisle containment is a more effective way to manage heat in the data center.

⁸ In contrast, to the extent customers provide their own cabinets in NY11, there is an additional out-of-pocket cost for such cabinets.

⁹ For example, NYSE charges an initial \$5,000 fee for dedicated cabinets. See https://www.nyse.com/publicdocs/Wireless_Connectivity_Fees_and_Charges.pdf.

³ See Securities Exchange Act Release No. 34-101078 (September 5, 2024), 89 FR 77937 (September 24, 2024) (SR-NASDAQ-2024-054).

⁴ Half cabinets are not available to new subscribers. See General 8, Section 1(a).

⁵ *Supra* note 3.

⁶ Because of the addition of the Ultra High Density Cabinet option in NY11-4, the Super High Density Cabinet in NY11-4 will have power density greater than 15 kW and less than or equal to 17.3 kW.

operational efficiencies.¹⁰ As between the Phase 1 and Phase 3 power options, the Phase 3 options provide a more efficient power source.

Fees for Power Distribution Unit Options

The Exchange will offer power distribution units (“PDUs”) ¹¹ in NY11–4 as a convenience to customers. Rather than sourcing PDUs on a customer-by-customer basis, as the Exchange does for customers in NY11, the Exchange will offer Phase 1 and Phase 3 ¹² power distribution units in NY11–4. The Exchange proposes to establish a fee of \$4,100 for a Phase 1 PDU and \$5,260 for a Phase 3 PDU. This service is optional and customers may choose to provide their own PDUs appropriate for their power installation choices. The Exchange notes that, as part of such proposed fees, the Exchange would provide a primary and redundant PDU. As such, the proposed PDU fees covers a pair of PDUs. In addition, customers utilizing a Phase 1 or Phase 3 PDU provided by the Exchange have the ability to upgrade or downgrade between amperage levels without replacing the PDU, by a simple upgrade of the facility cord and a receptacle update.¹³ A PDU replacement is required when switching between phases/voltage.

The Exchange will also offer a switch monitored PDU add on in NY11–4, which would allow customers to connect remotely to their PDU and control the power sockets. With the switch monitored PDU option, customers would be able to power cycle or shut off power remotely. The Exchange proposes to establish a \$2,000 fee for the switch monitored PDU option. This option is optional as well and customers may choose to provide their own switch monitored PDU, if desired.

¹⁰ Benefits include future proofing the data hall to allow for increasing power density in the future, requiring less whips to deliver the same amount of amperage, less circuits need to be installed to reach the same power supply, and safety improvements.

¹¹ PDUs are devices fitted with multiple outputs designed to distribute electric power. The standardized PDUs would only be offered for NY11–4.

¹² Phase 1 PDUs are compatible with the following power options: Phase 1 20 amp 240 volt, Phase 1 32 amp 240 volt, and Phase 1 40 amp 240 volt. Phase 3 PDUs are compatible with the following power options: Phase 3 20 amp 415 volt and Phase 3 32 amp 415 volt. Phase 1 and Phase 3 are available in NY11 and NY11–4. Phase 3 PDUs provide greater power density than Phase 1 PDUs by delivering power over three wires as opposed to one wire.

¹³ This functionality may be available with customer-provided PDUs as well and depends on the PDU provided by the customer.

Implementation

Although the timing is subject to change,¹⁴ the Exchange anticipates opening NY11–4 Exchange access on November 11, 2024 and providing customers access on October 7, 2024. Customer orders will not be fee liable until customers are provided access to the space.¹⁵

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,¹⁷ in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposal to establish a monthly fee for Ultra High Density Cabinets, an installation fee for cabinets in NY11–4, installation fees for power installation in NY11–4, and fees for power distribution unit options in NY11–4 is reasonable. First, the Exchange’s proposal to establish a \$7,230 ongoing monthly fee for Ultra High Density Cabinets in NY11–4 is reasonable because it is comparable to the Exchange’s current ongoing monthly fees for cabinets. The proposed fee amount falls between the \$4,748 ongoing monthly fee charged for High Density Cabinets and the \$8,440 ongoing monthly fee charged for Super High Density Cabinets. Furthermore, the proposed fee is consistent with the existing ongoing monthly cabinet fees on a per kW basis. The existing monthly cabinet fees range from approximately \$475 per kW to \$916 per kW, while the proposed ongoing monthly cabinet fee for the Ultra High Density Cabinet ranges from approximately \$482 per kW (at the high end of the power density range for Ultra High Density Cabinets) to \$723 per kW (at the low end of the power density range for Ultra High Density Cabinets). Second, the Exchange believes that the proposed cabinet installation fee of \$5,940 is reasonable as compared to the installation fees in

¹⁴ The Exchange will announce modifications to the proposed timing via the Nasdaq Customer Portal, which is the web portal used for order and inventory management of colocation services, and email communication to all colocation customers.

¹⁵ Charging customers once access is provided is consistent with current practice and allows customers to set up equipment and begin using power.

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(4) and (5).

NY11 (of \$3,693–\$4,748) because the proposed installation fee includes the cabinet itself, which includes certain enhanced features in NY11–4, including uniform, wider cabinets (32” W x 48” D x 91” H), cable management, and a rear split door and combo lock. In contrast, in NY11, customers may choose to provide their own cabinets, incurring an additional cost. Furthermore, the proposed installation fee is comparable to the rate charged by NYSE for a similar product, as described above. Third, the Exchange believes that the power installation fees of \$3,600 for Phase 1 power options and \$4,560 for Phase 3 power options in NY11–4 are reasonable. As compared to power installation fees in NY11, the proposed rates for NY11–4 are higher because the Exchange will incur increased costs for installation of the higher voltage power options. In addition, the higher voltage power options will provide operational efficiencies for the data hall, as discussed above,¹⁸ warranting a higher fee. Finally, the Exchange believes that the proposed fees for PDUs and the PDU add on are reasonable because such fees are consistent with market rates. Furthermore, the Exchange is providing the PDU options as a convenience to customers. No customer is required to purchase any PDU options from the Exchange. Customers may choose to provide their own PDUs and PDU add ons.

The Exchange believes substitutable products and services are available to market participants, including, among other things, other equities and options exchanges that a market participant may connect to in lieu of the Exchange,¹⁹ connectivity to the Exchange via a third-party reseller of connectivity, and/or trading of equities or options products within markets which do not require connectivity to the Exchange, such as the Over-the-Counter (OTC) markets. Market participants that wish to connect

¹⁸ *Supra* note 10.

¹⁹ There are currently 16 registered equities exchanges that trade equities and 17 exchanges offering options trading services. No single equities exchange has more than 20% of the market share. See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (Last updated July 3, 2024), available at https://www.cboe.com/us/equities/market_statistics/. No single options exchange trades more than 15% of the options market by volume and only one of the 17 options exchanges has a market share over 10 percent. See Nasdaq, Options Market Statistics (Last updated July 3, 2024), available at <https://www.nasdaqtrader.com/Trader.aspx?id=OptionsVolumeSummary>. This broad dispersion of market share demonstrates that market participants can and do exercise choice in trading venues. Further, low barriers to entry mean that new exchanges may rapidly enter the market and offer additional substitute platforms to further compete with the Exchange and the products it offers.

to the Exchange will continue to choose the method of connectivity based on their specific needs. Market participants that wish to connect to the Exchange but want to avoid or mitigate the effect of these proposed fees can choose to connect to the Exchange through a vendor.

In summary, the proposal represents an equitable allocation of reasonable dues, fees and other charges because customers have choices in how they connect to the Exchange, the proposed monthly fee for Ultra High Density Cabinets is comparable to current fees charged by the Exchange for other cabinets, the Exchange will provide uniform cabinets in NY11-4 with special features, the proposed cabinet installation fee is consistent with that of comparable products offered by other providers, the Exchange will incur increased costs for new power installation in NY11-4, higher voltage power options will provide operational efficiencies for the data hall, and PDU options are provided as a convenience to customers and customers may choose to provide their own PDUs.

The Exchange believes that the proposed fee changes are not unfairly discriminatory because the cabinet, power, and PDU fees for NY11-4 are available to and assessed uniformly across all market participants. In addition, all customers have the choice of whether and how to connect to the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Nothing in the proposal burdens inter-market competition because approval of the proposal does not impose any burden on the ability of other exchanges to compete. The Exchange operates in a highly competitive market in which market participants can determine whether or not to connect to the Exchange based on the value received compared to the cost of doing so. Indeed, market participants have numerous alternative exchanges that they may participate on and direct their order flow, as well as off-exchange venues, where competitive products are available for trading.

Nothing in the proposal burdens intra-market competition because the Ultra High Density Cabinets, cabinet power options, and PDU optionality in NY11-4 are available to any customer under the same fees as any other customer, and any customer that wishes

to order cabinets, power and PDUs in NY11-4 can do so on a non-discriminatory basis.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.²⁰

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include file number SR-NASDAQ-2024-056 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-NASDAQ-2024-056. 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-NASDAQ-2024-056 and should be submitted on or before November 1, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²¹

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024-23532 Filed 10-10-24; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20701 and #20702; NORTH CAROLINA Disaster Number NC-20007]

Presidential Declaration Amendment of a Major Disaster for the State of North Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Carolina (FEMA-4827-DR), dated September 28, 2024.

DATES: Issued on October 4, 2024.

Physical Loan Application Deadline Date: November 27, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: June 30, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small

²⁰ 15 U.S.C. 78s(b)(3)(A)(ii).

²¹ 17 CFR 200.30-3(a)(12).

Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of North Carolina, dated September 28, 2024, is hereby amended to include the following areas as adversely affected by the disaster:

Incident: Tropical Storm Helene.

Incident Period: September 25, 2024 and continuing.

Primary Counties (Physical Damage and Economic Injury Loans):

Mecklenburg, Swain.

Contiguous Counties (Economic Injury Loans Only):

North Carolina: Cabarrus, Union.

South Carolina: Lancaster.

Tennessee: Blount.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–23576 Filed 10–10–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20703 and #20704; SOUTH CAROLINA Disaster Number SC–20012]

Presidential Declaration Amendment of a Major Disaster for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA–4829–DR), dated September 29, 2024.

DATES: Issued on October 5, 2024.

Physical Loan Application Deadline Date: November 29, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: June 30, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster

declaration for the State of South Carolina, dated September 29, 2024, is hereby amended to include the following areas as adversely affected by the disaster:

Incident: Hurricane Helene.

Incident Period: September 25, 2024 and continuing.

Primary Counties (Physical Damage and Economic Injury Loans): Hampton. *Contiguous Counties (Economic Injury Loans Only):*

South Carolina: Beaufort, Jasper.

Georgia: Effingham.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–23577 Filed 10–10–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20672 and #20673; KANSAS Disaster Number KS–20016]

Presidential Declaration Amendment of a Major Disaster for Public Assistance Only for the State of Kansas

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA–4824–DR), dated September 24, 2024.

DATES: Issued on October 4, 2024.

Physical Loan Application Deadline Date: November 25, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: June 24, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Kansas, dated September 24, 2024, is hereby amended to include the following areas as adversely affected by the disaster.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: June 26, 2024 through July 7, 2024.

Primary Counties: Logan, Pawnee, Wallace.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–23571 Filed 10–10–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20705 and #20706; VIRGINIA Disaster Number VA–20011]

Presidential Declaration Amendment of a Major Disaster for the Commonwealth of Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–4831–DR), dated October 1, 2024.

DATES: Issued on October 4, 2024.

Physical Loan Application Deadline Date: December 2, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: July 1, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Virginia, dated October 1, 2024, is hereby amended to include the following areas as adversely affected by the disaster:

Incident: Tropical Storm Helene.

Incident Period: September 25, 2024 and continuing.

Primary Counties (Physical Damage and Economic Injury Loans): Montgomery, Pulaski.

Contiguous Counties (Economic Injury Loans Only):

Virginia: Floyd, Independent City of Radford, Roanoke County.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-23580 Filed 10-10-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20651 and #20652; CALIFORNIA Disaster Number CA-20023]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated October 7, 2024.

DATES: Issued on October 7, 2024.

Physical Loan Application Deadline Date: December 6, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: July 7, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be submitted online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

Incident: Boyles Fire.

Incident Period: September 8, 2024 through September 11, 2024.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Lake

Contiguous Counties:

California: Colusa, Glenn, Mendocino, Napa, Sonoma, Yolo

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere	5.625
Homeowners without Credit Available Elsewhere	2.813

	Percent
Businesses with Credit Available Elsewhere	8.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i>	
Business and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 206515 and for economic injury is 206520.

The States which received an EIDL Declaration is California.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,
Administrator.

[FR Doc. 2024-23628 Filed 10-10-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20699 and #20700; FLORIDA Disaster Number FL-20012]

Presidential Declaration Amendment of a Major Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA-4828-DR), dated September 28, 2024.

DATES: Issued on October 3, 2024.

Physical Loan Application Deadline Date: November 27, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: June 30, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated September 28, 2024, is hereby amended to include the following areas as adversely affected by the disaster:
Incident: Hurricane Helene.

Incident Period: September 23, 2024 and continuing.

Primary Counties (Physical Damage and Economic Injury Loans): Gulf. *Contiguous Counties (Economic Injury Loans Only):*

Florida: Bay, Calhoun.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-23575 Filed 10-10-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20711 and #20712; GEORGIA Disaster Number GA-20013]

Presidential Declaration Amendment of a Major Disaster for the State of Georgia

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Georgia (FEMA-4830-DR), dated September 30, 2024.

DATES: Issued on October 4, 2024.

Physical Loan Application Deadline Date: November 29, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: June 30, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Georgia, dated September 30, 2024, is hereby amended to include the following areas as adversely affected by the disaster:

Incident: Hurricane Helene.

Incident Period: September 24, 2024 and continuing.

Primary Counties (Physical Damage and Economic Injury Loans): Bryan, Butts, Camden, Charlton, Glynn, Long, Newton, Wayne. *Contiguous Counties (Economic Injury Loans Only):*

Georgia: Henry, Jasper, Lamar, Monroe, Morgan, Rockdale, Spalding, Walton.

Florida: Nassau.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–23579 Filed 10–10–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: U.S. Small Business Administration.

ACTION: Notice; request for comment.

SUMMARY: The Small Business Administration has submitted the following information collection: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation), to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act (PRA).

DATES: Submit comments on or before November 12, 2024.

ADDRESSES: Submit comments by the deadline stated in the **DATES** section above to:

- www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under Review—Open for Public Comments” and searching for this information collection by title or OMB Control Number 3245–0404; and
- Christine Illige Saucier, Lead Performance Analyst, Christine.IlligeSaucier@sba.gov.

FOR FURTHER INFORMATION CONTACT: Submit requests for additional information, including requests for copies of the collection instrument and supporting documents to Christine.IlligeSaucier@sba.gov or Curtis B. Rich, Management Analyst, curtis.rich@sba.gov, 202–921–3356.

SUPPLEMENTARY INFORMATION:

Title: Improving Customer Experience (OMB Circular A–11, Section 280 Implementation).

OMB Control Number: 3245–0404.

Abstract: A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing

transparency) and resources to ensure customer experience is a focal point for agency leadership.

This proposed information collection activity provides a means to garner customer and stakeholder feedback in an efficient, timely manner in accordance with the Administration’s commitment to improving customer service delivery as discussed in Section 280 of OMB Circular A–11 at <https://www.performance.gov/cx/a11-280.pdf>. As discussed in OMB guidance, agencies should identify their highest-impact customer journeys (using customer volume, annual program cost, and/or knowledge of customer priority as weighting factors) and select touchpoints/transactions within those journeys to collect feedback.

These results will be used to improve the delivery of Federal services and programs. It will also provide government-wide data on customer experience that can be displayed on www.performance.gov to help build transparency and accountability of Federal programs to the customers they serve.

As a general matter, these information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. The Small Business Administration will only submit collections if they meet the following criteria:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information (PII) is collected only to the extent necessary and is not retained;
- Information gathered is intended to be used for general service improvement and program management purposes
- The agency will follow the procedures specified in OMB Circular A–11 Section 280 for the required quarterly reporting to OMB of trust data and experience driver data from surveys.
- Outside of the quarterly reporting mentioned in the bullet immediately above, if the agency intends to release

journey maps, user personas, reports, or other data-related summaries stemming from this collection, the agency must include appropriate caveats around those summaries, noting that conclusions should not be generalized beyond the sample, considering the sample size and response rates. The agency must submit the data summary itself (e.g., the report) and the caveat language mentioned above to OMB before it releases them outside the agency. OMB will engage in a passback process with the agency.

These collections will allow for ongoing, collaborative and actionable communications between the Agency, its customers, stakeholders, and OMB as it monitors agency compliance on Section 280. These responses will inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on services will be unavailable.

Type of Review: Extension.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: Below is a preliminary estimate of the aggregate burden hours for this information collection.

Average Expected Annual Number of Activities: Approximately five types of customer experience activities such as feedback surveys, focus groups, user testing, and interviews.

Average Number of Responses per Activity: 1 response per respondent per activity.

Annual Responses: 9,504,000.

Average Minutes per Response: 3 minutes–120 minutes, dependent upon activity.

Burden Hours: Small Business Administration requests approximately 477,750 burden hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Curtis Rich,

Management Analyst.

[FR Doc. 2024-23583 Filed 10-10-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20732 and #20733; FLORIDA Disaster Number FL-20014]

Presidential Declaration of a Major Disaster for Public Assistance Only for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Florida (FEMA-4828-DR), dated 10/05/2024.

DATES: Issued on October 5, 2024.

Physical Loan Application Deadline Date: December 4, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: July 7, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT: Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on October 5, 2024, Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications online using the MySBA Loan Portal <https://lending.sba.gov> or other locally announced locations. Please contact the SBA disaster assistance customer

service center by email at disastercustomerservice@sba.gov or by phone at 1-800-659-2955 for further assistance.

Incident: Hurricane Helene.

Incident Period: September 23, 2024 and continuing.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Charlotte, Citrus, Columbia, Dixie, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Manatee, Pasco, Pinellas, Sarasota, Suwannee, Taylor, Wakulla.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Non-Profit Organizations with Credit Available Elsewhere ...	3.250
Non-Profit Organizations without Credit Available Elsewhere	3.250
<i>For Economic Injury:</i>	
Non-Profit Organizations without Credit Available Elsewhere	3.250

The number assigned to this disaster for physical damage is 207328 and for economic injury is 207330.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-23572 Filed 10-10-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20703 and #20704; SOUTH CAROLINA Disaster Number SC-20012]

Presidential Declaration Amendment of a Major Disaster for the State of South Carolina

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of South Carolina (FEMA-4829-DR), dated September 29, 2024.

DATES: Issued on October 6, 2024.

Physical Loan Application Deadline Date: November 29, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: June 30, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of South Carolina, dated September 29, 2024, is hereby amended to include the following areas as adversely affected by the disaster:

Incident: Hurricane Helene.

Incident Period: September 25, 2024 and continuing.

Primary Counties (Physical Damage and Economic Injury Loans): Jasper, York, and the Catawba Indian Nation.

Contiguous Counties (Economic Injury Loans Only):

South Carolina: Lancaster.

North Carolina: Gaston, Mecklenburg.

Georgia: Chatham.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024-23578 Filed 10-10-24; 8:45 am]

BILLING CODE 8026-09-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20699 and #20700; FLORIDA Disaster Number FL-20012]

Presidential Declaration Amendment of a Major Disaster for the State of Florida

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA-4828-DR), dated September 28, 2024.

DATES: Issued on October 1, 2024.

Physical Loan Application Deadline Date: November 27, 2024.

Economic Injury (EIDL) Loan Application Deadline Date: June 30, 2025.

ADDRESSES: Visit the MySBA Loan Portal at <https://lending.sba.gov> to apply for a disaster assistance loan.

FOR FURTHER INFORMATION CONTACT:

Alan Escobar, Office of Disaster Recovery & Resilience, U.S. Small Business Administration, 409 3rd Street

SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Florida, dated September 28, 2024, is hereby amended to include the following areas as adversely affected by the disaster:

Incident: Hurricane Helene.

Incident Period: September 23, 2024 and continuing.

Primary Counties (Physical Damage and Economic Injury Loans): Columbia, Gilchrist, Hamilton, Leon, Suwannee.

Contiguous Counties (Economic Injury Loans Only):

Florida: Baker, Bradford, Gadsden, Union.

Georgia: Clinch, Echols, Grady.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Rafaela Monchek,

Deputy Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–23574 Filed 10–10–24; 8:45 am]

BILLING CODE 8026–09–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36776]

CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) to acquire overhead trackage rights over two rail lines owned by Norfolk Southern Railway Company (NSR): (1) The Bay Route, between CP Bay, at or near milepost 91.9,¹ and the connection between NSR and CSXT, at or near milepost IP 0.41, a distance of approximately 2.8 miles, in Baltimore City, Md.; and (2) The Harrisburg Route, (a) between Lurgan, Pa. (at or near milepost LG 40.1/HW 40.1), and Norristown, Pa., at CP Norris, Pa. (at or near milepost HP 18.0), a distance of approximately 148.3 miles; and (b) between CP Falls (at or near milepost HP 5.4) and a connection with CSXT's Philadelphia Subdivision at CP Laurel Hill (at or near milepost QA 2.9), a distance of approximately 0.5 miles (collectively, the Lines).

CSXT and NSR have agreed to two Form A Trackage Rights Addendums to

their Master Trackage Rights Agreement for the overhead trackage rights.²

According to the verified notice, the purpose of the new trackage rights is to provide temporary alternate routes for CSXT trains while CSXT's Howard Street Tunnel in Baltimore, Md. (HST), is closed for a project that includes clearing the HST for double-stack rail passage. CSX states that, at certain times during the project, it will close the HST, and, during such closures, CSXT intends to reroute its current traffic over other CSXT lines and lines of NSR to continue to provide service to its customers whose traffic normally moves through the HST. CSXT further states that it will reroute the traffic using a combination of existing trackage rights and the new trackage rights that are the subject of this verified notice.³ According to the verified notice, CSXT and NSR have agreed that the new overhead trackage rights will terminate when the project is complete, the HST is reopened, and CSXT has begun to move rail traffic through the HST.⁴

This transaction may be consummated on or after October 26, 2024, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 18, 2024 (at least seven days before the exemption becomes effective).

² CSXT has filed executed, redacted versions of the addendums with the verified notice. CSXT has also submitted under seal executed, unredacted versions of the addendums and filed a motion for protective order. That motion is addressed in a separate decision.

³ CSXT is also granting NSR overhead trackage rights over certain CSXT routes, for which NSR has sought authority in *Norfolk Southern Railway—Trackage Rights Exemption—CSX Transportation, Inc.*, Docket No. FD 36790.

⁴ To allow the trackage rights to terminate at the time agreed to by CSXT and NSR, CSXT has concurrently filing a petition for partial revocation of this trackage rights exemption in *CSX Transportation, Inc.—Trackage Rights Exemption—Norfolk Southern Railway Company*, Docket No. 36776 (Sub-No. 1). The petition for partial revocation will be addressed in a subsequent decision in that subdocket.

All pleadings, referring to Docket No. FD 36776, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on CSXT's representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

According to CSXT, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: October 8, 2024.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,
Clearance Clerk.

[FR Doc. 2024–23616 Filed 10–10–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2024–2406; Summary Notice No. –2024–43]

Petition for Exemption; Summary of Petition Received; International Aero Engines, LLC; Correction

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice; correction.

SUMMARY: On October 9, 2024, the FAA published a **Federal Register** Notice (FRN) document titled Petition for Exemption; Summary of Petition Received; International Aero Engines, LLC. That document inadvertently identified the docket number as FAA–2025–2406. The correct docket number is FAA–2024–2406.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 31, 2024.

ADDRESSES: Send comments identified by docket number FAA–2024–2406 using any of the following methods:

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

- **Mail:** Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West

¹ CSXT states that it will access the NSR line at CP Bay via rights that it has to operate over the National Passenger Railroad Corporation's Northeast Corridor.

Building Ground Floor, Washington, DC 20590–0001.

- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

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

Docket: Background documents or comments received may be read at <http://www.regulations.gov> at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: William Andrews, 202–267–8181, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

SUPPLEMENTARY INFORMATION:

Correction

The docket number in the document published October 9, 2024 at 89 FR 81978 in the third column is corrected to FAA–2024–2406.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

Dan Ngo,

Manager, Part 11 Petitions Branch, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2024–2406.

Petitioner: International Aero Engines, LLC.

Section(s) of 14 CFR Affected: §§ 33.76(c)(6)(i) and 33.76(c)(7)(vii).

Description of Relief Sought: International Aero Engines, LLC seeks relief to enable certification of current and future variants of the PW1100G–JM series engines for installation on Airbus A320neo family aircraft models incorporating reduced thrust go-around

and would like to exercise the privileges of the relief outside the United States.

[FR Doc. 2024–23569 Filed 10–10–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2024–0068]

Agency Information Collection Activities: Request for Comments for a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FHWA has forwarded the information collection request described in this notice to the Office of Management and Budget (OMB) to approve a new information collection. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by November 12, 2024.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 0068 by any of the following methods:

Website: For access to the docket to read background documents or comments received go to the Federal eRulemaking Portal: Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

Fax: 1–202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

Hand Delivery or Courier: U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kenneth Petty, Office of Planning (HEPP–1), 202–366–6654, and Brian Gardner, Office of Planning (HEPP–30), 202–366–6221, Department of Transportation, Federal Highway Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION: We published a **Federal Register** Notice with a 60-day public comment period on this information collection on October 30, 2023 at 88 FR 74227. There were no comments received.

Title: Application to Participate in the Transportation Access Pilot Program.

Background: The Infrastructure Investment and Jobs Act of 2021 requires FHWA to establish the Transportation Access Pilot Program (Pub. L. 117–58 sec. 13010). The program’s intent is to improve transportation planning by measuring the level of access by surface transportation modes to important destinations, disaggregating the level of access by surface transportation mode by a variety of categories (e.g., population or freight commodities), and assessing the change in accessibility that would result from transportation investments.

Beginning in 2025, FHWA plans to use an application form and follow-up phone conversations to gather information from interested participants. Information collected in the application form will be used to evaluate applications to participate in the Transportation Access Pilot Program. The application will request information necessary to evaluate applications and select pilot program participants. The application will request that applicants provide information about: (1) previous experience of the eligible entity measuring transportation access or other performance management experience, if applicable; (2) the types of important destinations to which the eligible entity intends to measure access; (3) the types of data disaggregation the eligible entity intends to pursue; (4) a general description of the methodology the eligible entity intends to apply; (5) if the applicant does not intend the pilot program to apply to the full area under the jurisdiction of the applicant, a description of the geographic area in which the applicant intends the pilot program to apply; and (6) additional information required to evaluate and make selections for participation in the Transportation Access Pilot Program.

FHWA plans to require applications be submitted in electronic format (Adobe PDF or similar format). FHWA estimates that the application will take approximately one hour to complete. The application will consist of both multiple-choice and short-answer question formats. FHWA may request a follow-up phone conversation to address questions in an agency’s submitted application form. These phone conversations will be approximately 30 minutes in length. This is planned as an annual information collection, until such time as the program is no longer accepting applications.

FHWA increased its estimated burden to the public between the 60-day **Federal Register** Notice announcing its intent to seek approval from OMB to collect this information, and this application. FHWA doubled its estimated burden on the public from 90 minutes per application to 180 minutes (3 hours) per application. The reason for this adjustment is that during this time, FHWA developed the application form and found that to gather all information needed to evaluate applications, a longer set of application questions was required, and that more time would likely be needed to discuss applications in follow-up interviews. This increased burden estimate is reflected in the Supporting Statement and this notice.

Respondents: FHWA estimates the maximum response to be up to 50 percent of the total universe of potential pilot program participants, which includes 52 State DOTs equivalents, and approximately 420 MPOs and 10 RTPOs. Thus, the estimated maximum response expected per application round is up to 241 individuals.

Frequency: Annually.

Estimated Average Burden per Response: Approximately 180 minutes per respondent.

Estimated Total Annual Burden Hours: Total estimated average annual burden is 723 hours, and 2,169 hours over 3 years.

Public Comments Invited: You are asked to comment on any aspect of this

information collection, including: (1) Whether the proposed collection is necessary for the FHWA's performance; (2) the accuracy of the estimated burdens; (3) ways for the FHWA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1.48.

Issued on: October 8, 2024.

Jazmyne Lewis,

Information Collection Officer.

[FR Doc. 2024-23609 Filed 10-10-24; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names

of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List) based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: This action was issued on October 8, 2024. See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, 202-622-2420; or Assistant Director for Sanctions Compliance, 202-622-2490 or <https://ofac.treasury.gov/contact-ofac>.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website: <https://ofac.treasury.gov>.

Notice of OFAC Action

On October 8, 2024, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person is blocked under the relevant sanctions authority listed below.

Individual

MUSA, Algoney Hamdan Daglo (Arabic: **القوني حمدان دقلو موسى**) (a.k.a. DAGALO, Algoney Hamdan; a.k.a. DAGALO, Al-Qoni Hamdan), Dubai, United Arab Emirates; DOB 07 Aug 1990; POB Nayala North, Sudan; nationality Sudan; Gender Male; Passport B00017334 (Sudan); alt. Passport B00024943 (Sudan) expires 27 Sep 2031 (individual) [SUDAN-EO14098].

Designated pursuant to section 1(a)(ii)(A) of Executive Order 14098 of May 4, 2023, "Imposing Sanctions Certain Persons Destabilizing Sudan and Undermining the Goal of a Democratic Transition," for being a foreign person who is or has been a leader, official, senior executive officer, or member of the board of directors of the Rapid Support Forces, an entity that has, or whose members have been responsible for, or complicit in, or to have directly or indirectly engaged or attempted to engage in actions or policies that threaten the peace, security, or stability of Sudan, relating to the tenure of such leader, official, senior executive officer, or member of the board of directors.

Lisa M. Palluconi,
Acting Director, Office of Foreign Assets Control.
 [FR Doc. 2024-23592 Filed 10-10-24; 8:45 am]
BILLING CODE 4810-AL-P

UNITED STATES INSTITUTE OF PEACE

Notice Regarding Board of Directors Meetings

AGENCY: United States Institute of Peace (USIP) and Endowment of the United States Institute of Peace.

ACTION: Announcement of meeting.

SUMMARY: USIP announces the next meeting of the Board of Directors.

DATES: Friday, October 25, 2024 (9:00 a.m.).

The next meeting of the Board of Directors will be held January 24, 2025.

ADDRESSES: 2301 Constitution Avenue NW, Washington DC 20037.

FOR FURTHER INFORMATION CONTACT: Corinne Graff, 202-429-7895, cgraff@usip.org.

SUPPLEMENTARY INFORMATION: Open Session—Portions may be closed pursuant to subsection (c) of section 552b of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98-525.

Authority: 22 U.S.C. 4605(h)(3).

Dated: October 7, 2024.

Rebecca Fernandes,
Director of Accounting.

[FR Doc. 2024-23563 Filed 10-10-24; 8:45 am]

BILLING CODE 2810-03-P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Amended, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. ch. 10, that the Advisory Committee on Cemeteries and Memorials will conduct meeting sessions to be held October 29–30, 2024. The meeting sessions will begin and end as follows:

Date(s):	Time(s):	Location(s)	Open to the public
October 29, 2024	9:00 a.m. to 2:45 p.m. Eastern Standard Time (EST).	Library of Congress Jefferson Building, Room J119, Washington, DC 20540.	Yes.
October 30, 2024	9:00 a.m. to 4:00 p.m. EST	Library of Congress Jefferson Building, Room J119, Washington, DC 20540.	Yes.

The meeting sessions are open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of national cemeteries, soldiers' lots and plots, the selection of new national cemetery sites, the erection of appropriate memorials, and the adequacy of Federal burial benefits. The Committee makes recommendations to the Secretary regarding such activities.

On Tuesday, October 29, 2024, the agenda will include opening remarks from the Committee Chair, and other VA officials. There will be remarks by the Department of Veterans Affairs Chief of Staff, National Cemetery Administration Acting Under Secretary for Memorial Affairs, and updates from the Pension and Fiduciary Services, Veterans Benefits Administration, Survivor Assistance Memorial Support Office, and the Veterans Health Administration.

On Wednesday, October 30, 2024, the agenda will include a tour and presentation on the Library of Congress, a briefing from the Director, National Archives and Administration, National Personnel Records Center, the status of committee recommendations, public comments, subcommittee updates, proposed recommendations, and open discussion. Additionally, time will be allotted for the public to provide comments starting at 2:45 p.m. EST and ending no later than 3:45 p.m. EST. The comment period may end sooner, if

there are no comments presented or they are exhausted before the end time. Individuals interested in providing comments during the public comment period are allowed no more than three minutes for their statements.

Any member of the public seeking additional information should contact Ms. Faith Hopkins, Designated Federal Officer, at 202-603-4499. Please leave a voice mail message no later than close of business, October 25, 2024. The Committee will also accept written comments. Comments may be transmitted electronically to the Committee at faith.hopkins@va.gov. In the public's communications with the Committee, the writers must identify themselves and state the organizations, associations, or persons they represent.

Any member of the public who wishes to attend the meeting virtually, use the following Cisco Webex Meeting Link:

Join on Your Computer or Mobile App:

<https://veteransaffairs.webex.com/veteransaffairs/j.php?MTID=m36c2db38720b307ba7761d97e03bb015>

Meeting number: 2819 557 6428

Password: MSvuV69Kf@7

Join by phone: (404) 397-1596

Access code: 281 955 76428

Dated: October 8, 2024.

Jelessa M. Burney,
Federal Advisory Committee Management Officer.

[FR Doc. 2024-23608 Filed 10-10-24; 8:45 am]

BILLING CODE 8320-01-P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900-0681]

Agency Information Collection Activity Under OMB Review: Pre and Post Independent Living Assessment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefit Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden, and it includes the actual data collection instrument.

DATES: Comments and recommendations for the proposed information collection should be sent by November 12, 2024.

ADDRESSES: To submit comments and recommendations for the proposed information collection, please type the following link into your browser: www.reginfo.gov/public/do/PRAMain, select “Currently under Review—Open for Public Comments”, then search the list for the information collection by Title or “OMB Control No. 2900–0681.”

FOR FURTHER INFORMATION CONTACT: VA PRA information: Maribel Aponte, 202–461–8900, vacopaperworkreduact@va.gov.

SUPPLEMENTARY INFORMATION:

Title: VA Form 28–0791, Pre and Post Independent Living Assessment.

OMB Control Number: 2900–0681
<https://www.reginfo.gov/public/do/PRASearch>.

Type of Review: Reinstatement with change of a previously approved collection.

Abstract: VA Form 28–0791, Pre and Post Independent Living Assessment (IL) is used by the Vocational Rehabilitation Counselor (VRC) during the initial and post IL evaluations. During this face-to-face meeting, the VRC identifies impairments and or barriers the Veteran may be experiencing with Activities of Daily Living (ADLs). The VRC then uses this information to identify the needs for services. The VRC compares the information obtained from the preliminary and post plan assessments to determine if there are improvements in the Veteran’s activities of daily living. Without the information gathered on this form, VR&E is not able to identify IL needs and provide needed services. There are no other invitations or other communications sent to the respondent associated with the information collection. Failure to collect this information would have a detrimental impact upon the determination of appropriate rehabilitation goals for Veterans participating in the IL program. This would negatively impact the Veteran’s participation in his or her rehabilitation program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 89 FR 57996, July 16, 2024.

Affected Public: Individuals or Households.

Estimated Annual Burden: 906 hours.

Estimated Average Burden per

Respondent: 30 minutes.

Frequency of Response: Two times.

Estimated Number of Respondents: 906 per year.

Authority: 44 U.S.C. 3501 *et seq.*

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2024–23606 Filed 10–10–24; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Matching Program

AGENCY: Department of Veterans Affairs (VA).

ACTION: Notice of a new matching program.

SUMMARY: The Department of Veterans Affairs (VA) provides notice that it intends to conduct a recurring computer-matching program matching Social Security Administration (SSA) Master Beneficiary Records (MBRs) and the Master Files of Social Security Number (SSN) Holders and SSN Applications (Enumeration System) with VA pension, compensation, and dependency and indemnity compensation (DIC) records. The goal of this match is to identify beneficiaries, who are receiving VA benefits and SSA benefits or earned income, and to reduce or terminate VA benefits, if appropriate. The match will include records of current VA beneficiaries.

DATES: Comments on this matching program must be received no later than 30 days after date of publication in the **Federal Register**. If no public comment is received during the period allowed for comment or unless otherwise published in the **Federal Register** by VA, the new agreement will become effective a minimum of 30 days after date of publication in the **Federal Register**. If VA receives public comments, VA shall review the comments to determine whether any changes to the notice are necessary. This matching program will be valid for 18 months from the effective date of this notice.

ADDRESSES: Comments may be submitted through www.Regulations.gov or mailed to VA Privacy Service, 810 Vermont Avenue NW, (005X6F), Washington, DC 20420. Comments should indicate that they are submitted in response to SSA’s benefit data, CMA 1030. Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT:

Jennifer Feuer,
PFBUSMGMT.VBAVACO@VA.GOV,
Pension and Fiduciary Service, Front

Office, Pension and Fiduciary Service (21P), Department of Veterans Affairs, 810 Vermont Ave NW, Washington, DC, 20420, (202) 632–8863.

SUPPLEMENTARY INFORMATION: VA will use this information to verify the income information submitted by beneficiaries in VA’s income-based benefit programs and adjust VA benefit payments as prescribed by law. The legal authority to conduct this match is 38 U.S.C. 5106, which requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for benefits or verifying other information with respect to payment of benefits.

Participating Agencies: The Social Security Administration (SSA) and Department of Veterans Affairs (VA).

Authority for Conducting the Matching Program: Federal law at 38 U.S.C. 5106 requires Federal agencies to furnish VA with information the VA Secretary may request for determining eligibility for or the amount of VA benefits.

Purpose(s): To update VA master records of VA beneficiaries and their dependents receiving income-dependent benefits and to adjust VA income-dependent benefits based on benefit information received from SSA regarding amount of SSA benefits.

Categories of Individuals: Veterans and beneficiaries who apply for VA income benefits.

Categories of Records: VA will provide SSA with an electronic file in a format defined by SSA that contains the Social Security number (SSN) for all beneficiaries in receipt of income-based VA benefits. SSA will provide an SSN verification for each record that VA submits based on a review of the Master Files of SSN Holders and SSN Applications (Enumeration System). SSA will provide Title II benefit data from the Master Beneficiary Record (MBR) for only those SSNs that verify against the Enumeration System.

System(s) of Records: SSA will disclose the necessary benefit information electronically from the MBR, system of records (SOR) number 60–0090, last fully published at 71 FR 1826 (January 11, 2006), amended at 72 FR 69723 (December 10, 2007), 78 FR 40542 (July 5, 2013), 83 FR 31250–31251 (July 3, 2018), 83 FR 54969 (November 1, 2018), and 89 FR 825 (January 5, 2024). SSA will disclose SSN verification information from the Enumeration System, SOR number 60–0058, last fully published at 87 FR 263 (January 4, 2022).

VA records involved in this match are in “VA Compensation, Pension,

Education, and Vocational Rehabilitation and Employment Records—VA” (58 VA 21/22/28), a system of records that was first published at 41 FR 9294 (March 3, 1976), amended at 77 FR 42594 (July 19, 2012), and last amended and republished in its entirety at 84 FR 4138 (February 14, 2019), and amended at 86 FR 61858 (November 8, 2021).

Signing Authority

The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. John Oswalt, Chief Privacy Officer and Chair of the Data Integrity Board, Department of Veterans

Affairs approved this document on August 28, 2024 for publication.

Dated: October 8, 2024.

Amy L. Rose,

Government Information Specialist, VA Privacy Service, Office of Compliance, Risk and Remediation, Office of Information and Technology, Department of Veterans Affairs.

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Part II

Environmental Protection Agency

40 CFR Parts 84, 261, 262, et al.

Phasedown of Hydrofluorocarbons: Management of Certain
Hydrofluorocarbons and Substitutes Under the American Innovation and
Manufacturing Act of 2020; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 84, 261, 262, 266, 270, and 271

[EPA-HQ-OAR-2022-0606; FRL-10105-02-OAR]

RIN 2060-AV84

Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes Under the American Innovation and Manufacturing Act of 2020

AGENCY: Environmental Protection Agency (EPA)

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency is issuing regulations to implement certain provisions of the American Innovation and Manufacturing Act of 2020. This rulemaking establishes an emissions reduction and reclamation program for the management of hydrofluorocarbons that includes requirements for leak repair and installation and use of automatic leak detection systems for certain equipment using refrigerants containing hydrofluorocarbons and certain substitutes; the servicing and/or repair of certain refrigerant-containing equipment to be done with reclaimed hydrofluorocarbons; the initial installation and servicing and/or repair of fire suppression equipment to be done with recycled hydrofluorocarbons, technician training, and recycling of hydrofluorocarbons prior to the disposal of fire suppression equipment containing hydrofluorocarbons; removal of hydrofluorocarbons from disposable cylinders before discarding them; and certain recordkeeping, reporting, and labeling requirements. In addition, EPA is establishing alternative Resource Conservation and Recovery Act standards for certain ignitable spent refrigerants being recycled for reuse.

DATES: This rule is effective December 10, 2024.

FOR FURTHER INFORMATION CONTACT: Christian Wisniewski, Stratospheric Protection Division, Office of Atmospheric Protection (Mail Code 6205A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-564-0417; email address: wisniewski.christian@epa.gov. You may also visit EPA's website at <https://www.epa.gov/climate-hfcs-reduction> for further information.

For information related to the alternative standards for certain ignitable spent refrigerants under the

Resource Conservation and Recovery Act (RCRA), please contact Tracy Atagi, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery (5304T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566-0511; email address: atagi.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” “the Agency,” or “our” is used, we mean EPA. Acronyms that are used in this rulemaking that may be helpful include:

AHRI—Air-Conditioning, Heating, and Refrigeration Institute
 ALD—Automatic Leak Detection
 AIM Act—American Innovation and Manufacturing Act of 2020
 APF—Air Permitting Forum
 APU—Auxiliary power unit
 ASHRAE—American Society of Heating, Refrigerating and Air-Conditioning Engineers
 ASTM—American Society for Testing and Materials
 BOEM—Bureau of Ocean Energy Management
 BTU/h—British thermal units per hour
 CAA—Clean Air Act
 CARB—California Air Resources Board
 CBI—Confidential Business Information
 CFC—Chlorofluorocarbon
 CFR—Code of Federal Regulations
 CH₄—Methane
 CO₂—Carbon dioxide
 CO₂e—Carbon Dioxide Equivalent
 DOD—Department of Defense
 DOI—Department of the Interior
 DOJ—Department of Justice
 DOT—Department of Transportation
 EEAP—Environmental Effects Assessment Panel
 EOL—End of Life
 EPA—Environmental Protection Agency
 ER&R—Emissions Reduction and Reclamation
 EVe—Exchange Value Equivalent
 FAA—Federal Aviation Administration
 FEMA—Fire Equipment Manufacturers Association
 F-HTFs—Fluorinated Heat Transfer Fluids
 FOIA—Freedom of Information Act
 FSSA—Fire Suppression Systems Association
 GHG—Greenhouse gas
 GWP—Global Warming Potential
 HARC—Halon Alternatives Research Corporation
 HCFC—Hydrochlorofluorocarbon
 HCFO—Hydrochlorofluoroolefin
 HEEP—HFC Emissions Estimating Program
 HFC—Hydrofluorocarbon
 HFO—Hydrofluoroolefin
 HSWA—Hazardous and Solid Waste Amendments of 1984
 HVAC—Heating, Ventilation, and Air Conditioning
 HVACR—Heating, Ventilation, Air Conditioning, and Refrigeration
 ICR—Information Collection Request
 in-Hg—inches of Mercury

IPCC—Intergovernmental Panel on Climate Change
 IPR—Industrial Process Refrigeration
 LRM—Lifecycle refrigerant management
 MACS—Mobile Air Climate Systems Association
 MMTCO₂e—Million Metric Tons of Carbon Dioxide Equivalent
 MMTEVe—Million Metric Tons of Exchange Value Equivalent
 MVAC—Motor Vehicle Air Conditioner
 NAICS—North American Industrial Classification System
 NAFED—National Association of Fire Equipment Distributors
 NEDA/CAP—National Environmental Development Association's Clean Air Project
 NFPA—National Fire Protection Association
 NODA—Notice of Data Availability
 NRDC—Natural Resources Defense Council
 NTTAA—National Technology Transfer and Advancement Act
 OCS—Outer Continental Shelf
 OCSLA—Outer Continental Shelf Lands Act
 ODP—Ozone Depletion Potential
 ODS—Ozone-depleting substances
 OEM—Original Equipment Manufacturer
 OMB—Office of Management and Budget
 PII—Personally identifiable information
 ppm—Parts Per Million
 PRA—Paperwork Reduction Act
 PTAC—Packaged terminal air conditioners
 R4 Program—Refrigerant Recovery, Reclaim, and Reuse Requirements (CARB Program)
 RACA—Request for Additional Consumption Allowance
 RACHP—Refrigeration, Air Conditioning, and Heat Pumps
 RCOP—Recycling Code of Practice
 RCRA—Resource Conservation and Recovery Act
 RFA—Regulatory Flexibility Act
 RIA—Regulatory Impact Analysis
 SAE—Society of Automotive Engineers
 SC-HFC—Social Cost of Hydrofluorocarbons
 SISNOSE—Significant Economic Impact on a Substantial Number of Small Entities
 SNAP—Significant New Alternatives Policy
 TFA—Trifluoroacetic acid
 TSD—Technical Support Document
 UMRA—Unfunded Mandates Reform Act
 VCOP—Voluntary Code of Practice
 VRF—Variable Refrigerant Flow
 VSQG—Very Small Quantity Generator

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I. Executive Summary

A. What is the purpose of these regulations?

The Environmental Protection Agency (EPA) is issuing regulations to implement certain provisions of the American Innovation and

Manufacturing Act of 2020, codified at 42 U.S.C. 7675 (AIM Act or “the Act”). The AIM Act authorizes EPA to address hydrofluorocarbons (HFCs) in three main ways: Phasing down HFC production and consumption through an allowance allocation program;¹ facilitating the transition to next-generation technologies by restricting use of these HFCs in the sector or subsectors in which they are used;² and promulgating certain regulations for purposes of maximizing reclaiming and minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers. This rulemaking focuses on the third area—establishing certain regulations for HFCs and their substitutes for the purposes of maximizing reclaiming and minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers.

More specifically, subsection (h) of the AIM Act, titled “Management of Regulated Substances,” directs EPA to promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment that involves: a regulated substance (used interchangeably with “HFCs” in this rulemaking), a substitute for a regulated substance, the reclaiming of a regulated substance used as a refrigerant, or the reclaiming of a substitute for a regulated substance used as a refrigerant.

This rulemaking establishes the Emissions Reduction and Reclamation (ER&R) Program to implement the provisions of subsection (h), including its authority to issue regulations to

¹ EPA has issued regulations establishing and codifying a framework for phasing down HFC production and consumption through an allowance allocation program, “Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act” (86 FR 55116, October 5, 2021)—referred to as the “Allocation Framework Rule” throughout this document. EPA finalized a separate rulemaking to update certain aspects of that regulatory framework (see final rule at 88 FR 46836, July 20, 2023)—referred to as the “2024 Allocation Rule” throughout this document.

² EPA has issued regulations addressing the framework for how EPA intends to implement its authority to restrict the use of HFCs in sectors and subsectors where they are used, as well as establishing certain restrictions on the use of HFCs in specific sectors or subsectors in which they are used, “Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020” (88 FR 73098, October 24, 2023)—referred to as the “2023 Technology Transitions Rule” throughout this document. EPA issued an interim final rule under the Technology Transitions program further addressing a particular subsector (88 FR 88825, December 26, 2023).

control such practices, processes, or activities, particularly as related to the management, use, and reuse of HFCs and substitutes in equipment. Further, these regulations include provisions to support implementation of, compliance with, and enforcement of requirements under subsection (h) of the AIM Act.

Additionally, EPA is establishing alternative RCRA standards for certain ignitable spent refrigerants being recycled for reuse, as that term is used under RCRA.³ These standards involve regulatory changes to 40 Code of Federal Regulations (CFR) parts 261 through 271 and are separate from the regulations under subsection (h)(1) of the AIM Act. These standards are established under a different set of statutory authorities than the ER&R regulations, and they are part of an independent and distinct regulatory regime. EPA is providing notice of the AIM Act regulations and the RCRA regulations in one **Federal Register** notice given both the RCRA regulations concerning the recovery and recycling of certain ignitable spent refrigerants and the AIM Act regulations concerning recovery and reclamation of refrigerants may be of interest to some of the same stakeholders.

B. What is the summary of the regulations finalized in this notice?

EPA is promulgating two separate and distinct sets of regulations. First, EPA is establishing an ER&R program for the management of HFCs and certain substitutes under subsection (h) of the AIM Act. The Agency is including provisions that address the purposes identified in subsection (h)(1) of the AIM Act of maximizing reclamation, minimizing the release of HFCs from equipment, and ensuring the safety of technicians and consumers. Specifically, the AIM Act regulations include requirements for:

- Leak repair of appliances that contain at least 15 pounds of a refrigerant that contains an HFC or a substitute for an HFC with a global warming potential (GWP) above 53, with specific exceptions;
- Installation and use of an automatic leak detection (ALD) system for certain new and existing appliances containing 1,500 pounds or more of a refrigerant

that contains an HFC or a substitute for an HFC with a GWP above 53;

- A reclamation standard limiting the amount of virgin HFCs that can be contained in reclaimed HFC refrigerants;
- The servicing and/or repair of existing equipment in certain refrigeration, air conditioning, and heat pumps (RACHP) subsectors to be done with reclaimed HFCs;
- The servicing, repair, disposal, or installation of fire suppression equipment that contains HFCs, with the purpose of minimizing the release of HFCs from that equipment, including requirements for the initial installation and servicing and/or repair of fire suppression equipment to be done with recycled HFCs, as well as requirements related to technician training in the fire suppression sector;
- Removal of HFCs from disposable cylinders before discarding; and
- Recordkeeping, reporting, and labeling.

Enforcement and compliance. To support compliance with these requirements, EPA is establishing labeling, reporting, and recordkeeping requirements as described in this rulemaking notice. The Agency intends to use a reporting platform the same as or similar to those used for prior AIM Act rules, and will consider making information not entitled to confidential treatment, as described in section V of this action, publicly available.

Exemptions for certain applications and other provisions. Provisions finalized in this action do not apply to two applications, mission-critical military end uses and on board aerospace fire suppression, as listed at 40 CFR 84.13(a), for a year or years for which that application receives an application-specific allowance as defined at 40 CFR 84.3. As such, the provisions established in this action include exemptions for the following applications, for a year or years for which that application receives an application-specific allowance:

- Mission-critical military end uses and
- On board aerospace fire suppression.

Amendments to the RCRA hazardous waste regulations. Second, EPA is amending a separate set of regulations promulgated under RCRA, a separate statutory authority from the AIM Act, to establish alternative standards for ignitable spent refrigerants when “recycled for reuse,” as the term is to be defined under RCRA. EPA is establishing that the alternative standards at 40 CFR part 266, subpart Q, under RCRA, apply to HFCs and other

substitutes that are lower flammability (*i.e.*, that do not belong to flammability Class 3 as classified by the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 34–2022).⁴ EPA is limiting the alternative standards to lower flammability HFCs and substitutes (Class 1, 2, and 2L) because of the lower risk of fire from the collection and recycling for reuse of these refrigerants, and the greater market value of these refrigerants, which supports the conclusion that these spent refrigerants will be recycled for reuse and not stockpiled, mismanaged, or abandoned.

Other topics. Together with the proposal for this rule, EPA issued an advanced notice of proposed rulemaking (ANPRM) seeking information on approaches for establishing requirements for technician training and/or certification. As stated at proposal, EPA is not addressing technician training in this final rulemaking and accordingly is not responding to comments on the ANPRM in this final rule.

Additionally, EPA is not finalizing as part of this action under the AIM Act the proposed provisions for container tracking of HFCs that could be used in the servicing, repair, and/or installation of refrigerant-containing or fire suppression equipment. EPA is also not finalizing in this action provisions requiring the initial installation of refrigerant-containing equipment in certain subsectors in the RACHP sector to be done with reclaimed refrigerant where HFCs or a blend containing HFCs are used. The Agency intends to further consider those provisions and the comments submitted on the proposed requirements before determining how to proceed. As such, EPA need not respond to public comments on those proposed requirements as part of this action.

EPA received many comments on this rulemaking, including those that were in general support or opposition of the various provisions. Specific comments

⁴ ASHRAE Standard 34–2022 assigns a safety group classification for each refrigerant that consists of two alphanumeric characters (*e.g.*, A2 or B1). The capital letter indicates the toxicity class (“A” for lower toxicity) and the numeral denotes the flammability. ASHRAE recognizes three classifications and one subclass for refrigerant flammability. The three main flammability classifications are Class 1, for refrigerants that do not propagate a flame when tested as per the ASHRAE 34 standard, “Designation and Safety Classification of Refrigerants;” Class 2, for refrigerants of lower flammability; and Class 3, for highly flammable refrigerants, such as the hydrocarbon refrigerants. ASHRAE recently updated the safety classification matrix to include a new flammability subclass 2L, for flammability Class 2 refrigerants that burn very slowly.

³ The terms “reclaim” and “recycle” have different regulatory purposes and definitions under RCRA than under the CAA and the AIM Act. Under RCRA, a material is “reclaimed” if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents (See 40 CFR 261.1(c)(4)). Reclamation is one of the four types of “recycling” identified in 40 CFR 261.2(c) that can involve management of a solid waste under RCRA.

as relevant to provisions in this rulemaking are discussed in the respective sections of this rulemaking. Some comments raised issues that are beyond the scope of this rulemaking; because those comments require no response, EPA need not address them in this notice, though in many cases the Agency has noted the submission of such comments for informational purposes.

C. What is the summary of the costs and benefits?

The costs and benefits for the provisions related to managing regulated substances and their substitutes in this rule comes from the *Analysis of the Economic Impact and Benefits of the Final Rule: Management of Certain Hydrofluorocarbons and Substitutes Under Subsection (h) of the American Innovation and Manufacturing Act of 2020* technical support document (TSD) (referred to as the “Economic Impact and Benefits TSD” in this rule) and the *Regulatory Impact Analysis (RIA) Addendum* for this rule (referred to in this rule as the “RIA addendum”) contained in the docket of this rule to provide the public with information on the relevant costs and benefits of this action, and to comply with executive orders. EPA notes that the costs and benefits associated with the management of regulated substances and their substitutes under the AIM Act are described and calculated separately from those associated with the amendments to the RCRA hazardous waste regulations. These analyses—as summarized later in this section—highlight the economic costs and benefits of the provisions in this rulemaking.

Given that the provisions being finalized concern the management of HFCs, and HFCs are subject to the phasedown of production and consumption under the AIM Act, the Agency relied on its previous analyses as a starting point for the assessment of costs and benefits of this rule. Specifically, the Allocation Framework Rule, “Phasedown of Hydrofluorocarbons: Establishing the Allowance Allocation and Trading Program Under the American Innovation and Manufacturing Act” (86 FR 55116, October 5, 2021), the 2024 Allocation Rule, “Phasedown of Hydrofluorocarbons: Allowance Allocation Methodology for 2024 and Later Years” (88 FR 46836, July 20, 2023),⁵ and the 2023 Technology

Transitions Rule, “Phasedown of Hydrofluorocarbons: Restrictions on the Use of Certain Hydrofluorocarbons Under the American Innovation and Manufacturing Act of 2020” (88 FR 73098, October 24, 2023) are assumed as a baseline for this rule. In this way, EPA analyzed the potential incremental impacts of the rule, attributing benefits only insofar as they are additional to those already assessed in the Allocation Framework Rule RIA, the 2024 Allocation Rule RIA Addendum, and the 2023 Technology Transitions Rule RIA Addendum (collectively referred to as “Allocation and 2023 Technology Transitions Rules” in this discussion).

As detailed in the RIA addendum and the Economic Impact and Benefits TSD, the number, charge sizes, leak rates, and other characteristics of potentially affected RACHP equipment were estimated using EPA’s Vintaging Model.⁶ These estimates served as a basis for calculating the reductions in HFC consumption and emissions from the various requirements of the final rule. As described in the RIA addendum and the Economic Impact and Benefits TSD, the leak repair and ALD system provisions finalized in this rule are assumed to result in the repair of leaking systems earlier than they otherwise would have, leading to reduced emissions of HFCs. Provisions requiring reclaimed refrigerant, requirements for the fire suppression sector, and provisions related to the handling of disposable cylinders are further estimated to result in incremental reductions in HFC emissions.

Estimated reductions in HFC releases from equipment result in climate benefits due to reduced climate forcing, which have been monetized in the RIA addendum by multiplying avoided emissions by estimates of the social cost of each HFC (collectively referred to as SC-HFC) affected by the rule. The RIA addendum includes these SC-HFC estimates and uses them in some of the analyses for the purpose of providing

allowances starting with calendar year 2024 allowances and adjusted the consumption baseline downward by less than 0.5 percent to reflect corrected data, among other changes (88 FR 46836, July 20, 2023). EPA also finalized another rulemaking in 2023 to update the regulations established in the HFC Allocation Framework Rule. That rule “Phasedown of Hydrofluorocarbons: Adjustment to the Hydrofluorocarbon Baseline,” amended the production baseline downward by 0.005 percent to reflect corrected data (88 FR 44220, July 12, 2023).

⁶ U.S. EPA. 2023. EPA’s Vintaging Model representing the Allocation Framework Rule as modified by the 2024 Allocation Rule RIA Addendum and the 2023 Technology Transitions Rule RIA Addendum. VM IO file_v4.4_02.04.16_Final TT Rule 2023 High Addition.

information to the public and to comply with executive orders. Although we utilized the SC-HFC estimates for purposes of those analyses, this action does not rely on those values or the resulting quantification of climate benefits as a record basis for this rule, and we would reach the same conclusions in absence of the social costs of HFCs. In the years 2026 through 2050, EPA estimates the rule will prevent approximately 120 million metric tons of carbon dioxide equivalent (MMTCO₂e) in HFC emissions, and the present value of economic benefit of avoiding the damages associated with those emissions is estimated at \$8.4 billion (discounted to 2024 dollars using a three percent discount rate).⁷ The annual benefits are estimated to decrease over time due to the HFC phasedown and the transition out of the higher-GWP HFCs, lowering the average GWP of later emissions. For example, it is estimated that the leak repair and ALD system provisions will prevent approximately 5.6 MMTCO₂e of HFC emissions in 2030 and 3.0 MMTCO₂e in 2040.

Reducing HFC emissions due to fixing leaks earlier is also anticipated to lead to savings for some system owners and operators, as less new refrigerant needs to be purchased to replace leaked refrigerant. In 2026, it is estimated that the leak repair and ALD provisions will lead to savings of \$19.5 million (2022\$) based on reduced HFC refrigerant needed to maintain the equipment. We also are aware that a refrigerant-containing appliance would operate less efficiently if not properly charged and maintained, leading to increased energy costs; however, we have not quantified such savings in our analysis. EPA acknowledges that these \$19.5 million in savings may not completely offset leak repair compliance costs and may not accrue uniformly to all regulated entities. Further, while these provisions have been estimated to result in savings, EPA understands that entities that may be affected by these regulations might not perform the practices, processes, or activities that would result in cost savings absent regulation. When entities are reviewing their own economic analyses, some factors may be pertinent that make new technologies or economically favorable best practices less attractive than existing practices, or some market failure may exist that acts as a barrier to businesses’ adoption of

⁵ This rule established the methodology for allocating HFC production and consumption

⁷ Unless stated otherwise, costs and benefits in this section are presented in 2022 dollars.

the most profitable course.⁸ For example, market failures may exist where there is imperfect information or split incentives, such as decision-makers not knowing the percentage of energy use associated with refrigeration or the costs of replacing refrigerant lost from leaking appliances.

The compliance costs of the rule include recordkeeping and reporting costs, the costs of purchasing and operating ALD systems, costs of required inspections, the cost of repairing leaks earlier than would have been necessary without the provisions, the costs associated with using reclaimed HFCs in certain RACHP subsectors for the servicing of existing equipment (vis a vis virgin manufactured HFCs), the costs associated with minimizing releases of HFCs from fire suppression equipment (including using recycled HFCs in the initial and servicing and/or repair of fire suppression equipment), and the cost of disposable cylinder management requirements. In the years 2026 through 2050, these provisions would result in compliance costs (inclusive of refrigerant savings) with a present value estimated at \$1.5 billion (in 2022 dollars discounted to 2024) at a two percent discount rate, \$1.3 billion at a three percent discount rate, or \$0.9 billion at a seven percent discount rate.

Taking into account both benefits and compliance costs over the 2026 through 2050 time period, it is estimated that the rule results in present value net benefit (climate benefits, as monetized by application of SC-HFCs, discounted at

three percent, minus compliance costs) of \$6.9 billion (with compliance costs discounted at two percent) to \$7.5 billion (with compliance costs discounted at seven percent).

As detailed in the RIA addendum and the Economic Impact and Benefits TSD, these values represent an estimate of potential incremental benefits and assume that industry would comply with previous AIM Act regulations as outlined in the 2023 Technology Transitions RIA Addendum⁹ but would not undertake certain improvements to leak repair and refrigerant recovery practices in the absence of this rulemaking that were not required by those regulations. Since these assumptions are ultimately uncertain, in the RIA addendum and the Economic Impact and Benefits TSD, EPA has also provided estimates under an additional scenario in which leak repair and recovery improvements do occur in the baseline, thus resulting in lower incremental benefits. The assumptions in this alternative scenario translate into reduced estimates of the incremental effect of the provisions of this final rule since additional impacts are only quantified insofar as they go beyond baseline assumptions of existing policy and industry practice.

Some of the information regarding projected impacts of certain aspects of the action was considered by EPA as it finalized this rulemaking. To the extent that EPA has considered such information, it is compiled in the Economic Impact and Benefits TSD, which is in the docket for this

rulemaking. While EPA has included estimates of the costs and benefits of this rulemaking in the RIA addendum to provide the public with information on the relevant costs and benefits of this action and to comply with Executive Orders, the analysis in the RIA addendum does not form a basis or rationale for any of the provisions EPA is promulgating in this rulemaking.

Further, as explained previously in this section, although EPA is using the SC-HFCs for purposes of some of the analysis in the RIA addendum, this action does not rely on those SC-HFC estimates as a record basis for the Agency's action. EPA would reach the conclusions in this rule even in the absence of the SC-HFCs. Additional information on these analyses can be found in section VI of this preamble, as well as the RIA addendum, which is in the docket for this rulemaking.

II. General information

A. Do these regulations apply to me?

You may be potentially affected by the regulations established in this final rule if you own, operate, service, repair, recycle, dispose, or install equipment containing HFCs or their substitutes, as well as if you recover, recycle, or reclaim HFCs or their substitutes. You may also be potentially affected if you manufacture or sell equipment containing HFCs or their substitutes. Potentially affected categories, by North American Industrial Classification System (NAICS) code, are included in Table 1.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES

NAICS Code	NAICS industry description
236118	Residential Remodelers.
236220	Commercial and Institutional Building Construction.
238220	Plumbing, Heating, and Air-Conditioning Contractors.
238990	All Other Specialty Trade Contractors.
311812	Commercial Bakeries.
321999	All Other Miscellaneous Wood Product Manufacturing.
322299	All Other Converted Paper Product Manufacturing.
324191	Petroleum Lubricating Oil and Grease Manufacturing.
324199	All Other Petroleum and Coal Products Manufacturing.
325199	All Other Basic Organic Chemical Manufacturing.
325211	Plastics Material and Resin Manufacturing.
325412	Pharmaceutical Preparation Manufacturing.
325414	Biological Product (except Diagnostic) Manufacturing.
325998	All Other Miscellaneous Chemical Product and Preparation Manufacturing.
326299	All Other Rubber Product Manufacturing.
327999	All Other Miscellaneous Nonmetallic Mineral Product Manufacturing.
332812	Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers.
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing.
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.
333511	Industrial Mold Manufacturing.

⁸ Klemick, Heather & Kopits, Elizabeth & Wolverton, Ann. "Potential Barriers to Improving Energy Efficiency in Commercial Buildings: The

Case of Supermarket Refrigeration." Journal of Benefit-Cost Analysis. 8, 2017, pp. 1–31.

⁹ In the 2023 Technology Transitions RIA Addendum, EPA analyzed a "base case" and a

"high additionality" scenario. The former is used as the baseline to analyze the base case scenario for this rule. See the RIA addendum and Economic Impact and Benefits TSD for additional details.

TABLE 1—NAICS CLASSIFICATION OF POTENTIALLY AFFECTED ENTITIES—Continued

NAICS Code	NAICS industry description
333912	Air and Gas Compressor Manufacturing.
333999	All Other Miscellaneous General Purpose Machinery Manufacturing.
334413	Semiconductor and Related Device Manufacturing.
334419	Other Electronic Component Manufacturing.
334516	Analytical Laboratory Instrument Manufacturing.
335220	Major Household Appliance Manufacturing.
336120	Heavy-Duty Truck Manufacturing.
336212	Truck Trailer Manufacturing.
336214	Travel Trailer and Camper Manufacturing.
3363	Motor Vehicle Parts Manufacturing.
3364	Aerospace Product and Parts Manufacturing.
336411	Aircraft Manufacturing.
336611	Ship Building and Repairing.
336612	Boat Building.
339112	Surgical and Medical Instrument Manufacturing.
339113	Surgical Appliance and Supplies Manufacturing.
339999	All Other Miscellaneous Manufacturing.
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers.
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers.
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers.
423620	Household Appliances, Electric Housewares, and Consumer Electronics Merchant Wholesalers.
423690	Other Electronic Parts and Equipment Merchant Wholesalers.
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers.
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers.
423740	Refrigeration Equipment and Supplies Merchant Wholesalers.
423830	Industrial Machinery and Equipment Merchant Wholesalers.
423840	Industrial Supplies Merchant Wholesalers.
423850	Service Establishment Equipment and Supplies Merchant Wholesalers.
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers.
423990	Other Miscellaneous Durable Goods Merchant Wholesalers.
424690	Other Chemical and Allied Products Merchant Wholesalers.
424820	Wine and Distilled Alcoholic Beverage Merchant Wholesalers.
441310	Automotive Parts and Accessories Stores.
443141	Household Appliance Stores.
444190	Other Building Material Dealers.
445110	Supermarkets and Other Grocery (except Convenience) Stores.
445131	Convenience Retailers.
445298	All Other Specialty Food Retailers.
446191	Food (Health) Supplement Stores.
449210	Electronics and Appliance Retailers.
452311	Warehouse Clubs and Supercenters.
453998	All Other Miscellaneous Store Retailers (except Tobacco Stores).
45711	Gasoline Stations With Convenience Stores.
481111	Scheduled Passenger Air Transportation.
488510	Freight Transportation Arrangement.
493110	General Warehousing and Storage.
531120	Lessors of Nonresidential Buildings (except Mini warehouses).
541330	Engineering Services.
541380	Testing Laboratories.
541512	Computer Systems Design Services.
541519	Other Computer Related Services.
541620	Environmental Consulting Services.
561210	Facilities Support Services.
561910	Packaging and Labeling Services.
561990	All Other Support Services.
562111	Solid Waste Collection.
562211	Hazardous Waste Treatment and Disposal.
562920	Materials Recovery Facilities.
621498	All Other Outpatient Care Centers.
621999	All Other Miscellaneous Ambulatory Health Care Services.
72111	Hotels (Except Casino Hotels) and Motels.
72112	Casino Hotels.
72241	Drinking Places (Alcoholic Beverages).
722511	Full-service Restaurants.
722513	Limited-service Restaurants.
722514	Cafeterias, Grill Buffets, and Buffets.
722515	Snack and Nonalcoholic Beverage Bars.
81119	Other Automotive Repair and Maintenance.
811219	Other Electronic and Precision Equipment Repair and Maintenance.
811412	Appliance Repair and Maintenance.
922160	Fire Protection.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this rulemaking. This table lists the types of entities that EPA expects could potentially be regulated by this rulemaking. Other types of entities not listed in the table could also be regulated. To determine whether your entity may be regulated by this rulemaking, you should carefully examine the regulatory text at the end of this document. If you have questions regarding the applicability of these regulations to a particular entity, consult the people listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What is EPA's authority for these regulations?

On December 27, 2020, the AIM Act was enacted as section 103 in Division S, Innovation for the Environment, of the Consolidated Appropriations Act, 2021 (42 U.S.C. 7675). In subsection (k)(1)(A), the AIM Act provides EPA with the authority to promulgate necessary regulations to carry out EPA's functions under the Act, including its obligations to ensure that the Act's requirements are satisfied (42 U.S.C. 7675(k)(1)(A)). Subsection (k)(1)(C) of the Act also provides that Clean Air Act (CAA) sections 113, 114, 304, and 307 apply to the AIM Act and any regulations EPA promulgates under the AIM Act as though the AIM Act were part of Title VI of the CAA (42 U.S.C. 7675(k)(1)(C)). Accordingly, the promulgation of these regulations under the AIM Act is subject to CAA section 307(d) (see 42 U.S.C. 7607(d)(1)(I)) (CAA section 307(d) applies to "promulgation or revision of regulations under subchapter VI of this chapter ((relating to stratosphere and ozone protection))").

The AIM Act authorizes EPA to address HFCs in three main ways: phasing down HFC production and consumption through an allowance allocation program; facilitating the transition to next-generation technologies by restricting use of these HFCs in the sector or subsectors in which they are used; and promulgating certain regulations for purposes of maximizing reclaiming and minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers. This rulemaking focuses on the third area—establishing certain regulations for HFCs and their substitutes for the purposes of maximizing reclaiming¹⁰ and

minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers.

The identification of regulated substances is addressed under subsection (c) of the Act. The Act lists 18 saturated HFCs, and by reference any of their isomers not so listed, which are covered by the statute's provisions and are referred to as "regulated substances"¹¹ under the Act (42 U.S.C. 7675(c)(1)). Congress also assigned an "exchange value"^{12 13} to each regulated substance. EPA is also authorized to designate additional substances as regulated substances if they meet certain criteria; for example, to be listed, the substance must be a saturated HFC that has an exchange value greater than 53 (which is also the lowest exchange value for a regulated substance listed in subsection (c)(1) of the Act) (42 U.S.C. 7675(c)(3)).

The regulated substances addressed in this rulemaking may be used neat (*i.e.*, as a single component substance) or in a blend with other substances, which may include other regulated substances and/or substitutes for regulated substances. The requirements included in this rulemaking for regulated substances apply regardless of whether the regulated substance is used neat or in a blend. In taking this approach, EPA is not concluding that a blend that uses one or more regulated substances is itself a regulated substance. Rather, the Agency is intending to regulate the regulated substance(s) used within a "blend of substances" (42 U.S.C. 7675(c)(3)(B)(ii)), such that the requirements applicable to equipment that uses regulated substances also

similar terms and when used as nouns uses them interchangeably in this ER&R action.

¹¹ As noted previously in this action, "regulated substance" and "HFC" are used interchangeably in this ER&R action.

¹² EPA has determined that the exchange values included in subsection (c) of the AIM Act are identical to the GWP's included in the Intergovernmental Panel on Climate Change (IPCC) (2007). EPA uses the terms "global warming potential," "GWP," and "exchange value" interchangeably in this rulemaking.

¹³ IPCC (2007): Solomon, S., D. Qin, M. Manning, R.B. Alley, T. Bernsten, N.L. Bindoff, Z. Chen, A. Chidthaisong, J.M. Gregory, G.C. Hegerl, M. Heimann, B. Hewitson, B.J. Hoskins, F. Joos, J. Jouzel, V. Kattsov, U. Lohmann, T. Matsuno, M. Molina, N. Nicholls, J. Overpeck, G. Raga, V. Ramaswamy, J. Ren, M. Rusticucci, R. Somerville, T.F. Stocker, P. Whetton, R.A. Wood and D. Wratt, 2007: Technical Summary. In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change [Solomon, S., D. Qin, M. Manning, Z. Chen, M. Marquis, K.B. Averyt, M. Tignor and H.L. Miller (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA <https://www.ipcc.ch/report/ar4/wg1>. The IPCC's Fourth Assessment Report is also referred to as IPCC AR4.

affect equipment that uses regulated substances in blends. This is consistent with approaches that the Agency has taken under the Allocation Framework Rule (86 FR 55116, October 5, 2021), the 2024 Allocation Rule (88 FR 46836, July 20, 2023), and the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023).¹⁴ Furthermore, subsection (h)(1) requires EPA to promulgate regulations addressing certain practices, processes, or activities involving, among other things, a regulated substance or a substitute for a regulated substance (42 U.S.C. 7675(h)(1)(A)–(B)). Consistent with those provisions, regulatory requirements under subsection (h) may also apply with respect to substitutes for regulated substances, regardless of whether the substitute is used neat or in a blend. In taking this approach for substitutes for a regulated substance, EPA is not concluding that a blend that uses one or more such substitutes that are so regulated is itself a regulated substance under subsection (c) of the Act, nor is EPA designating the substitute a regulated substance under subsection (c) of the Act. Rather, such substitutes are simply addressed, as appropriate, under EPA's authority to promulgate regulations under subsection (h) for certain practices, processes, or activities that involve a substitute for a regulated substance.

Subsection (h) of the AIM Act is titled "Management of Regulated Substances." For purposes of maximizing reclaiming and minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers, subsection (h)(1) directs EPA to promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment that involves a regulated substance, a substitute for a regulated substance, the reclaiming of a regulated substance used as a refrigerant, or the reclaiming of a substitute for a regulated substance used as a refrigerant (42 U.S.C. 7675(h)(1)). Subsection (h)(1) further provides that this includes requiring, where appropriate, that any such servicing, repair, disposal, or installation be performed by a trained technician meeting minimum standards, as determined by EPA. The phrase "where appropriate" in subsection (h)(1) provides EPA discretion to reasonably determine how the regulations under

¹⁴ In affirming this aspect of the Allocation Framework Rule, the D.C. Circuit held that "EPA has statutory authority to regulate HFCs within blends . . . because an HFC within a blend remains a regulated HFC under the Act." *Heating, Air Conditioning & Refrigeration Distributors Int'l v. EPA*, 71 F.4th 59, 64 (D.C. Cir. 2023).

¹⁰ For purposes of this provision, EPA views "reclaim," "reclaiming," and "reclamation" as

subsection (h)(1) will apply because “where appropriate” clearly leaves EPA flexibility to determine how to regulate in the context of subsection (h). In exercising its discretion under this provision, EPA has taken a number of considerations into account, such as: the text of subsection (h)(1) itself, including the statutory purposes identified in that provision; the anticipated effectiveness of the requirements under consideration in serving those purposes; the intent of subsection (h), considering the overall context and structure of the AIM Act; and information and insight drawn from EPA’s past experience with the same or similar practices, processes, or activities, as well as sectors, subsectors, and markets, gained from implementing other programs, including under other provisions of the AIM Act and the CAA.

Under subsection (h)(2)(A) of the AIM Act, the Agency “shall consider the use of authority available . . . under this section to increase opportunities for the reclaiming of regulated substances used as refrigerants.” Subsection (h)(2)(B) of the Act further provides that a “regulated substance used as a refrigerant that is recovered shall be reclaimed before the regulated substance is sold or transferred to a new owner, except where the recovered regulated substance is sold or transferred to a new owner solely for the purposes of being reclaimed or destroyed.”

Further, subsection (h)(3) provides that in promulgating regulations to carry out subsection (h), EPA may coordinate those regulations with “any other regulations promulgated by the [EPA] that involve—(A) the same or a similar practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment; or (B) reclaiming.” The statute’s use of “may” conveys the Agency discretion to choose whether to coordinate regulations under subsection (h) with other Agency regulations, as well as determine the circumstances in which it is appropriate to undertake such coordination. Congress did not define the term “coordinate” in the AIM Act. EPA interprets the term, as used in this context, as encompassing a variety of forms of coordination that could potentially be used for the specified types of regulatory provisions and interprets (h)(3) as conveying discretion to EPA to select the form or forms of coordination that are appropriate for the particular circumstances and regulatory provisions under consideration in a given action. This action under subsection (h) of the AIM Act describes whether and where EPA is coordinating with regulations that involve the same

or similar practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment or reclaiming, and the Agency’s rationale on the appropriateness of coordinating with these regulations. For example, coordination could include establishing parallel requirements under subsection (h), where appropriate, as in another regulatory regime so that a similar practice, process, or activity in similar equipment is held to similar standards under both regimes. It could also include deciding not to establish requirements under subsection (h) in certain situations, such as when an existing requirement already applies to a similar practice, process, or activity under another set of regulations that EPA views as adequate to also address the purposes of subsection (h). Coordination could also mean coordinating rulemaking schedules or timing for certain requirements under subsection (h) that cover a similar practice, process, or activity as covered in a previous regulation and would meet the purposes of subsection (h). Finally, coordination may also mean coordinating the requirements under subsection (h) with revisions to regulations under other statutory authorities that address related practices, processes, or activities, with the goal of developing independent regulatory regimes that operate well together to achieve their stated goals.

Subsection (h)(4) expressly states that any rulemaking under subsection (h) shall not apply to a regulated substance or a substitute for a regulated substance that is contained in a foam. Thus, the requirements in this rulemaking do not apply to regulated substances or substitutes for regulated substances when those substances are contained in foams.

Finally, subsection (h)(5) provides that, subject to availability of appropriations, EPA shall establish a grant program to award small business grants for the purchase of new specialized equipment for the recycling, recovery, or reclamation of a substitute for a regulated substance, including the purchase of approved refrigerant recycling equipment for recycling, recovery, or reclamation in the service or repair of motor vehicle air conditioner (MVAC) systems. Funds have not been appropriated for this grant program. The establishment of this program is outside the scope of this rulemaking.

Through this rulemaking, EPA is establishing an ER&R program that includes requirements for leak repair for certain equipment containing a refrigerant that contains an HFC or

certain substitutes for HFCs; installation and use of ALD systems for certain equipment; the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors; requirements for the servicing, repair, disposal, or installation of fire suppression equipment that contains HFCs to be done with recycled HFCs, with the purpose of minimizing the release of HFCs from that equipment, as well as requirements related to technician training in the fire suppression sector; and recovery of HFCs from disposable cylinders before discarding. EPA is also establishing recordkeeping, reporting, and/or labeling requirements pursuant to these provisions.

Under subsection (h)(1), EPA is directed to promulgate certain regulations for “purposes of maximizing the reclaiming and minimizing the release of a regulated substance from equipment and ensuring the safety of technicians and consumers.” Subsection (h) further specifies that those regulations are to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment that involves a regulated substance, a substitute for a regulated substance, the reclaiming of a regulated substance used as a refrigerant, or the reclaiming of a substitute for a regulated substance used as a refrigerant. Together, the provisions, as summarized here and explained in greater detail in the relevant sections of this rulemaking, are designed to further those three purposes described in subsection (h)(1); *i.e.*, (1) maximizing reclaiming, (2) minimizing the release of regulated substances from equipment, and (3) ensuring the safety of technicians and consumers, consistent with the scope of regulatory authority under that provision. As EPA interprets the statutory text, the suite of regulations established under subsection (h)(1) of the Act, taken together, are to focus on serving these purposes, though the individual regulatory provisions under subsection (h)(1) need not each connect to all three purposes. This interpretation is integral to establishing an effective regulatory program, as some regulatory provisions that might be considered under (h)(1) may be highly efficacious at addressing one of the regulatory purposes but not address the other two, or alternatively, may be important to support the functioning of the regulatory program as a whole, but not be focused on any of the specific purposes. Accordingly, this understanding of the statutory text will support EPA’s ability to develop

regulations that work together to help achieve the statutory purposes.

Together, the provisions in this action serve the purposes described in (h)(1), with certain provisions more geared towards one or two of the purposes identified in subsection (h)(1). For example, the provisions related to leak repair in this action are directed at the purpose of minimizing the release of a regulated substance from equipment, but also help serve the purpose of maximizing the reclaiming of a regulated substance. Those provisions set requirements for when and how equipment must be serviced and leaks in equipment must be repaired. Taking these actions will minimize the release of regulated substances through such leaks, as the sooner a leak is found and repaired, the less HFC will be released from that leak. Further, by limiting the amount of regulated substances released from leaks in equipment, the opportunity to recover and subsequently reclaim these regulated substances increases. Thus, the provisions related to leak repair also help serve the purpose of maximizing the reclaiming of regulated substances.

Another example is the provisions for the installation and use of ALD systems, which, similar to the leak repair provision, help address the purposes articulated in subsection (h)(1). In general, ALD systems will alert an owner or operator to leaks in refrigerant-containing appliances well before any measurable decrease in the level of performance of the equipment. Identifying and repairing leaks sooner as a result of detecting the leak with an ALD system will further limit the amount of regulated substance released from the leak and maintain more of the regulated substance within the equipment, where it will be available for eventual recovery and reclamation.

In addition to establishing requirements for the management of HFCs and substitutes, this action includes provisions designed to support enforcement and compliance, including recordkeeping and reporting. As stated earlier in this section, subsection (k)(1)(C) of the AIM Act states that CAA section 114 applies to the AIM Act and rules promulgated under it as if the AIM Act were included in CAA Title VI. Thus, CAA section 114, which provides authority to the EPA Administrator to require recordkeeping and reporting in carrying out provisions of the CAA, also applies to and supports this rulemaking. These provisions and ones like them are integral to establishing an effective regulatory program, and thus are important to the overall efficacy of the HFC management program at achieving

the purposes articulated in subsection (h)(1), even if they may be less directly connected to those purposes if viewed in isolation.

EPA is also establishing alternative RCRA standards for ignitable spent refrigerants being recycled for reuse. These standards are not part of the regulations under subsection (h)(1) of the AIM Act but rather involve revisions to independent regulatory provisions, under a separate and distinct statutory authority. More specifically, the action under RCRA involves regulatory changes to 40 CFR parts 261 through 271, and those changes are made under the authority of sections 2002, 3001, 3002, 3003, 3004, 3006, and 3010 of the Solid Waste Disposal Act of 1965 (SWDA), as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA). This statute is commonly referred to as “RCRA.”

III. Background

A. What are HFCs?

HFCs are anthropogenic¹⁵ fluorinated chemicals that have no known natural sources. HFCs are used in a variety of applications such as refrigeration and air conditioning, foam-blowing agents, solvents, aerosols, and fire suppression. HFCs are potent greenhouse gases (GHGs) with 100-year GWPs (a measure of the relative climatic impact of a GHG) that can be hundreds to thousands of times more potent than carbon dioxide (CO₂).

HFC use and emissions¹⁶ have been growing worldwide due to the global phaseout of ozone-depleting substances (ODS) under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) and the increasing use of refrigeration and air conditioning equipment globally. HFC emissions had previously been projected to increase substantially over the next several decades. In 2016, in Kigali, Rwanda, countries agreed to adopt an amendment to the Montreal Protocol, known as the Kigali Amendment, which provides for a global phasedown of the production and consumption of HFCs. The United States ratified the Kigali Amendment on

October 31, 2022. Global adherence to the Kigali Amendment will substantially reduce future emissions, leading to a peaking of HFC emissions before 2040.^{17 18} For additional context, EPA further notes that the G7 Climate, Energy, and Environment ministers met in April 2024 and issued a joint declaration, which included statements recognizing the importance of reducing non-CO₂ carbon emissions and other climate pollutants, including HFCs, and supporting robust implementation of the Kigali Amendment.¹⁹ The joint declaration²⁰ also included the commitment of the relevant governments to, among other things, take concrete actions to reduce non-CO₂ emissions and promote the proper choice of refrigerants as well as the management of HFCs throughout their lifecycle including through leak prevention and end-of-life management of refrigerants.

Atmospheric observations of most currently measured HFCs confirm their abundances are increasing at accelerating rates. Total emissions of HFCs increased by 23 percent from 2012 to 2016²¹ and a further 19 percent from 2016 to 2020. The four most abundant HFCs in the atmosphere, in GWP-weighted terms, are HFC-134a, HFC-125, HFC-23, and HFC-143a.²²

HFCs excluding HFC-23 accounted for a radiative forcing²³ of 0.025 W/m²

¹⁷ Ibid.

¹⁸ A recent study estimated that global compliance with the Kigali Amendment is expected to lower 2050 annual emissions by 3.0–4.4 MMTCO₂e. Guus J.M. Velders et al. Projections of hydrofluorocarbon (HFC) emissions and the resulting global warming based on recent trends in observed abundances and current policies. *Atmos. Chem. Phys.*, 22, 6087–6101, 2022. Available at: <https://doi.org/10.5194/acp-22-6087-2022>.

¹⁹ The Ministerial meeting on Climate, Energy and Environment ends with the adoption of a joint communiqué, April 30, 2024, available: <https://www.g7italy.it/en/the-ministerial-meeting-on-climate-energy-and-environment-ends-with-the-adoption-of-a-joint-communique/>.

²⁰ Climate, Energy and Environment Ministers' Meeting Communiqué, April 29–30, 2024, available: https://www.g7italy.it/wp-content/uploads/G7-Climate-Energy-Environment-Ministerial-Communique_Final.pdf.

²¹ World Meteorological Organization (WMO), Scientific Assessment of Ozone Depletion: 2018, World Meteorological Organization, Global Ozone Research and Monitoring Project—Report No. 58, 588 pp., Geneva, Switzerland, 2018. Available at: <https://ozone.unep.org/sites/default/files/2019-05/SAP-2018-Assessment-report.pdf>.

²² WMO, 2022.

²³ Radiative forcing is expressed in units of watts per square meter (W/m²) and is defined by the IPCC as “a measure of the influence a factor has in altering the balance of incoming and outgoing energy in the Earth-atmosphere system and is an index of the importance of the factor as a potential climate change mechanism.” IPCC, 2007: Climate Change 2007: Synthesis Report. Contribution of Working Groups I, II and III to the Fourth Assessment Report of the Intergovernmental Panel

¹⁵ While the overwhelming majority of HFC production is intentional, EPA is aware that HFC-23 can be a byproduct associated with the production of other chemicals, including but not limited to hydrochlorofluorocarbon (HCFC)–22.

¹⁶ World Meteorological Organization (WMO), Scientific Assessment of Ozone Depletion: 2022, GAW Report No. 278, 509 pp., WMO, Geneva, Switzerland, 2022. Available at: <https://ozone.unep.org/system/files/documents/Scientific-Assessment-of-Ozone-Depletion-2022.pdf>.

in 2016, rising to 0.037 W/m² in 2020. This is an increase of nearly a third in total HFC forcing relative to 2016. This radiative forcing was projected to increase by an order of magnitude to 0.25 W/m² by 2050.²⁴ If the Kigali Amendment is fully implemented, it is expected to reduce the future radiative forcing due to HFCs (excluding HFC-23) to 0.13 W/m² in 2050, which is a reduction of about 50 percent compared with the radiative forcing projected in the business-as-usual scenario of uncontrolled HFCs.²⁵

There are hundreds of possible HFC compounds. The 18 HFCs listed as regulated substances by the AIM Act are some of the most commonly used HFCs (neat and in blends) and have high impacts as measured by the quantity of each substance emitted, multiplied by their respective GWPs. These 18 HFCs are all saturated, meaning they have only single bonds between their atoms, and therefore have longer atmospheric lifetimes.

In the United States, HFCs are used primarily in refrigeration and air conditioning equipment in homes, commercial buildings, and industrial operations (approximately 75 percent of total HFC use in 2018) and in air conditioning in vehicles and refrigerated transport (approximately 8 percent). Smaller amounts are used in foam products (approximately 11 percent), aerosols (approximately 4 percent), fire protection systems (approximately 1 percent), and solvents (approximately 1 percent).²⁶

on Climate Change [Core Writing Team, Pachauri, R.K. and Reisinger, A. (eds.)]. IPCC, Geneva, Switzerland, 104 pp. <https://www.ipcc.ch/report/ar4/syr>.

²⁴ Guus J.M. Velders, David W. Fahey, John S. Daniel, Stephen O. Andersen, Mack McFarland, Future atmospheric abundances and climate forcings from scenarios of global and regional hydrofluorocarbon (HFCs) emissions, *Atmospheric Environment*, doi:10.1016/j.atmosenv.2015.10.071, 2015.

²⁵ Ibid.

²⁶ Calculations based on EPA's Vintaging Model, which estimates the annual chemical emissions from industry sectors that historically used ODS, including refrigeration and air conditioning, foam blowing agents, solvents, aerosols, and fire suppression. The model uses information on the market size and growth for each end-use, as well as a history and projections of the market transition from ODS to substitutes. The model tracks emissions of annual "vintages" of new equipment that enter into operation by incorporating information on estimates of the quantity of equipment or products sold, serviced, and retired or converted each year, and the quantity of the compound required to manufacture, charge, and/or maintain the equipment. Additional information on these estimates is available in U.S. EPA, April 2016. EPA Report EPA-430-R-16-002. Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2014. Available at: <https://www.epa.gov/ghgemissions/inventory-us-greenhouse-gas-emissions-and-sinks-1990-2014>.

EPA estimated in the Allocation Framework Rule (86 FR 55116, October 5, 2021) as updated under the 2024 Allocation Rule (88 FR 46836, July 20, 2023), that phasing down HFC production and consumption according to the schedule provided in the AIM Act will avoid cumulative consumption of 3,156 million metric tons of exchange value equivalent (MMTEVe) of HFCs in the United States for the years 2022 through 2036. That estimate included both consumption as defined in 40 CFR 84.3—i.e., with respect to a regulated substance, bulk production plus bulk imports minus bulk exports—and, although not requiring AIM Act allowances, the amount in imported products containing a regulated substance, less the amount in exported products containing a regulated substance. Annual avoided consumption was estimated at 42 MMTCO₂e in 2022 and 282 MMTCO₂e in 2036. In order to calculate the climate benefits associated with consumption abatement, the consumption changes were expressed in terms of emissions reductions. EPA estimated that for the years 2022 through 2050, the HFC phasedown will avoid emissions of 4,560 MMTCO₂e of HFCs in the United States. The annual avoided emissions are estimated at 22 MMTCO₂e in the year 2022 and 171 MMTCO₂e in 2036. More information regarding these estimates is provided in the Allocation Framework Rule RIA and the 2024 Allocation Rule RIA Addendum, which can be found in the docket for this rulemaking.

The Agency calculated incremental avoided consumption and emissions under the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023). HFC consumption reductions beyond those from the HFC phasedown as stipulated in the previous paragraph ranged from 720 to 1,113 MMTCO₂e for the years 2025 through 2050. EPA also estimated that the 2023 Technology Transitions Rule will achieve an additional 83 to 876 MMTCO₂e of avoided emissions over these years, 2025 through 2050. The 2023 Technology Transitions Rule RIA Addendum, as well as the TSD, *Costs and Environmental Impacts*, are available in the docket for this rulemaking.

B. How do HFCs affect public health and welfare?

Elevated concentrations of GHGs including HFCs are and have been warming the planet, leading to changes in the Earth's climate including changes in the frequency and intensity of heat waves, precipitation, and extreme

weather events; rising seas; and retreating snow and ice. The changes taking place in the atmosphere as a result of the well-documented buildup of GHGs due to human activities are changing the climate at a pace and scale that threatens human health, society, and the natural environment. This section provides some scientific background on climate change to offer additional context for this rulemaking and help the public understand the environmental impacts of GHGs, such as HFCs. Extensive additional information on climate change is available in the scientific assessments and Agency documents that are briefly described in this section, as well as in the technical and scientific information supporting them.

One of those documents is EPA's 2009 Endangerment and Cause or Contribute Findings for Greenhouse Gases under CAA section 202(a) (74 FR 66496, December 15, 2009).²⁷ In the 2009 Endangerment Finding, the Administrator found under CAA section 202(a) that elevated atmospheric concentrations of six key, well-mixed GHGs—CO₂, methane (CH₄), nitrous oxide (N₂O), HFCs, perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆)—"may reasonably be anticipated to endanger the public health and welfare of current and future generations" (74 FR 66523, December 15, 2009), and subsequent science and observed changes have confirmed and strengthened the understanding and concerns regarding the climate risks considered in the Finding. The 2009 Endangerment Finding, together with the extensive scientific and technical evidence in the supporting record, documented that climate change caused by human emissions of GHGs (including HFCs) threatens the public health of the population of the United States. It explained that by raising average temperatures, climate change increases the likelihood of heat waves, which are associated with increased deaths and illnesses (74 FR 66497, December 15, 2009). While climate change also likely reduces cold-related mortality, evidence indicates that the increases in heat mortality will be larger than the decreases in cold mortality in the United States (74 FR 66525, December 15, 2009). The 2009 Endangerment Finding further explained that, compared with a future without climate change, climate change is expected to increase tropospheric ozone pollution over broad areas of the United States, including in the largest metropolitan

²⁷ In describing these 2009 Findings, EPA is neither reopening nor revisiting them.

areas with the worst tropospheric ozone problems, and thereby increase the risk of adverse effects on public health (74 FR 66525, December 15, 2009). Climate change is also expected to cause more intense hurricanes and more frequent and intense storms of other types and heavy precipitation, with impacts on other areas of public health, such as the potential for increased deaths, injuries, infectious and waterborne diseases, and stress-related disorders (74 FR 66525, December 15, 2009). Children, elderly people, and poor people are among the most vulnerable to these climate-related health effects (74 FR 66498, December 15, 2009).

The 2009 Endangerment Finding also documented, together with the extensive scientific and technical evidence in the supporting record, that climate change touches nearly every aspect of public welfare²⁸ in the United States, including changes in water supply and quality due to increased frequency of drought and extreme rainfall events; increased risk of storm surge and flooding in coastal areas and land loss due to inundation; increases in peak electricity demand and risks to electricity infrastructure; predominantly negative consequences for biodiversity and the provisioning of ecosystem goods and services; and the potential for significant agricultural disruptions and crop failures (though offset to some extent by carbon fertilization). These impacts are also global and may exacerbate problems outside the United States that raise humanitarian, trade, and national security issues for the United States (74 FR 66530, December 15, 2009).

In 2016, the Administrator similarly issued Endangerment and Cause or Contribute Findings for GHG emissions from aircraft under CAA section 231(a)(2)(A) (81 FR 54422, August 15, 2016).²⁹ In the 2016 Endangerment Finding, the Administrator found that the body of scientific evidence amassed in the record for the 2009 Endangerment Finding compellingly supported a similar endangerment finding under CAA section 231(a)(2)(A) and also found that the science assessments released between the 2009 and the 2016

Endangerment Findings “strengthen and further support the judgment that GHGs in the atmosphere may reasonably be anticipated to endanger the public health and welfare of current and future generations” (81 FR 54424, August 15, 2016).

Since the 2016 Endangerment Finding, the climate has continued to change, with new records being set for several climate indicators such as global average surface temperatures, GHG concentrations, and sea level rise. Moreover, heavy precipitation events have increased in the Eastern United States, while agricultural and ecological drought has increased in the Western United States, along with more intense and larger wildfires.³⁰ These and other trends are examples of the risks discussed in the 2009 and 2016 Endangerment Findings that have already been experienced. Additionally, major scientific assessments continue to demonstrate advances in our understanding of the climate system and the impacts that GHGs have on public health and welfare both for current and future generations. According to the Intergovernmental Panel on Climate Change’s (IPCC) Sixth Assessment Report, “it is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred.”³¹ These updated observations and projections document the rapid rate of current and future climate change both globally and in the United States.^{32 33}

C. What regulatory programs addressing refrigerants has EPA already established under the Clean Air Act?

EPA is issuing regulations that are designed to establish a comprehensive HFC management program that serves purposes including maximizing HFC

reclamation and minimizing the release of HFCs from equipment while coordinating these efforts with other similar programs where appropriate. EPA has an extensive history under CAA Title VI regulating the sectors in which HFCs and substitutes are typically used, including where they are used as refrigerants and for other purposes. For example, EPA has regulated stationary refrigeration and air conditioning applications under CAA section 608, as well as MVACs under CAA section 609, and has evaluated alternative substances for refrigeration, air conditioning, and other uses under the Significant New Alternatives Policy (SNAP) program under CAA section 612.

1. National Recycling and Emission Reduction Program (CAA Section 608)

CAA section 608, titled “National Recycling and Emission Reduction Program,” has three main components. First, CAA section 608(a) requires EPA to establish standards and requirements regarding the use and disposal of class I and class II substances.³⁴ The second component, CAA section 608(b), requires that the regulations issued pursuant to subsection (a) contain requirements for the safe disposal of class I and class II substances. The third component, CAA section 608(c), prohibits the knowing venting, release, or disposal of ODS refrigerants³⁵ and their substitutes³⁶ in the course of maintaining, servicing, repairing, or disposing of appliances or industrial process refrigeration (IPR). EPA refers to this third component as the “venting prohibition.” CAA section 608(c)(1) establishes the venting prohibition for ODS refrigerants effective July 1, 1992, and it includes an exemption from this prohibition for “[d]e minimis releases associated with good faith attempts to recapture and recycle or safely dispose” any such substance. CAA section 608(c)(2) extends CAA section 608(c)(1) to substitute refrigerants, effective November 15, 1995. CAA section 608(c)(2) also includes a provision that allows the Administrator to exempt a substitute refrigerant from the venting prohibition if he or she determines that such venting, release, or disposal of a

²⁸ The CAA states in section 302(h) that “[a]ll language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being, whether caused by transformation, conversion, or combination with other air pollutants.” 42 U.S.C. 7602(h).

²⁹ In describing these 2016 Findings, EPA is neither reopening nor revisiting them.

³⁰ An additional resource for indicators can be found at <https://www.epa.gov/climate-indicators>.

³¹ IPCC, 2021: Summary for Policymakers. In: Climate Change 2021: The Physical Science Basis. Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change [Masson-Delmotte, V., P. Zhai, A. Pirani, S.L. Connors, C. Péan, S. Berger, N. Caud, Y. Chen, L. Goldfarb, M.I. Gomis, M. Huang, K. Leitzell, E. Lonnoy, J.B.R. Matthews, T.K. Maycock, T. Waterfield, O. Yelekçi, R. Yu, and B. Zhou (eds.)]. Cambridge University Press, Cambridge, United Kingdom and New York, NY, USA, pp. 3–32, doi:10.1017/9781009157896.001.

³² USGCRP, 2018: Impacts, Risks, and Adaptation in the United States: Fourth National Climate Assessment, Volume II [Reidmiller, D.R., C.W. Avery, D.R. Easterling, K.E. Kunkel, K.L.M. Lewis, T.K. Maycock, and B.C. Stewart (eds.)]. U.S. Global Change Research Program, Washington, DC, USA, 1515 pp. doi: 10.7930/NCA4.2018. Available at: <https://nca2018.globalchange.gov>.

³³ IPCC, 2021.

³⁴ A class I or class II substance is an ozone-depleting substance (ODS) listed at 40 CFR part 82, subpart A, appendix A or appendix B, respectively. This document refers to class I and class II substances collectively as ODS.

³⁵ The term “ODS refrigerant” as used in this document refers to any refrigerant or refrigerant blend in which one or more of the components is a class I or class II substance.

³⁶ The term “substitute” for the purposes of the regulations under CAA section 608 is defined at 40 CFR 82.152.

substitute refrigerant “does not pose a threat to the environment.”

EPA first issued regulations under CAA section 608 on May 14, 1993 (58 FR 28660, “1993 Rule”), to establish the national refrigerant management program for ODS refrigerants recovered during the service, repair, or disposal of air conditioning and refrigeration appliances. Since then, EPA has revised these regulations, which are found at 40 CFR part 82, subpart F, (“subpart F”), through subsequent rulemakings published between 1994 and 2020. Regulations issued under CAA section 608 include, among other things, the venting prohibition and sales restrictions for refrigerants (40 CFR 82.154); safe disposal of appliances (40 CFR 82.155); proper practices for the evacuation of refrigerant from appliances (40 CFR 82.156); required practices for appliance maintenance and leak repair (40 CFR 82.157); standards for recovery and/or recycling equipment (40 CFR 82.158); technician and reclaimer certification requirements (40 CFR 82.161 and 82.164, respectively); and reporting and recordkeeping requirements (40 CFR 82.166). Appendices A through E at 40 CFR part 82, subpart F, provide, among other things, specifications for refrigerants; performance standards for refrigerant recovery, recycling, and/or reclaiming equipment; and standards for becoming a certifying program for technicians.

As it pertains to regulations under CAA section 608, EPA has used the term “non-exempt substitute” to refer to non-ozone depleting refrigerants that have not been exempted from the venting prohibition under CAA section 608(c)(2) and 40 CFR 82.154(a) in the relevant end use. Similarly, the term “exempt substitute” refers to a non-ozone depleting refrigerant that has been exempted from the venting prohibition under CAA section 608(c)(2) and 40 CFR 82.154(a) in the relevant end use. A few exempt substitutes have been exempted from the venting prohibition in all applications. Notably, in 2016, EPA updated existing refrigerant management requirements and extended the full set of the subpart F refrigerant management requirements, which prior to that rule applied only to ODS refrigerants,³⁷ to non-exempt substitute refrigerants, such as HFCs and hydrofluoroolefins (HFOs). See 81 FR 82272 (November 18, 2016), hereafter “2016 CAA Section 608 Rule.” Among the subpart F requirements extended to

non-exempt substitute refrigerants in the 2016 CAA Section 608 Rule were provisions that restricted the servicing of appliances and the sale of refrigerant to certified technicians; specified the proper evacuation levels before opening an appliance; required the use of certified refrigerant recovery and/or recycling equipment; required refrigerant to be recovered from appliances prior to disposal; required appliances have a servicing aperture or process stub to facilitate refrigerant recovery; required refrigerant reclaimers be certified to reclaim and sell used refrigerant; and established standards for technician certification programs, recovery equipment, and the purity of reclaimed refrigerant. The 2016 CAA Section 608 Rule also extended the appliance maintenance and leak repair provisions, currently codified at 40 CFR 82.157, to appliances that contain 50 or more pounds of non-exempt substitute refrigerant. It also made numerous revisions to improve the efficacy of the refrigerant management program as a whole, such as revisions of regulatory provisions for increased clarity and readability, and removal of provisions that had become obsolete.

After promulgation, the Agency reviewed the 2016 CAA Section 608 Rule, focusing in particular on whether the Agency had the statutory authority to extend the full set of subpart F refrigerant management regulations to non-exempt substitute refrigerants, such as HFCs and HFOs. In 2018, EPA proposed to withdraw the extension of the provisions of 40 CFR 82.157 to appliances using only non-exempt substitute refrigerants (83 FR 49332, October 1, 2018).³⁸ In 2020, EPA published a final rule (85 FR 14150, March 11, 2020, hereafter “2020 CAA Section 608 Rule”) withdrawing the extension of the leak repair requirements—including requirements for repairing leaks, conducting leak inspections, and keeping applicable records—for appliances containing only such substitute refrigerants. Other subpart F provisions that were extended to substitute refrigerants in the 2016 CAA Section 608 Rule, as mentioned in the previous paragraph, were left in place for appliances containing HFCs and other non-exempt substitute refrigerants. There were no changes to any of the regulatory requirements for ODS in the 2020 CAA Section 608 Rule.

Petitions for judicial review were filed on the 2016 CAA Section 608 Rule and

separately on the 2020 CAA Section 608 Rule. Two industry coalitions, the National Environmental Development Association’s Clean Air Project (NEDA/CAP) and the Air Permitting Forum (APF), filed petitions for judicial review of the 2016 CAA Section 608 Rule in the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in 2017. APF also filed an administrative petition for reconsideration before EPA regarding the 2016 CAA Section 608 Rule.³⁹ In 2020, the Natural Resources Defense Council (NRDC) and a group of State and municipal petitioners⁴⁰ filed petitions for judicial review of the 2020 CAA Section 608 Rule in the D.C. Circuit. NEDA/CAP also filed an administrative petition regarding the 2020 CAA Section 608 Rule, styled as a petition for reconsideration or in the alternative a petition for rulemaking.⁴¹ These four petitions for review were all consolidated (Case No. 20–1150, D.C. Cir.) in July of 2020, and in August of 2020 the court severed four issues raised in NEDA/CAP and APF’s administrative petitions for reconsideration and assigned them to a different case (Case No. 20–1309, D.C. Cir.). Both cases are now being held in abeyance.

The E.O. issued on January 20, 2021, “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” directed review of certain agency actions taken between January 20, 2017, and January 20, 2021 (86 FR 7037, January 20, 2021). The 2020 CAA Section 608 Rule was one of the actions subject to review. In light of this review and the Agency’s consideration of subsection (h) of the AIM Act, EPA has developed this rulemaking, which, among other things, involves evaluating the application of leak repair requirements to appliances using HFCs and substitute refrigerants under subsection (h). Because this action is rooted in EPA’s authority under the AIM Act, this rulemaking does not reopen or otherwise address the question of the authority for such requirements under the CAA. Similarly, EPA is not reopening or revisiting any of the regulations under CAA section 608 in this rulemaking.

³⁹ APF Petition for Reconsideration, January 2017, available: <https://www.regulations.gov/document?D=EPA-HQ-OAR-2015-0453-0228>.

⁴⁰ The State and municipal petitioners are the State of New York, State of Connecticut, State of Illinois, State of Maine, State of Maryland, State of Minnesota, State of New Jersey, State of Oregon, Commonwealth of Virginia, State of Washington, District of Columbia, and City of New York.

⁴¹ NEDA/CAP Petitions for Reconsideration/Petition for Rulemaking, May 2020, available: <https://www.regulations.gov/document?D=EPA-HQ-OAR-2017-0629-0345>.

³⁷ The only 40 CFR part 82, subpart F requirements that applied to substitute refrigerants prior to the 2016 CAA Section 608 Rule were the venting prohibition and certain exemptions from that prohibition, as set forth in section 82.154(a).

³⁸ Ozone-depleting refrigerants and appliances that contain or use any amount of ODS continue to be subject to all applicable subpart F requirements, including those in 40 CFR 82.157.

2. Motor Vehicle Air Conditioning Servicing Program (CAA section 609)

CAA section 609 directs EPA to issue regulations establishing standards and requirements for the servicing of MVACs. For purposes of the regulations implementing CAA section 609, “motor vehicle air conditioners”⁴² is defined at 40 CFR 82.32(d) as mechanical vapor compression refrigeration equipment used to cool the driver’s or passenger’s compartment of any motor vehicle. This definition further states that it is not intended to encompass certain hermetically sealed refrigeration systems used on motor vehicles for refrigerated cargo and the air conditioning systems on passenger buses. For purposes of the section CAA section 609 regulations, “motor vehicle” is defined at 40 CFR 82.32(c) as any vehicle which is self-propelled and designed for transporting persons or property on a street or highway, including but not limited to passenger cars, light-duty vehicles, and heavy-duty vehicles. This definition further provides that it does not include a vehicle where final assembly of the vehicle has not been completed by the original equipment manufacturer (OEM).

Under CAA section 609 and regulations that implement it, no person repairing or servicing motor vehicles for consideration (e.g., payment or bartering) may perform any service on an MVAC that involves the refrigerant⁴³ without properly using approved refrigerant recovery or recovery and recycling equipment, and no such person may perform such service for consideration unless such person has been properly trained and certified. CAA section 609 also contains restrictions on the sale or distribution, or offer for sale or distribution, of class I and class II substances suitable for use as a refrigerant in MVACs in containers of less than 20 pounds, except to a

person performing service for consideration on MVAC systems.

Regulations issued under CAA section 609, codified at 40 CFR part 82, subpart B, include, among other things, prohibited and required practices for persons repairing and servicing MVACs for consideration (40 CFR 82.34); requirements for refrigerant handling equipment (40 CFR 82.36); approval processes for independent standards testing organizations (40 CFR 82.38); requirements for certifications that any person servicing or repairing MVACs for consideration must submit to EPA; and related recordkeeping requirements (40 CFR 82.42). Appendices A through F at 40 CFR part 82, subpart B, provide minimum operating requirements for equipment used for the recovery, recycling and/or recharging of refrigerant used in MVACs.

In 1992, EPA published a rule (57 FR 31242, July 14, 1992) under CAA section 609 establishing standards and requirements for servicing of MVACs and restricting the sale of small containers of ODS. The regulations, which appear in 40 CFR part 82, subpart B, require persons who repair or service MVACs for consideration to be certified in refrigerant recovery and recycling and to properly use approved equipment when performing service involving the refrigerant. Consistent with the definition in CAA section 609(b)(1), “refrigerant” is defined in subpart B as any class I or class II substance used in MVACs, and to include any substitute substance effective November 15, 1995. The 1992 CAA section 609 Rule also defined approved refrigerant recycling equipment as equipment certified by the Administrator or an approved organization as meeting either one of the standards in 40 CFR 82.36. Such equipment extracts and recycles refrigerant or extracts but does not recycle refrigerant, allowing that refrigerant to be subsequently recycled on-site or to be sent off-site for reclamation.⁴⁴ EPA based the regulatory equipment standards in subpart B on those developed by the Society of Automotive Engineers (SAE). They cover service procedures for dichlorodifluoromethane (CFC–12 or R–12) recover/recycle equipment (SAE J1989, issued in October 1989); test procedures to evaluate R–12 recover/recycle equipment (SAE J1990, issued in October 1989 and revised in 1991); and

a purity standard for recycled R–12 refrigerant (SAE J1991, issued in October 1989). Only equipment certified to meet the standards set forth in appendix A at 40 CFR part 82, subpart B, or that meets the criteria for substantially identical equipment, was approved under CAA section 609 for use in the servicing of MVACs at that time.

EPA issued another rule under CAA section 609 in 1997 (62 FR 68026, December 30, 1997) in response to the increasing use of substitute refrigerants, particularly 1,1,1,2-tetrafluoroethane (HFC–134a or R–134a). The 1997 CAA Section 609 Rule established standards and requirements for the servicing of MVACs that use any refrigerant other than R–12. The rule also stated that refrigerant (whether R–12 or a substitute) recovered from motor vehicles at motor vehicle disposal facilities may be re-used in the MVAC service sector only if it has been properly recovered and recycled by persons who are either employees, owners, or operators of the facilities, or technicians certified under CAA section 609, using approved equipment. This differs from the rules established under CAA section 608, in which no person may sell or distribute, or offer for sale or distribution, used refrigerant (including both ODS and non-exempt substitutes such as HFCs) unless it has first been reclaimed by a certified reclaimer (40 CFR 82.154(d)). The 1997 CAA Section 609 Rule also established conditions under which owners and operators of motor vehicle disposal facilities may sell refrigerant recovered from such vehicles to technicians certified under CAA section 609.

3. Significant New Alternatives Policy Program (CAA section 612)

EPA identifies and evaluates substitutes for ODS in certain industrial sectors, including RACHP, aerosols, and foams. To a very large extent, HFCs are used in the same sectors and subsectors as where ODS historically have been used. Under SNAP, EPA evaluates acceptability of substitutes for ODS based primarily on the potential human health and environmental risks, relative to other substances used for the same purpose. In so doing, EPA assesses atmospheric effects such as ozone depletion potential (ODP) and GWP, exposure assessments, toxicity data, flammability, and other environmental impacts. This assessment could take a wide range of forms, such as a theoretical evaluation of the properties of the substitute, a computer simulation of the substitute’s performance in the sector or subsector, lab-scale (table-top)

⁴² A related definition for “MVAC-like appliance” is found at 40 CFR 82.152: MVAC-like appliance means a mechanical vapor compression, open-drive compressor appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver’s or passenger’s compartment of off-road vehicles or equipment. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is not intended to cover appliances using R–22 refrigerant.

⁴³ Section 609(b)(1) defines the term “refrigerant,” “[a]s used in this section”, to mean “any class I or class II substance used in a motor vehicle air conditioner. Effective 5 years after November 15, 1990, the term ‘refrigerant’ shall also include any substitute substance.” EPA’s implementing regulations include a parallel definition of this term at 40 CFR 82.32(f).

⁴⁴ Equipment that extracts and recycles refrigerant is referred to as recover/recycle equipment. Equipment that extracts but does not recycle refrigerant is referred to as equipment that recovers but does not recycle refrigerant, or as recover-only equipment.

evaluations of the substitute, or equipment tests under various conditions.

IV. How is EPA regulating the management of HFCs and their substitutes?

As described in the following sections, EPA is establishing an ER&R program for the management of HFCs under subsection (h) of the AIM Act that includes requirements regarding several topics, including leak repair requirements for certain refrigerant-containing appliances and installation and use of ALD systems for certain equipment; requirements for the servicing and/or repair of certain refrigerant-containing equipment; requirements for the servicing, repair, disposal, or installation of fire suppression equipment that contains HFCs, with the purpose of minimizing the release of HFCs from that equipment, including requirements for the initial installation and servicing and/or repair of fire suppression equipment with recycled HFCs, as well as requirements related to technician training in the fire suppression sector; and recovery of HFCs from disposable cylinders before discarding. As discussed in greater detail in section X of this preamble, EPA intends for the regulatory provisions established under subsection (h) of the AIM Act in this final action to be able to stand independently from one another and has designed them accordingly. For example, the leak repair requirements for refrigerant-containing appliances are designed to operate independently from the requirements for servicing, repair, disposal, or installation of fire suppression equipment.

A. What definitions is EPA implementing under subsection (h)?

EPA has operated a refrigerant management program for decades under the CAA. More recently, EPA established regulatory programs related to the HFC phasedown and the technology transitions provisions under the AIM Act. Rules implementing those CAA and AIM Act programs have included defined terms, which EPA was mindful of when proposing and finalizing definitions for the ER&R program under subsection (h) of the AIM Act.

The Allocation Framework Rule (86 FR 55116, October 5, 2021) established regulatory definitions at 40 CFR part 84, subpart A to implement the framework for phasing down HFCs under the AIM Act, with certain revisions to the definitions section at 40 CFR 84.3 (see

88 FR 46836, July 20, 2023).⁴⁵ Subsequently, the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023) established additional regulatory definitions in 40 CFR part 84, subpart B, at 40 CFR 84.52 to implement subsection (i) of the AIM Act. To maintain consistency, except as otherwise explained in this rule, EPA generally intends to use terms in this rulemaking, and in the new subpart C established by this rule, consistent with their definitions in subparts A and B, but there may be exceptions, such as where one term has different definitions under different subparts. The definitions under subpart A had already been finalized when this rule was proposed. Accordingly, consistent with the proposal, for terms not defined in subpart C but that are defined in subpart A (40 CFR 84.3) those definitions apply. As noted previously, EPA also considered the definitions in subpart B (40 CFR 84.52) in establishing the definitions and regulations in subpart C but is not incorporating those definitions into subpart C, in part to avoid potential confusion if the same term was defined differently in subparts A and B, but not defined in subpart C. EPA is also establishing definitions for terms that are applicable only under 40 CFR part 84, subpart C, and do not have counterparts in the definitions under 40 CFR part 84, subparts A or B.

Many of the terms and definitions considered in this action are similar to those used to implement programs under CAA sections 608 and 609, with only limited changes as needed to conform with the AIM Act or this action. EPA considered these previously defined terms, from 40 CFR 82.152 and 40 CFR 82.32, where they are used in the same or substantially similar manner. The regulated community for these regulations under subsection (h) and those under CAA sections 608 and 609 overlap; therefore, maintaining the same or similar definitions, where consistent with AIM Act requirements and the purposes of this action, facilitates implementation by those who have been using and are familiar with these terms. Because EPA's authority under the AIM Act extends beyond the

⁴⁵ The revisions in 40 CFR 84.3 are described in EPA's Allowance Allocation Methodology for 2024 and Later Years rule, which was published on July 20, 2023 (88 FR 46836). That rulemaking focuses on the second phase of the HFC phasedown and, among other things, establishes the allocation methodology for the "general pool" of HFC production and consumption allowances for 2024 through 2028. Available at: <https://www.federalregister.gov/documents/2023/07/20/2023-14312/phasedown-of-hydrofluorocarbons-allowance-allocation-methodology-for-2024-and-later-years>.

sectors covered by 40 CFR part 82, subpart F, where it is necessary or helpful for clarity, EPA is specifying certain definitions that apply to the terms as they refer to refrigerant-containing equipment or as they apply to fire suppression equipment (see, e.g., the definition for "disposal"). EPA may consider adding additional subsectors in a future rulemaking and accordingly may consider updating these definitions in the future.

1. Terms That Did Not Generate Comment and That EPA Is Finalizing as Proposed

Many proposed definitions did not garner specific comment. For the reasons discussed in the proposed rule, EPA is finalizing the following terms substantively as proposed, although in some instances with minor edits that do not alter their meaning (e.g., a non-substantive change in a word's tense or removal of redundant language⁴⁶):

Certified technician means a technician that has been certified per the provisions at 40 CFR 82.161.

Component, as it relates to a refrigerant-containing appliance, means a part of the refrigerant circuit within an appliance including but not limited to compressors, condensers, evaporators, receivers, and all of its connections and subassemblies.

Custom-built means that the industrial process refrigeration equipment or any of its components cannot be purchased and/or installed without being uniquely designed, fabricated, and/or assembled to satisfy a specific set of industrial process conditions.

Fire suppression technician means any person who in the course of servicing, repair, disposal, or installation of fire suppression equipment could be reasonably expected to violate the integrity of the fire suppression equipment and therefore release fire suppressants⁴⁷ into the environment.

Follow-up verification test, as it relates to a refrigerant-containing appliance, means those tests that involve checking the repairs to an appliance after a successful initial verification test and after the appliance has returned to normal operating characteristics and conditions to verify

⁴⁶ EPA notes that in a few instances the proposed definition for a term included a phrase like "as used in this subpart" or "for purposes of this subpart." EPA is not including those phrases in the final definitions, as the second sentence of § 84.102 in the final rule already makes clear that the definitions are for "purposes of this subpart C."

⁴⁷ As described in Section IV.F.1, EPA views the terms, "fire suppressants" and "fire suppression agents" as interchangeable for this rule.

that the repairs were successful. Potential methods for follow-up verification tests include but are not limited to the use of soap bubbles as appropriate, electronic or ultrasonic leak detectors, pressure or vacuum tests, fluorescent dye and black light, infrared or near infrared tests, and handheld gas detection devices.

Full charge, as it relates to a refrigerant-containing appliance, means the amount of refrigerant required for normal operating characteristics and conditions of the appliance as determined by using one or a combination of the following four methods:

(1) Use of the equipment manufacturer's determination of the full charge;

(2) Use of appropriate calculations based on component sizes, density of refrigerant, volume of piping, and other relevant considerations;

(3) Use of actual measurements of the amount of refrigerant added to or evacuated from the appliance, including for seasonal variances; and/or

(4) Use of an established range based on the best available data regarding the normal operating characteristics and conditions for the appliance, where the

midpoint of the range will serve as the full charge.

Initial verification test, as it relates to a refrigerant-containing appliance, means those leak tests that are conducted after the repair is finished to verify that a leak or leaks have been repaired before refrigerant is added back to the appliance.

Leak inspection, as it relates to a refrigerant-containing appliance, means the examination of an appliance to detect and determine the location of refrigerant leaks. Potential methods include but are not limited to ultrasonic tests, gas-imaging cameras, bubble tests as appropriate, or the use of a leak detection device operated and maintained according to manufacturer guidelines. Methods that determine whether the appliance is leaking refrigerant but not the location of a leak, such as standing pressure/vacuum decay tests, sight glass checks, viewing receiver levels, pressure checks, and charging charts, must be used in conjunction with methods that can determine the location of a leak.

Leak rate, as it relates to a refrigerant-containing appliance, means the rate at which an appliance is losing refrigerant, measured between refrigerant charges.

The leak rate is expressed in terms of the percentage of the appliance's full charge that would be lost over a 12-month period if the current rate of loss were to continue over that period. The rate must be calculated using one of the following methods. The same method must be used for all appliances subject to the leak repair requirements located at an operating facility.

(1) Annualizing Method.

(i) Step 1. Take the number of pounds of refrigerant added to the appliance to return it to a full charge, whether in one addition or in multiple additions related to same leak, and divide it by the number of pounds of refrigerant the appliance normally contains at full charge;

(ii) Step 2. Take the shorter of the number of days that have passed since the last day refrigerant was added or 365 days and divide that number by 365 days;

(iii) Step 3. Take the number calculated in Step 1 and divide it by the number calculated in Step 2; and

(iv) Step 4. Multiply the number calculated in Step 3 by 100 to calculate a percentage. This method is summarized in the following formula:

$$\text{Leak rate (\% per year)} = \frac{\text{pounds of refrigerant added in full charge}}{\text{pounds of refrigerant in full charge}} \times \frac{365 \text{ days/year}}{\text{shorter of: \# days since refrigerant last added or 365 days}} \times 100\%$$

(2) Rolling Average Method.

(i) Step 1. Take the sum of the pounds of refrigerant added to the appliance over the previous 365-day period (or over the period that has passed since the last successful follow-up verification

test showing all identified leaks in the appliance were repaired, if that period is less than one year);

(ii) Step 2. Divide the result of Step 1 by the pounds of refrigerant the

appliance normally contains at full charge; and

(iii) Step 3. Multiply the result of Step 2 by 100 to obtain a percentage. This method is summarized in the following formula:

$$\text{Leak rate (\% per year)} = \frac{\text{pounds of refrigerant added over past 365 days (or since the last successful follow-up verification test showing all identified leaks in the appliance were repaired, if that period is less than one year)}}{\text{pounds of refrigerant in full charge}} \times 100\%$$

EPA further notes that, as discussed in section IV.C.3 of this preamble, owner or operators may preemptively repair leaks prior to adding refrigerant and calculating the leak rate for a refrigerant-containing appliance. After the completion of preemptive repair, an owner or operator must calculate the leak rate to see if the refrigerant-containing appliance was leaking above the applicable leak rate threshold and

complete the full suite of leak repair requirements as described in section IV.C.3 (e.g., verification tests, leak inspections, etc.) if the appliance was leaking above the applicable threshold. If the refrigerant-containing appliance was found to be leaking below the applicable leak rate threshold then no further action is necessary after the completion of the preemptive repair. Alternatively, an owner/operators may

use the amount of refrigerant lost in lieu of the amount of refrigerant added to calculate the leak rate prior to adding refrigerant if they have a valid method of determining the amount of refrigerant lost (e.g., evacuating the appliance and comparing the amount of refrigerant evacuated to the full charge).

Mothball, as it relates to a refrigerant-containing appliance, means to evacuate refrigerant from an appliance, or the

affected isolated section or component of an appliance, to at least atmospheric pressure, and to temporarily shut down that appliance.

Motor vehicle, means any vehicle which is self-propelled and designed for transporting persons or property on a street or highway, including but not limited to passenger cars, light-duty vehicles, and heavy-duty vehicles. This definition does not include a vehicle where final assembly of the vehicle has not been completed by the original equipment manufacturer.

Motor vehicle air conditioner (MVAC), means mechanical vapor compression refrigerant-containing appliances used to cool the driver's or passenger's compartment of any motor vehicle. This definition is intended to have the same meaning as in 40 CFR 82.32.

Normal operating characteristics and conditions, as it relates to a refrigerant-containing appliance, means appliance operating temperatures, pressures, fluid flows, speeds, and other characteristics, including full charge of the appliance, that would be expected for a given process load and ambient condition during normal operation. Normal operating characteristics and conditions are marked by the absence of atypical conditions affecting the operation of the appliance.

Owner or operator, means any person who owns, leases, operates, or controls any equipment, or who controls or supervises any practice, process, or activity that is subject to any requirement pursuant to this subpart.

Recycling, when referring to fire suppression or fire suppressants, means the testing and/or reprocessing of regulated substances used in the fire suppression sector to certain purity standards.

Refrigerant circuit, as it relates to a refrigerant-containing appliance, means the parts of an appliance that are normally connected to each other (or are separated only by internal valves) and are designed to contain refrigerant.

Reprocess, means using procedures such as filtering, drying, distillation, and other chemical procedures to remove impurities from a regulated substance or a substitute for a regulated substance.

Retire, as it relates to a refrigerant-containing appliance, means the removal of the refrigerant and the disassembly or impairment of the refrigerant circuit such that the appliance as a whole is rendered unusable by any person in the future.

Seasonal variance, as it relates to a refrigerant-containing appliance, means the removal of refrigerant from an appliance due to a change in ambient

conditions caused by a change in season, followed by the subsequent addition of an amount that is less than or equal to the amount of refrigerant removed in the prior change in season, where both the removal and addition of refrigerant occurs within one consecutive 12-month period.

Stationary refrigerant-containing equipment means refrigerant-containing equipment, as defined in this subpart, that is not an MVAC or MVAC-like appliance, as defined in this subpart.

EPA notes that for this definition the phrase "motor vehicle air conditioner" was used in the proposed definition, but in the final definition EPA is replacing that phrase with its abbreviation "MVAC" to maintain consistency with other definitions in this rule. This change does not alter the meaning of the term.

Technician, as it relates to any person who works with refrigerant-containing appliances, means any person who in the course of servicing, repair, or installation of a refrigerant-containing appliance (except MVACs) could be reasonably expected to violate the integrity of the refrigerant circuit and therefore release refrigerants into the environment. Technician also means any person who, in the course of disposal of a refrigerant-containing appliance (except small appliances as defined in 40 CFR 82.152, MVACs, and MVAC-like appliances), could be reasonably expected to violate the integrity of the refrigerant circuit and therefore release refrigerants from the appliance into the environment. Activities reasonably expected to violate the integrity of the refrigerant circuit include but are not limited to: Attaching or detaching hoses and gauges to and from the appliance; adding or removing refrigerant; adding or removing components; and cutting the refrigerant line. Activities such as painting the appliance, rewiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts are not reasonably expected to violate the integrity of the refrigerant circuit. Activities conducted on refrigerant-containing appliances that have been properly evacuated pursuant to 40 CFR 82.156 are not reasonably expected to release refrigerants unless the activity includes adding refrigerant to the appliance. Technicians include but are not limited to installers, contractor employees, in-house service personnel, and owners and/or operators of refrigerant-containing appliances.

EPA further notes that this definition deviates slightly from the definition of "technician" at 40 CFR 82.152 to conform with the AIM Act grant of

authority. EPA is also defining "certified technician" to make it clear that EPA is referring to persons certified per 40 CFR 82.161 for the purposes of these regulations. When specifically referring to technicians certified under 40 CFR part 82, subpart B, the term "609-certified technician" is used.

2. Terms That Received Comment or That EPA Is Modifying

This section discusses comments received on specific proposed definitions, EPA's responses to those comments, and any changes made to the final definitions in response to those comments. It also includes discussion of certain modifications in the final rule to definitions that did not receive comment as discussed previously.

Comfort cooling. EPA proposed to define this term as "the refrigerant-containing appliances used for air conditioning to provide cooling in order to control heat and/or humidity in occupied facilities including but not limited to residential, office, and commercial buildings. Comfort cooling appliances include but are not limited to chillers, commercial split systems, and packaged roof-top units."

As described below, after considering public comment on this definition, EPA is modifying its definition of "comfort cooling" to include dual-function heat pumps as an additional example of the term.

Comment: One commenter requested that EPA's definition of "comfort cooling" include single-function (heat only) and dual-function (heating and cooling) heat pump appliances.

Response: EPA agrees that dual-function heat pumps are included within the definition of "comfort cooling" because those appliances provide cooling. To provide another relevant example of comfort cooling applications, EPA is adding dual-function heat pumps to the illustrative list of examples in the definition. EPA is not including single-function heat pump applications as an example of an application included in "comfort cooling" because EPA does not view it as fitting within this particular category as the definition is currently drafted. EPA may in the future consider proposing to include single-function heat pump applications under comfort cooling or under a different category of equipment.

Commercial refrigeration. EPA proposed this definition to mean "the refrigerant-containing appliances used in the retail food and cold storage warehouse subsectors. Retail food appliances include the refrigeration equipment found in supermarkets,

convenience stores, restaurants and other food service establishments. Cold storage includes the refrigeration equipment used to store meat, produce, dairy products, and other perishable goods.”

EPA is finalizing two modifications to the proposed definition of “commercial refrigeration.” Both modifications involved replacing the term “refrigeration equipment” in sentences two and three of the proposed definition of the term to “refrigeration-containing appliance” in the finalized term. These changes were made because “refrigeration equipment” is not a defined term under this subpart, but “refrigeration-containing appliance” is. EPA did not receive comment on the definition of “commercial refrigeration.”

Disposal. EPA’s proposed definition of “disposal” (see 88 FR 72216, 72298, October 19, 2023) applied to “refrigerant-containing appliances.” This was done to maintain consistency with the definition of “disposal” in 40 CFR 82.161 which applies to “appliances.” EPA is finalizing a definition of disposal with two parts, with the first part relating to “refrigerant-containing equipment” and the second part relating to “fire suppression equipment.” Furthermore, in the first part of the final definition EPA is using the term “refrigerant-containing equipment” instead of “refrigerant-containing appliance” to more fully align with the regulatory definition with how the term disposal is used under subsection (h)(1) of the AIM Act, which states “the Administrator shall promulgate regulations to control, where appropriate, any practice process or activity regarding servicing, repair, disposal, or installation of *equipment* (emphasis added).” “Refrigerant-containing equipment” is broader than “refrigerant-containing appliance” and includes everything covered under the definition of “refrigerant-containing appliance” (e.g., any air conditioner, MVAC, refrigerator, chiller, or freezer) while also including refrigerant-containing components. However, the regulatory requirements related to disposal of refrigerant-containing equipment established in this final action at 84.106 apply to refrigerant-containing appliances (rather than refrigerant-containing equipment), and this change in the definition is not intended to broaden the scope of these requirements.

EPA added a second part to the final definition of disposal to distinguish disposal of fire suppression equipment. Since this final rule regulates the disposal of fire suppression equipment,

which may differ from the disposal of refrigerant-containing equipment, the Agency is specifying how the term “disposal” relates to fire suppression equipment in this subpart, for greater clarity of the regulatory provisions. This final definition of disposal is analogous to the definition of “disposal of halon-containing equipment” in the halon emissions reduction requirements at 40 CFR part 82, subpart H, which EPA referenced in the proposal, describing its intent to propose requirements similar to those in subpart H. The final definition parallels the definition of disposal at 40 CFR 82.260, with the words “fire suppression equipment” replacing the term “halon-containing equipment” to maintain consistency with regulations for the disposal of halon-containing equipment, including halon-containing equipment used in fire suppression applications. The revised definition can be read in full below:

Disposal, as it relates to refrigerant-containing equipment, means the process leading to and including:

- (1) The discharge, deposit, dumping, or placing of any discarded refrigerant-containing equipment into or on any land or water;
- (2) The disassembly of any refrigerant-containing equipment for discharge, deposit, dumping, or placing of its discarded component parts into or on any land or water;
- (3) The vandalism of any refrigerant-containing equipment such that the refrigerant is released into the environment or would be released into the environment if it had not been recovered prior to the destructive activity;

(4) The disassembly of any refrigerant-containing equipment for reuse of its component parts; or

(5) The recycling of any refrigerant-containing equipment for scrap.

Disposal, as it relates to fire suppression equipment, means the process leading to and including:

- (1) The discharge, deposit, dumping, or placing of any fire suppression equipment into or on any land or water;
- (2) The disassembly of any fire suppression equipment for discharge, deposit, dumping, or placing of its discarded component parts into or on any land or water; or
- (3) The disassembly of any fire suppression equipment for reuse of its component parts.

Comment: One commenter asserted that the proposed definition of disposal (which as originally proposed was specific to a “refrigerant-containing appliance”) is inconsistent with the principles of safe disposal under 40 CFR 82.155 and with the definition of

disposal under RCRA. The commenter asserted that parts 4 and 5 of the definition incorrectly conflate two different processes (disassembly and recycling). The commenter further stated that since there are “safe disposal” regulations at 40 CFR 82.155, it is counterproductive to have a definition of disposal that includes principles of recycling, because disposal and recycling are entirely different processes. The commenter also stated that the definition of disposal under 40 CFR 82.155 and 40 CFR 84.102 is incompatible with RCRA’s definition of disposal under 40 CFR 260.10, which does not include practices of disassembly or recycling. The commenter requested that EPA align the proposed definition with those in 40 CFR 82 subparts B and F to minimize complications and contradictions between these AIM Act subsection (h) regulations and CAA title VI regulations.

Response: EPA is finalizing a definition of “disposal,” as it relates to refrigerant-containing equipment, that parallels the definition in 40 CFR 82.152. To the extent the commenter is suggesting that the proposed definition of disposal is inconsistent with the requirements in 82.155, EPA disagrees. Rather, the definition in 40 CFR 84.102 is analogous to the definition of disposal in 40 CFR part 82, subpart F at 40 CFR 82.152, the safe disposal provisions also found subpart F at 40 CFR 82.155, as 82.155 does not contain a separate definition of “disposal.” To the extent this comment relates to the requirements of or suggestions to change 82.155 or any other regulations under CAA title VI, it is outside the scope of this rulemaking and requires no further response.

EPA disagrees that parts 4 and 5 of the proposed definition (see at 88 FR 72216, 72298, October 19, 2023) are incorrectly conflated. Recycling and disassembly for reuse are distinct processes under these regulations, but they are both end-of-life practices for refrigerant-containing equipment. The definition is intended to include a range of end-of-life practices to ensure the requirements cover the range of relevant activities. The commenter has not provided sufficient rationale for why the relevant requirements under this subpart should not apply to both disassembly and recycling. Accordingly, the Agency is retaining both 4 and 5 in the definition as it relates to refrigerant-containing equipment.

The definitions of recycle and disposal under RCRA are outside the scope of this rulemaking under subsection (h) of the AIM Act and this

action to establish the definitions that will apply for the regulations implementing that provision. For information on public comments on the proposed RCRA alternative standards, and EPA's responses, please see *RCRA Alternative Standards for Ignitable Spent Refrigerants: Response to Comments Document*, available in the docket.

Equipment. EPA proposed this definition to mean "any device that contains, uses, detects or is otherwise connected or associated with a regulated substance or substitute for a regulated substance, including any refrigerant-containing appliance, component, or system."

EPA is modifying its definition of equipment to specify that fire suppression equipment is also included under the definition of equipment. This revision is intended to clarify the definition by providing another illustrative example of equipment that is included in the definition. EPA does not view this list of examples as being exhaustive, however as it would be unnecessarily cumbersome to list all of the equipment that is included in the regulatory definition. For example, while not expressly listed in the definition, EPA also understands this definition to include direct and indirect ALD systems, including point detection systems, are a subset of equipment because ALD systems are devices that detect regulated substances or substitutes for regulated substances. EPA also added the word "to" after the word "connected" to maintain consistency with other definitions that use the phrase "connected to."

Fire suppression equipment. EPA's proposed definition of this term (see 88 FR 72216, 72298, October 19, 2023) described what would be included in the definition and also stated, among other things, that the term would not include mission-critical military end uses and systems used in deployable and expeditionary situations. EPA is modifying the final definition by replacing the phrase "mission-critical military end uses and systems" with "military equipment" to provide greater clarity on situations in which military equipment are exempt from certain provisions of the rule. As discussed later in this section, EPA is amending the definition of refrigerant-containing equipment in the same manner.

EPA intended the proposed definition to clarify that certain military equipment would not be subject to regulatory requirements in certain situations. The reference to "mission-critical military end uses and systems" was intended to be analogous to the use

of the similar term "mission-critical military end uses" in 40 CFR 84.13(a). After further reflection and consideration of the comments submitted, the Agency has concluded that it would be clearer to separately address the exemption for mission-critical military end uses, and that this approach would better align with how these end-uses are treated under other provisions of the AIM Act. Accordingly, as noted in section I.B, EPA is also establishing an exemption from the ER&R regulations for mission-critical military end uses, as listed at 40 CFR 84.13(a), for a year or years for which the application receives an application-specific allowance as defined at 40 CFR 84.3. This approach mirrors the approach in regulations established under the 2023 Technology Transitions Rule at 84.56(a)(2) and better aligns with the regulations under 84.13. Given the addition of this exemption to the regulations finalized in this rule (see 84.114(b)), there is no need to exclude mission-critical military end uses from the definition of fire suppression equipment. With respect to military systems used in deployable and expeditionary situations, as stated in the proposal, there are situations in which the unique design and use of this equipment makes it impossible to recover fire suppression agents during the service, repair, disposal, or installation of such equipment. Because this rule does not define "end uses" or "systems," EPA is using the broader term "equipment" to improve understanding and clarify its intent that no military equipment used in deployable and expeditionary situations is subject to the regulations for fire suppression equipment in this rule.

Comment: One commenter requested that EPA exclude individual fire extinguishers from the definition of "fire suppression equipment." Another commenter supported exempting mission-critical military end uses from certain requirements of the rule. This commenter suggested that EPA could improve the clarity of the rule by stating that specific requirements (e.g., leak repair, ALD systems) do not apply to mission-critical end uses and systems, rather than embedding the exemption in the definitions of "refrigerant-containing equipment" and "fire suppression equipment." The commenter further stated that affirmatively stating that certain requirements do not apply to mission-critical military end uses would make this rule consistent with the Allocation Framework Rule and would help improve compliance with this final rule.

Response: EPA disagrees with the commenter's request to exclude individual fire extinguishers from the definition of fire suppression equipment. EPA has a long history under the CAA title VI regulations of considering fire suppression as both streaming (e.g., fire extinguishers) and total flooding applications. The commenter did not provide sufficient rationale for changing that approach in this rule and EPA is concerned that doing so would limit the ability of this rule to achieve its intended purpose with respect to minimizing releases from fire suppression equipment.

In response to the comment suggesting that EPA exempt mission-critical military end uses from certain requirements of the rule separate from the definition, as described above, EPA notes, that it has created a separate exemption in these regulations for mission-critical military end uses, as listed at 40 CFR 84.13(a), for a year or years for which that application receives an application-specific allowance as defined at 40 CFR 84.3. As explained above, EPA is taking this approach, rather than listing the exemption in each specific requirement, as that approach better aligns with the approach under other AIM Act rules, which should ease understanding of the exemption and facilitate implementation and compliance.

Industrial process refrigeration. EPA is finalizing this term as proposed to mean "complex, customized, refrigerant-containing appliances that are directly linked to the processes used in, for example, the chemical, pharmaceutical, petrochemical, and manufacturing industries. This sector also includes industrial ice machines, appliances used directly in the generation of electricity, and ice rinks. Where one appliance is used for both industrial process refrigeration and other applications, it will be considered industrial process refrigeration equipment if 50 percent or more of its operating capacity is used for industrial process refrigeration."

Comment: One commenter stated that in the Technology Transitions program, EPA determined appliances that cool data centers, information technology equipment facilities (ITEFs), computer room cooling equipment, communications rooms, and appliances associated with cooling other spaces dedicated to maintaining the operating temperatures of electronic devices were not IPR or comfort cooling. The commenter further stated that under 40 CFR part 82, subpart F these refrigerant-containing devices are comfort cooling. The commenter requested that EPA

specify whether these appliances are comfort cooling or IPR. The commenter stated that all industrial facilities have data centers or computer rooms and need to understand how to properly sort their appliances because this impacts leak rate repair triggers and appliance repair time.

Response: The commenter is correct that the definition of “comfort cooling” in 40 CFR part 82, subpart F codified at 40 CFR 82.152 includes appliances that cool data centers, ITEF, computer rooms, communications rooms, and electronic devices. EPA intends for its definition of “industrial process refrigeration” under these regulations to parallel the definition within 40 CFR 82.152 as many of these requirements established for industrial process refrigeration and comfort cooling in this rule are analogous to those that apply under 40 CFR part 82, subpart F and EPA anticipates that using parallel definitions will facilitate understanding of the rule’s requirements amongst regulated entities and support compliance for those entities that already have established approaches to complying with similar requirements for similar equipment under subpart F. Accordingly, the appliances that cool data centers, ITEF, computer room cooling equipment, communications rooms, and appliances associated with cooling other spaces dedicated to maintaining the operating temperatures of electronic devices are considered comfort cooling for purposes of the ER&R program established in this rule.

Installation. EPA is finalizing this term as proposed to mean “the process of setting up equipment for use, which may include steps such as completing the refrigerant circuit, including charging equipment with a regulated substance or substitute for a regulated substance, or connecting cylinders containing a regulated substance or a substitute for a regulated substance to a total flooding fire suppression system, such that the equipment can function and is ready for use for its intended purpose.”

The definition of “installation” for purposes of the ER&R program is broader than a definition for a similar term used in the Technology Transitions program, which is found in 40 CFR part 84, subpart B. Specifically, the definition for “install” in subpart B refers only to the completion of a field-assembled system’s circuit. “Installation” in this rulemaking under subsection (h) includes processes, practices and activities related to installation of equipment that are encompassed in the Technology Transitions program’s definitions for

both “installation” and “manufacture” at 40 CFR 84.52, as well as other types of installation. EPA is establishing a broader definition under subsection (h) to encompass the full range of practices, processes, or activities that are relevant to the installation of equipment that is regulated under this action, or that may be regulated under a future rule under subsection (h). Included under this definition of installation is the process of setting up of ALD systems for use, because ALD systems are considered equipment under this subpart.

Comment: One commenter stated that the activity of installation is commonly understood to relate to physically placing equipment in a facility or location, not to the initial charging of equipment during manufacture nor the field charging of refrigeration systems during construction. The commenter further maintained that read together, the terms that Congress used in subsection (h)(1) (“servicing, repair, disposal, or installation of equipment”) naturally refer to work performed on the equipment, not to the design of the equipment or the choice of which refrigerant is used in the equipment. The commenter asserted that if Congress had intended for EPA to have the ability to mandate what type of refrigerant is used in the equipment, it would more naturally have listed installation first in the serialization of activities, because installation is the first activity in the temporal sequence, followed by servicing and repair, and ultimately disposal of the equipment at end of life (EOL).

Another commenter stated that subsection (h)(1) contained limited authority regarding servicing, repair, disposal, and installation of equipment, and that the scope of any EPA regulations to implement subsection (h)(1) must remain within these parameters. The commenter further stated that subsection (h) does not contain any provision concerning the “initial” charging of equipment prior to sale or distribution—nor is there any specific mention in the statute of any subsequent charging of existing equipment. The commenter also stated that “servicing” was not defined in the proposed rule and that EPA has not clarified what constitutes “servicing” of existing equipment, although, charging of existing equipment could constitute “servicing.”

Response: EPA disagrees with commenters that the term “installation” as used in context in subsection (h)(1) of the AIM Act does not include the addition of refrigerant to an appliance. Read in context, in relevant part, subsection (h) directs EPA to establish

regulations to “control, where appropriate, any practice, process, or activity regarding the . . . installation of equipment . . . that involves” an HFC or a substitute for an HFC or the reclaiming of an HFC or a substitute for an HFC used as a refrigerant. The commenter’s overly narrow interpretation is not the best reading of this provision. For example, it does not account for the full range of practices, processes, or activities that are involved in installation of equipment, and it does not recognize the scope of discretion that subsection (h)(1) conveys to EPA. In directing EPA to regulate “any practice, process, or activity regarding the . . . installation of equipment” “where appropriate” Congress afforded EPA discretion to determine what control measures are appropriate for particular practices, processes, and activities, and also to reach practices, processes, and activities that regard—or relate to—installation, rather than limiting EPA to only addressing practices, processes, and activities that occur directly during the placement of equipment on the site. Thus, EPA interprets this provision to convey regulatory authority that extends to a range of practices, processes, or activities regarding installation, and that includes activities both before and after placement on the site. From a technical perspective, an important part of installation of equipment is to prepare it for use, and adding refrigerant to refrigerant-containing equipment is a critical step in preparing the equipment for use, as the equipment cannot serve its intended use until it has been charged. Thus, charging is part of installation, and activities related to charging of equipment are related to the installation process and within this grant of authority under subsection (h)(1) concerning practices, processes, or activities regarding installation. Based on this interpretation of the statutory text, EPA is including the charging of equipment in the definition of “installation” in these regulations implementing subsection (h)(1). EPA agrees with the commenters to the extent that they assert that the terms that Congress used in subsection (h)(1) (“servicing, repair, disposal, or installation of equipment”) include work performed on the equipment, but for the reasons explained earlier in this response, EPA disagrees that the regulatory authority under subsection (h)(1) is limited to work performed directly on equipment. EPA disagrees with one commenter’s suggested definition of “installation” as it would end at mere placement of the equipment on site and exclude work performed to

allow the system to function. Given that the text of subsection (h)(1) of the AIM Act expressly provides that the regulations established are to address practices, processes, or activities regarding the installation of equipment “that involves a regulated substance or a substitute for a regulated substance,” EPA concludes it is not appropriate to create a definition that focuses solely on work on the equipment and excludes work that plainly “involves” an HFC or substitute for an HFC, such as charging equipment. Further the Agency does not ascribe the same meaning to the sequencing of the terms as one of the commenters does, and the commenter’s interpretation is not the best reading of the statutory text as it could eliminate many aspects of installation without any indication that Congress intended for the term to be so limited. Further, there could be other reasons that Congress put “installation” at the end of the sequence. For example, Congress may have been aware of mirroring similar provisions in CAA section 608, such as section 608(a)(1) and (2), which convey authority to establish regulations related to the “service, repair, or disposal of appliances and industrial process refrigeration.” Congress may have added “installation” at the end of the sequence because it was an addition to the terms that were included in section 608. Accordingly, EPA does not agree that either the interpretation of the statutory term “installation” or the definition of the term in the implementation of the statutory text through the regulations should be as limited as commenters suggest.

EPA disagrees with the comment that EPA define “servicing” in this final rule. EPA did not propose to do so, in part because it expected that the term would be understood by the regulated community without a definition, based in part on its experience with the regulations under CAA section 608, which addresses servicing of appliances without defining the term, and to EPA’s knowledge, that lack of a definition has not hindered implementation of those regulations. EPA interprets installation and servicing to have distinct meanings under subsection (h)(1), as each is listed separately. However, EPA understands that adding refrigerant to existing equipment may also be part of servicing that equipment and does not intend for the inclusion of charging equipment in the regulatory definition of installation to suggest that adding refrigerant to equipment would only occur during installation, but simply that it may occur as part of installation. While EPA is not establishing a definition of

servicing in this rule, it notes that other examples of servicing may include, but are not limited to, activities that involve the opening of the refrigerant loop, such as charging equipment, replacing component parts, or checking for leaks.

EPA discusses its authority for the requirements finalized in this rule regarding installation and servicing of equipment in greater detail in the relevant sections below.

MVAC-like appliance. EPA proposed this term to mean “a mechanical vapor compression, open-drive compressor refrigerant-containing appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver’s or passenger’s compartment of off-road vehicles or equipment. This includes, but is not limited to, the air-conditioning equipment found on agricultural or construction vehicles. This definition is intended to have the same meaning as defined in 40 CFR 82.152.”

EPA is modifying its proposed definition of “MVAC-like appliance” by deleting the first instance of the phrase “or equipment” and changing the second instance of “or equipment” with “or appliances.” EPA deleted the first instance of the phrase “or equipment” from the definition because the use of the term “equipment” in this instance does not align with the definition of “equipment” as defined in this rulemaking. This deletion is intended to clarify the intent of the definition, as the use of “equipment” in this context of “off-road vehicles or equipment” could have been confusing because it is not being used in the sense of how the term “equipment” is defined in these regulations. Regarding the second instance of “air conditioning equipment” EPA changed this language to “air conditioning appliances” to better align the types of devices that the definition of the term “MVAC-like appliance” covers under 40 CFR 82.152 with the types of devices covered under this rulemaking. EPA also removed the word “defined” from the definition to maintain consistency with the definition of “motor vehicle air conditioners.” EPA still intends the definition to have the same meaning as in 40 CFR 82.152.

Recover. EPA proposed this term to mean “the process by which a regulated substance, or where applicable, a substitute for a regulated substance, is removed, in any condition, from equipment; and stored in an external container, with or without testing or processing the regulated substance or substitute for a regulated substance.”

EPA is modifying its definition of “recover” by putting the number “(1)”

before the phrase: “removed, in any condition, from equipment and” and the number “(2)” before the phrase “stored in an external container, with or without testing or processing the regulated substance or substitute for a regulated substance.” EPA made this edit to clarify the text and to more closely align its definition of “recover” with the corresponding definition in the Act, though the AIM Act separates these two phrases with the letters “(A)” and “(B)” instead of “(1)” and “(2).”

The term “recover” is defined in the AIM Act at subsection (b)(10) as “the process by which a regulated substance is (A) removed, in any condition, from equipment; and (B) stored in an external container, with or without testing or processing the regulated substance.” EPA proposed to extend the regulatory definition in these regulations to include “where applicable, substitutes for regulated substances” to support implementation of subsection (h)(1), which authorizes certain regulations involving substitutes for regulated substances. Substitutes for regulated substances are used in the same applications and often the same equipment as the regulated substances that they are being used in place of. Thus, recovering a substitute for a regulated substance would also occur, as appropriate, during the servicing, repair, or disposal of equipment and could be addressed by regulations under subsection (h)(1).

Comment: One commenter stated that the term “recover” is insufficiently defined under the AIM Act and indicated that this could lead to a loophole where virgin HFCs are placed into equipment for only a short amount of time and then labeled as recovered. Another commenter stated that EPA should consider recovered refrigerant as refrigerant “installed in equipment for the purpose of operating the equipment for an extended amount of time.”

Response: EPA responds that, as noted above, subsection (b)(10) of the AIM Act defines “recover” as “the process by which a regulated substance is (A) removed, in any condition, from equipment; and (B) stored in an external container, with or without testing or processing the regulated substance.” This definition is similar to the same term as defined in 40 CFR 82.152, which defines “recover” to mean “to remove refrigerant in any condition from an appliance and to store it in an external container without necessarily testing or processing it in any way.” While charging a regulated substance into a piece of equipment and then recovering it without allowing it to be used for its intended purpose could be

a loophole, EPA has not encountered confusion around this term under the CAA regulations at 40 CFR 82.152, and the commenters did not provide sufficient rationale to change this aspect of the statutorily defined term in this regulation.

The Agency however takes note of the scenario the commenter provided as a potential means for circumventing the requirements and views such an approach as inconsistent with the intent of the definition. Moreover, EPA is establishing a definition of “virgin regulated substance” in this rulemaking to make it clear that introduction of a regulated substance to equipment, such as a refrigerant-containing appliance or fire suppression equipment, solely or primarily to convert or attempt to convert its status to a “used” regulated substance and circumvent the intended requirements of this rule is not permissible. A regulated substance that has had no bona fide use in equipment (as described in the definition for “virgin regulated substance”) would still be considered a virgin regulated substance.

Refrigerant. EPA proposed this term to mean, “for purposes of this subpart, any substance, including blends and mixtures, consisting in part or whole of a regulated substance or a substitute for a regulated substance that is used for heat transfer purposes, including those that provide a cooling effect.”

After considering comments, EPA is modifying the final definition by replacing the phrase “including those that provide a cooling effect” with the phrase “and provides a cooling effect.” This change aligns with the definition of “refrigerant” in 40 CFR 82.152 and will maintain a consistent understanding of the term in the ER&R program and in the regulations under section 608 of the CAA. EPA is also removing the phrase “for the purposes of this subpart” from this definition for reasons stated in section IV.A.1 of this preamble.

Comment: One commenter asked whether heat transfer fluids that do not provide a cooling effect are regulated under this rule. The commenter stated that EPA’s proposed definition could include heat transfer fluids that do not provide a cooling effect, including fluorinated heat transfer fluids (F-HTFs). The commenter indicated that this was likely not EPA’s intention, citing EPA’s rulemaking 69 FR at 11946, 11957 (March 12, 2004), which excluded heat transfer fluids that do not provide a cooling effect. The commenter further stated that F-HTFs have never been used as a substitute for ODS, unlike regulated substances that provide a cooling effect. The commenter

provided the following alternative definition: “Refrigerant, for purposes of this subpart, means any gaseous substance, including blends and mixtures, consisting in part or whole of a regulated substance or a substitute for a regulated substance that is used in a heat cycle, and reversibly undergoes a phase change from a gas to a liquid, to provide a cooling effect.”

Response: EPA acknowledges the commenter’s suggestion for an alternative definition for the term refrigerant and in response agrees with the commenter that F-HTFs that do not circulate through the compressor of a system are not considered refrigerants for the purposes of this rule. EPA has historically treated these fluids separately from refrigerants. However, EPA notes that subsection (h)(1) of the AIM Act is not limited to refrigerants but rather “equipment . . . that involves a regulated substance, or a substitute for a regulated substance.” This rule includes HFCs used as fire suppression agents in fire suppression equipment and in a later rulemaking action could include HFCs used as heat transfer fluids. Furthermore, the commenter’s alternative definition only covers vapor compression systems and not alternative types of refrigeration systems such as non-mechanical heat-transfer with a circulating cooler or a thermosiphon, which EPA has included as an end-use under SNAP. For those reasons, rather than adopting the commenters’ suggested definition, EPA is modifying the proposed definition as described above to clarify that heat transfer fluids that do not provide a cooling effect are not included in the definition of “refrigerant” established in this rule.

Refrigerant-containing appliance. EPA proposed this term to mean “any device that contains and uses a regulated substance or substitute for a regulated substance as a refrigerant including any air conditioner, motor vehicle air conditioner, refrigerator, chiller, or freezer. For a system with multiple circuits, each independent circuit is considered a separate appliance.”

After considering comments, EPA is modifying the final definition. First, EPA is removing the phrase “motor vehicle air conditioner” and replacing it with its abbreviation “MVAC” to maintain consistency with other definitions where the term “motor vehicle air conditioner(s)” is abbreviated. After the term “MVAC,” EPA is also adding the word “MVAC-like appliance” to provide another example of a refrigerant-containing appliance. Second, EPA is replacing the

phrase “a system with multiple circuits” to “such devices with multiple circuits.” This edit is intended to increase clarity, as the term “device” is used in the last sentence to maintain a parallel sentence structure with the first sentence of the definition, which uses the term “any device.” The final definition also adds “including but not limited to,” to clarify that air conditioners, refrigerators, chillers, and freezers are intended as illustrative examples, but is not an exhaustive list of all possible devices that meet the definition of refrigerant-containing appliances under this subpart. EPA further notes that a refrigerant-containing appliance could be of any size and include residential, commercial, or industrial appliances.

As the term “refrigerant-containing appliance” is not a defined term under the AIM Act, and as the Agency is establishing certain regulatory requirements that apply only to refrigerant-containing appliances in this rule, the regulatory definition is designed to provide clarity as to what types of equipment are subject to those requirements. EPA intends this term to be a subset of the broader category of “refrigerant-containing equipment” which is also defined in this rule as discussed below, and EPA understands that any exclusions from the definition of “refrigerant-containing equipment” would necessarily also apply to refrigerant-containing appliances. EPA notes that this definition differs from the definition of a similar term, “appliance,” under CAA section 608. CAA sections 601 and 608 specified that an appliance “is used for household or commercial purposes,” and that phrase also appears in the definition of “appliance” in 40 CFR 82.152. The AIM Act has no analogous provision; rather subsection (h) focuses more broadly on “equipment.” Accordingly, EPA is not including that phrase in defining “refrigerant-containing appliance” for purposes of implementing subsection (h). Similar to EPA’s approach to similar equipment under the application of title VI of the CAA (e.g., under sections CAA sections 608 and 612), EPA is defining a “refrigerant-containing appliance” to consist of an independent circuit. The independent circuit provides the desired cooling effect, typically consisting of a compressor, condenser, evaporator, and metering device in an enclosed refrigerant loop. EPA notes that a given piece refrigerant-containing equipment could contain multiple independent circuits and thus be considered as multiple, separate “refrigerant-containing appliances.” For

instance, some food retail cases have been made with multiple independent circuits, each one containing the maximum 150-gram charge limit of propane, thus allowing a single case to address a higher refrigeration load.

Comment: One commenter recommended that EPA define each independent closed loop circuit as a separate appliance, citing confusion caused by different usage of the term “appliance” by the industry.

Response: EPA agrees that each independent closed loop circuit is a separate appliance and has clarified the final definition, as described above.

Refrigerant-containing equipment. EPA proposed this term to mean “equipment that contains, uses, or is otherwise connected or associated with a regulated substance or substitute for a regulated substance that is used as a refrigerant. This definition includes refrigerant-containing components, refrigerant-containing appliances, and MVAC-like appliances. This term does not include mission-critical military end uses and systems used in deployable and expeditionary situations. This term also does not include space vehicles as defined in 40 CFR 84.3.”

EPA is modifying the final definition by replacing the phrase “mission-critical military end uses and systems” with “military equipment.” EPA also added the word “to” after the word “connected” to maintain consistency with other definitions that use the phrase “connected to.” Finally, EPA is removing the phrase “MVAC-like appliances” from the definition because “MVAC-like appliances” are examples of refrigeration-containing appliances. As such, keeping the term in the definition would be extraneous.

As finalized, this definition of “refrigerant-containing equipment” does not include military equipment used in deployable and expeditionary applications, nor does it include space vehicles. These exclusions are based on EPA’s understanding that there are situations in which the unique design and use of military equipment used in deployable and expeditionary situations and space vehicles make it impossible to recover refrigerant during the service, repair, disposal, or installation of the equipment. Likewise, requiring adherence to the leak repair requirements and other provisions for refrigerant-containing equipment in this rulemaking in an active military zone of engagement, including military systems used in deployable and expeditionary situations, could lessen the military effectiveness of the equipment. Similarly, the exclusion for space vehicles is based on EPA’s

understanding that requiring leak repair and other provisions in this rulemaking for such equipment could lessen their effectiveness. EPA notes that an identical exclusion for military equipment and space vehicles was made in the finalized definition of “fire suppression equipment.” Further, as noted in section I.B and explained in greater detail in the discussion of the definition for “fire suppression equipment” above, while EPA replaced the phrase “mission-critical military end uses and systems” with “military equipment” in this definition, this final rule also includes a separate exemption from the ER&R regulations for mission-critical military end uses (as listed at 40 CFR 84.13(a)), for a year or years for which the application receives an application-specific allowance as defined at 40 CFR 84.3.

Comment: One commenter stated that the proposed rule creates confusion by having separate definitions for equipment, refrigerant-containing appliance, and refrigerant-containing equipment. The commenter stated that EPA’s definition of “refrigerant-containing appliance” would have been sufficient for all the instances in which “equipment” or “refrigerant-containing equipment” were used, and that EPA should only finalize a definition for “refrigerant-containing appliance,” and rename it “refrigerant-containing equipment” to be consistent with subsection (h) of the AIM Act.

Response: EPA disagrees with this comment, as the terms “equipment,” “refrigerant-containing equipment,” and “refrigerant-containing appliance” are not used interchangeably in the rule. Rather, these three definitions are intended to have distinct meanings. For example, “refrigerant-containing equipment” is a broader category that includes applications that are not covered under “refrigerant-containing appliance.” For example, “refrigerant-containing equipment” includes refrigerant-containing components, whereas the definition of “refrigerant-containing appliance” does not. “Equipment” is an even broader category that includes both equipment that does and equipment that does not contain refrigerant. For example, fire suppression equipment is included in the definition of equipment but not the definition of “refrigerant-containing equipment.” Different requirements apply to different types of equipment under the regulations established in this *final rule*. Given these distinctions, EPA is retaining all three of these definitions in the final rule.

Repair. EPA proposed this term to mean, “for purposes of this subpart and

as it relates to a particular leak in a refrigerant-containing appliance, to mean making adjustments or other alterations to that refrigerant-containing appliance that have the effect of stopping leakage of refrigerant from that particular leak.”

EPA is modifying this term by removing the phrase “for the purposes of this subpart” from this definition for reasons stated in section IV.A.1 of this preamble.

Comment: One commenter expressed support for EPA’s proposed definition of repair and the discussion of the purpose of repair in the preamble of the proposed rule.

Response: After considering comments, EPA is finalizing the definition of “repair” as proposed, though EPA is deleting the phrase “for purposes of this subpart” from the definition.

Retrofit. EPA proposed this definition, as it relates to a refrigerant-containing appliance, to mean “to convert an appliance from one refrigerant to another refrigerant. Retrofitting includes the conversion of the appliance to achieve system compatibility with the new refrigerant and may include, but is not limited to, changes in lubricants, gaskets, filters, driers, valves, o-rings, or appliance components. Retrofits required under this subpart shall be done to a refrigerant with a lower-GWP.”

EPA is modifying the final definition by removing the last sentence requiring that retrofits be done with a refrigerant with a lower-GWP. The proposed definition was meant to prevent the retrofit of refrigerant-containing appliances to a higher-GWP refrigerant as a compliance option. EPA decided in this final rule to not require the retrofit of an appliance to a lower-GWP refrigerant. The Agency acknowledges that there are situations where retrofitting to a lower-GWP refrigerant may not be feasible, such as when there is an inadequate supply of lower-GWP refrigerant or when technical standards do not allow the retrofit from a non-flammable refrigerant to a flammable refrigerant. Some appliances may have a limited number of lower-GWP alternatives, making it more difficult to retrofit a system to meet leak repair requirements. While the owner of a refrigerant-containing appliance has other ways to meet leak repair requirements, such as sufficiently repairing leaks or retiring the system, EPA does not want to limit the number of compliance options by prohibiting the retrofit of an appliance to a higher-GWP refrigerant. EPA emphasizes that it still encourages the retrofit of systems to

lower-GWP refrigerants whenever possible.

Comment: A few commenters were opposed to a requirement that retrofits always be to a refrigerant with a lower-GWP. One commenter stated that requiring retrofits to only lower-GWP refrigerants would produce logistical challenges, create supply constraints, and increase costs. Another commenter stated that EPA should avoid discouraging retrofits from refrigerants like R-22, R-404A, and R-507A to lower-GWP alternatives that still exceed the GWP limits in the 2023 Technology Transitions Rule (R-448, R-449, R-427, R-407H, and R-407A for commercial and industrial). The commenter stated that transitioning from R-404A to lower-GWP options will benefit the HFC phasedown. One commenter supported EPA retaining its definition to require retrofits to low-GWP refrigerants and stated that requiring retrofit plans to use lower-GWP refrigerants is consistent with the phasedown and the intent of the AIM Act and may help mitigate ongoing leakage that may occur after the retrofit is completed.

Response: EPA acknowledges these comments both supporting and opposing the proposed definition. After consideration of these comments, for the reasons discussed above in describing the modifications to the proposed definition in the final definition, EPA is not requiring that retrofits use lower-GWP refrigerants in this final rule. As noted above, while not requiring it, EPA encourages the retrofit of refrigerant-containing appliances to lower-GWP refrigerants whenever possible. With respect to the comments related to the restrictions established in the 2023 Technology Transitions Rule, EPA notes that rule did not address retrofits and that rule applies only to new systems (including for refrigerant-containing appliances). Additionally, with respect to the comment that requiring retrofits to lower-GWP refrigerants may help mitigate ongoing leakage after the retrofit is complete, EPA notes that 40 CFR 84.106(h)(4) requires that all leaks be repaired as part of any retrofit plan, which should also ameliorate concerns about ongoing leakage related to the retrofit. Regarding the intent of the Act, the commenter did not provide any rationale to support the position that the intent of the AIM Act was to require retrofits to use lower-GWP refrigerants. EPA further notes that the AIM Act does not expressly address whether a lower-GWP refrigerant should be used for retrofits, and for the reasons explained above, EPA has decided not to establish that requirement in this rule.

Substitute for a regulated substance. EPA is finalizing this definition as proposed to mean “a substance that can be used in equipment in the same or similar applications as a regulated substance, to serve the same or a similar purpose, including but not limited to a substance used as a refrigerant in a refrigerant-containing appliance or as a fire suppressant in fire suppression equipment, provided that the substance is not a regulated substance or an ozone-depleting substance.”

Subsection (h)(1) expressly authorized EPA to promulgate certain regulations involving a regulated substance, a substitute for a regulated substance, the reclaiming of a regulated substance used as a refrigerant, or the reclaiming of a substitute for a regulated substance used as a refrigerant. EPA is defining “substitute for a regulated substance” in this subpart for additional clarity that the use of this term in subsection (h) and in the regulations established in this rule differs from how the term “substitute” is used in subsection (i) and defined in 40 CFR part 84, subpart B.⁴⁸ The definition under subsection (h) makes clear that substitutes do not include HFCs or ODS and are instead a different category of substances. Examples of a substitute for a regulated substance that are encompassed by this definition under subsection (h) include but are not limited to HFOs, hydrocarbons (e.g., propane, isobutane), ammonia (NH₃), and CO₂. A substitute for a regulated substance may be used neat or in a blend. However, a blend that contains a regulated substance is subject to the requirements that apply under this rule to regulated substances because those requirements apply to regulated substances regardless of whether the regulated substance is used neat or in a blend, as described above in section II.B of this preamble.

This distinction between substitutes and regulated substances for purposes of these regulations is also helpful for

implementing certain provisions of this rulemaking that apply differently to regulated substances than to substitutes for regulated substances. For instance, the leak repair requirements apply to all regulated substances but only apply to substitutes for a regulated substance with a GWP greater than 53.

As noted in the Executive Summary of this preamble at section I.A, the terms “HFC” and “regulated substance” are used interchangeably in this preamble. Similarly, the term “substitute for an HFC” may be used interchangeably with “substitute for a regulated substance” in this preamble.

Comment: One commenter requested further clarification of the definition. The commenter stated that the definition of “regulated substance” in 40 CFR 84.106(a)(1) is easy to understand unlike the definition in 40 CFR 84.106(a)(2). The commenter highlighted the complexity of determining the GWP of a substitute for a regulated substance, because the proposed methodology involved consulting three separate references that may vary in accessibility. The commenter requested that EPA provide a list of all substitutes for regulated substances with a GWP greater than 53, and that the Agency should not list substitutes for regulated substances with a GWP of less than 53, as doing so contributes to confusion.

Response: EPA responds that to the extent the commenter read the proposed regulations at 40 CFR 84.106(a)(1) and (2) as definitions, that interpretation misunderstands the intent of those provisions, which are designed to describe the applicability of the requirements in 40 CFR 84.106, not provide general definitions. To the extent the commenter intended to request the addition of definitions, EPA responds that subsection (c)(1) of the AIM Act lists regulated substances for the purpose of this and other rulemakings under the AIM Act, such as the Allocation Framework Rule (86 FR 55116, October 5, 2021) and the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023). The term “regulated substance” is defined in part 84, subpart A (40 CFR 84.3), with a current list provided in appendix A to part 84, and this appendix applies to the whole of part 84, including subpart C. Accordingly, EPA concludes it is not necessary to again list the regulated substances with a GWP greater than 53 in this action. While subsection (c)(3)(A) of the AIM Act authorizes the Administrator to designate as a regulated substance a substance that is not included in the list in subsection (c)(1) if certain criteria are met, EPA did

⁴⁸ The definition for *substitute* in the 2023 Technology Transitions Rule is: “any substance, blend, or alternative manufacturing process, whether existing or new, that may be used, or is intended for use, in a sector or subsector with a restriction on the use of regulated substances and that has a lower global warming potential than the GWP limit or restricted list of regulated substances and blends in that sector or subsector.” Under this definition, substitutes include regulated substances (e.g., HFC-32 used in lieu of R-410A in commercial unitary AC), blends containing regulated substances (e.g., R-454B used in lieu of R-410A in residential unitary AC), blends that do not use a regulated substance (e.g., R-441A used in lieu of R-410A in window ACs), substances that are not HFCs (e.g., HFOs, hydrocarbons, R-717, and R-744 (CO₂)), and not-in-kind technologies (e.g., finger-pump bottles in lieu of aerosol cans, or vacuum panels in lieu of foam insulation). (See 88 FR 73098, 73110, October 24, 2023).

not propose to add any regulated substance to the statutory list, and is not finalizing any addition. To the extent the commenter opposes such a listing, EPA finds that concern is beyond the scope of this rulemaking and thus requires no further response.

In response to the commenter's statements about the complexity of consulting multiple sources to determine the GWP of a substitute for a regulated substance, EPA notes that as described in section IV.C.1 of this preamble, the Agency is not finalizing the methodology to determine GWP of a substitute for a regulated substance, as proposed. EPA is instead finalizing the provisions to use a list of GWPs for various substitutes for regulated substances codified in the 2023 Technology Transitions Rule at 40 CFR 84.64. EPA is taking this approach because it agrees that having these GWPs in one concise list will limit confusion and enhance accessibility.

Virgin regulated substance. EPA proposed this definition to mean “any regulated substance that has not had any bona fide use in equipment except for those regulated substances contained in the heel or the residue of a container that has bona fide use in the servicing, repair, or installation of equipment.”

EPA is modifying the final definition by removing the phrase “except for those regulated substances contained in the heel or the residue of a container that has bona fide use in the servicing, repair, or installation of equipment.”

EPA's proposed definition of “virgin regulated substance” excluded refrigerant heels because EPA wanted to include refrigerant heels recovered from a container as recovered material for purposes of meeting the reclamation standard. However, EPA concluded that refrigerant heels are best described as “virgin regulated substances” because refrigerant heels have not had a bona fide use in equipment. EPA still recognizes the value of recovered heels, and thus EPA is not counting refrigerant heels that are removed from containers to contribute towards the 15 percent virgin material limit discussed in section IV.E.1 of this preamble.

The final definition of “virgin regulated substance” makes it clear that the introduction of a regulated substance to equipment, such as a refrigerant-containing appliance or fire suppression equipment, solely to convert its status to a “used” regulated substance and circumvent the intended requirements of this rulemaking is not permissible. This scenario, where a regulated substance is charged into equipment and subsequently recovered without any bona fide use, was brought

to EPA's attention by stakeholders including during public stakeholder meetings as the Agency developed this rulemaking.⁴⁹ This issue was also raised in public comments on the proposed rule, as indicated in the comments summarized immediately below. Under the definition finalized in this rule, a regulated substance that has had no bona fide use in equipment would be considered a virgin regulated substance.

Comment: One commenter stated it is arbitrary and capricious to limit the definition of “virgin regulated substance” to refrigerant without a “bona fide use” in equipment because EPA does not define “bona fide use” and offers a limited explanation of the term. While the commenter agreed that only refrigerant that was used in an appliance for its intended purpose should qualify as recovered refrigerant, the commenter stated that it is not clear who the compliance obligation to make this determination of “bona fide use” falls on. The commenter further stated that the heel or residue of a container should not by default be considered “virgin” on the basis that it had a bona fide use, but instead be categorized based on the nature of its origin.

Multiple commenters requested that EPA define “bona fide use.” One commenter stated that EPA should define a minimum length of time that refrigerant can be in equipment or some other objective criteria before it has had a “bona fide use.” Another commenter stated that the term “bona fide use” has never been used in any definition of reclaim or reclamation either under title VI of the CAA, the AIM Act, or under the Air-Conditioning, Heating, and Refrigeration Institute's (AHRI) 700 standard for reclamation, and that EPA provides no justification for using the term. Two commenters stated that it is unclear how EPA will determine whether refrigerant has had a “bona fide use.” One commenter claimed that not having a precise definition of “bona fide use” will undermine the refrigeration industry and lead to fraud, since entities could briefly pass refrigerant through chillers or other equipment and then remove it, process it, and send it out for “AHRI 700 certification.” Lastly, one commenter stated that it is necessary to specify the use conditions from which refrigerant can be recovered in order to consider them reclaimed. The commenter asserted this would help avoid the “potential laundering of

newly produced material into the reclamation market.”

A few commenters recommended that EPA distinguish between virgin refrigerant and recovered heel. One commenter requested that EPA define heel as “the residual amount of any regulated substance in a disposable cylinder.” The commenter stated that residual amounts of regulated substances left in a disposable cylinder that has not had a bona fide use in equipment should be considered a “virgin regulated substance” whereas any residual amounts left in a disposable cylinder that has had a bona fide use in servicing, repair, or installation should be considered a recoverable substance for reclaim. The commenter remarked that these definitions should only apply to disposable cylinders and not other types of containers, as those heels are properly accounted for as virgin gas. Another commenter suggested the recovered heel should be considered in the context of cylinders rather than containers to avoid gaming the system of recovering from larger containers. Two commenters asserted that EPA should define heel based on how the refrigerant was used or obtained, not on the type of container the refrigerant is in. A commenter gave an example of refrigerant left in an International Organization for Standardization tank or rail car. The commenter stated that under EPA's proposed definition of “virgin regulated substance,” all of the unused refrigerant in these containers would need to be considered a “heel” and have to be reclaimed even though the refrigerant would still have the properties of virgin refrigerant. Another commenter discussed the possibility of large quantities of refrigerant being sent to a reclaimer as “bona fide heel” and asked for clarification on whether a bona fide heel could include the entire contents of a container. One commenter requested that the words “heel” and “residue” both be defined as “the vapor contents remaining in a container once the last drop of liquid has been removed.”

Response: EPA disagrees that limiting the definition of “virgin regulated substances” to refrigerant that has not had a “bona fide use” in equipment is arbitrary and capricious and, after considering the comments on this topic, is finalizing a definition of “virgin regulated substance” to mean “any regulated substance that has not had any bona fide use in equipment.”

Commenters did not provide alternate definitions or approaches that would sufficiently address the concerns raised by commenters and stakeholders that

⁴⁹ EPA held stakeholder meetings for public input on November 9, 2022, and March 16, 2023, and also solicited feedback through a webinar for EPA's GreenChill Partnership program on April 12, 2023.

entities could briefly pass refrigerant through equipment and claim the refrigerant was recovered. After considering the public input on this issue, the Agency concludes that it is important to finalize a definition of “virgin regulated substance” that indicates that virgin refrigerant is refrigerant that has not had bona fide use in equipment to address these concerns and help ensure the integrity of the reclamation requirements. In response to the comment on compliance obligation, EPA notes there is no obligation to make a determination of bona fide use under the definition itself; however, the definition informs compliance with other regulatory obligations, and to determine the compliance obligation one would need to examine the relevant regulatory requirement.

While EPA is not finalizing a definition for “bona fide use” in this rule, the Agency notes that at a minimum, refrigerant that has had a “bona fide use” is refrigerant that has been used in equipment to transfer heat between materials and then recovered for the purposes of reclamation or disposal. It is EPA’s position that there is no set amount of time that a refrigerant should be used in a system before it is considered to have had a “bona fide use.” Since there are a diverse range of applications in which refrigerants are used, and a variety of circumstances around that use, it is not appropriate to define a specific timeframe that applies for all refrigerants and applications. However, the amount of time refrigerant is used and other circumstances surrounding its use should together indicate that the use was for purposes of the equipment’s maintenance or operation, rather than for the purpose of converting or attempting to convert the HFC’s status to a “used” regulated substance and circumvent the requirements of this rule. Examples of “bona fide use” of refrigerant in equipment include, but are not limited to, refrigerant recovered from equipment once the refrigerant becomes contaminated, or refrigerant removed from an appliance due to changes in ambient conditions according to the provisions of seasonal variance in 40 CFR 82.152. Conversely, as indicated previously, passing a regulated substance through equipment and then recovering without an operational reason to do so (*e.g.*, without an indication of contamination or equipment malfunction), for the purpose of this treating the regulated substance as used, would not be

considered bona fide use under this definition.”

Even assuming the comments that the term “bona fide use” has not been used previously in other rulemakings or regulatory texts under CAA title VI or the AIM Act is true, EPA does not believe that is a reason to not use the term here. EPA’s justification for using the term is to differentiate “virgin regulated substances” from those substances that have been used in equipment for their intended purposes and should no longer be considered virgin refrigerant. Some commenters expressed concern with the definition of recovery because there is the potential that virgin regulated substances would be charged into equipment or appliances and then recovered in an attempt to circumvent regulatory requirements established under this rule. EPA responds that the Agency considers the definition of “virgin regulated substance” for the purposes of these regulations under subsection (h) to address those concerns and reiterates that adding refrigerant to an appliance for the purpose of recovering it shortly thereafter, and then considering it “used” is not considered “bona fide use.”

EPA did not propose and is not establishing a definition for residue or establishing various definitions for heel based on different types of containers. While in the Economic Impact and Benefits TSD EPA estimates an average refrigerant heel at a specific percent of a container’s nominal capacity, EPA acknowledges that there may be variations in the amount of HFCs that remain in a container.

The definition of “heel” in 40 CFR 84.3 to mean “the amount of a regulated substance that remains in a container after it is discharged or off-loaded (that is no more than 10 percent of the volume of the container)” applies to this rulemaking, as EPA is adopting definitions from 40 CFR part 84, subpart A for terms that are not separately defined in this rule. EPA clarifies that the heel could never be considered to include more than 10 percent of the container. EPA is not differentiating between refrigerant heels in different types of containers in this rulemaking to maximize the reclamation of refrigerant heel, except to clarify that the ten percent limit applies regardless of the type of container.

In response to comments about whether refrigerant should be classified by the nature of its origin, EPA notes that it is distinguishing refrigerant by its prior use, not the type of container it is in. As stated previously, refrigerant that has had bona fide use in equipment

would be considered recovered material, whereas refrigerant that has not had a bona fide use in equipment would not be considered recovered. In response to the comment suggesting that EPA not specify that refrigerant heel or residue must include only vapor contents in this rulemaking, EPA has decided not to include such a specification, as the Agency understands that there may be situations where refrigerant heel is not entirely vapor, even if the amount of refrigerant heel remaining in the container is less than 10 percent of the container’s volume.

3. What additional comments did EPA receive on definitions?

Some commenters suggested that EPA create defined terms that the Agency did not propose. Those terms are: reclaim, saturated hydrofluorocarbon, regulated substance, substitute, essential use, narrowed use limit, and technology transitions petition. For the reasons discussed in this section, EPA is not establishing definitions for these terms in this action.

Reclaim: Multiple commenters requested that EPA define “reclaim” or a phrase containing the word “reclaim” to improve the clarity of the rule. One commenter claimed that reclaimed refrigerant referred to in 40 CFR 84.112(e) may be refrigerant that either has “not had bona fide use in equipment” or recovered refrigerant (removed from equipment), and that these requirements are not interchangeable because recovered material could be virgin. The commenter asserted that EPA should clarify that reclaimed refrigerant must be non-virgin in origin. Another commenter suggested that EPA could consider instituting a policy in which the amount of material that can be sold by an entity as reclaimed cannot exceed material recovered. Another commenter suggested that EPA should define “certified reclaimed refrigerant” as “used (recovered) refrigerant . . . from a previously operational appliance” in line with the California Air Resources Board (CARB) definition.

Response: Subsection (b)(9) of the AIM Act provides a statutory definition for “reclaim; reclamation.” This definition refers to the reprocessing of a recovered regulated substance to meet at least the purity described in standard AHRI 700–2016 (or an appropriate successor standard adopted by the Administrator), and that the purity of the reclaimed regulated substances must be verified using, at a minimum, the analytical method described in that standard. EPA promulgated a definition

for “reclaim” in the Allocation Framework Rule (86 FR 55116, October 5, 2021) that is consistent with the definition provided by the AIM Act and that appears in 40 CFR 84.3. As provided in the regulations established in the final rule, for terms not defined in subpart C but that are defined in section 84.3, the definitions in section 84.3 shall apply, because the definition in 84.3 is also appropriate for the rule. EPA is not establishing a separate or different definition of “reclaim” in this action. This approach has the further benefit of providing consistency in the use of this term in this action with how it is used in other regulations implementing the AIM Act. Regarding the suggested definition of “certified reclaimed refrigerant,” EPA notes that CARB’s definition of that term includes practices meant to ensure that reclaimed refrigerant meets certain standards (such as being from a previously operational appliance).⁵⁰ EPA is not finalizing a definition of “certified reclaimed refrigerant,” nor is EPA providing a definition specifying what standards reclaimed refrigerants have to meet beyond what is already required under the AIM Act. In provisions that appear outside of the definition section of the regulations established in this final rule, EPA is requiring that refrigerant contain no more than 15 percent virgin material as specified in the reclamation standard found in 40 CFR 84.112(a) and that reclaimed refrigerant must meet AHRI standards or other applicable purity specifications. Because these provisions address the standards that would apply for reclaimed refrigerant, EPA concludes that the definitions such as those suggested by the commenters are not necessary. As indicated by these requirements, to the extent that the comments suggest that reclaimed refrigerant cannot include any virgin HFCs, EPA disagrees. EPA further explains its reasons for allowing up to 15 percent virgin material in refrigerant that meets the reclamation standards established in the rule in section IV.E.1 of this preamble. EPA disagrees with the comment that a reclaimer should not be able to sell more reclaimed refrigerant than the amount of recovered refrigerant it received. Reclaimers often will hold recovered refrigerant until there is a sufficient quantity to process efficiently or until a change in market conditions. Therefore, the amount reported as reclaimed will not align with, and could potentially exceed, the amount reported as received.

Saturated hydrofluorocarbon: One commenter requested that EPA define

“saturated” as it relates to a hydrofluorocarbon refrigerant and use that term throughout the rulemaking. *Response:* EPA disagrees that there is a need to use or define the term “saturated hydrofluorocarbon” for purposes of this action. As described previously, subsection (c)(1) of the AIM Act lists 18 saturated HFCs, and by reference any of their isomers not so listed, that are covered by the statute’s provisions, referred to as “regulated substances.” EPA is also authorized to designate additional substances that meet certain criteria as regulated substances and one of those criteria is that the substance must be a saturated HFC. Further, the term “regulated substance” is defined in part 84, subpart A (40 CFR 84.3), with a current list provided in Appendix A to part 84, and this appendix applies to all of part 84 including subpart C. EPA has also explained that it is using the terms HFC and regulated substances interchangeably in this action. These provisions make clear which HFCs are addressed by this action, obviating any need to define “saturated” by regulation or use the term “saturated hydrofluorocarbon” throughout the regulations established in this rule.

Comment: One commenter asserted that the rule should define the terms “regulated substance,” “substitute,” “essential use,” “narrowed use limit,” and “technology transitions petition.” The commenter stated that these terms are important to understand the scope and applicability of the HFC phasedown program, and not defining these terms could create confusion and inconsistency in interpreting the rule.

Response: The terms “essential use,” “regulated substance,” “narrowed use limit,” “substitute,” and “technology transitions petition” appear to be similar to or the same as terms used in other regulatory programs under the AIM Act or the CAA. For example, the terms “essential use” and “regulated substance” are defined under the Allowance Allocation program (40 CFR part 84, subpart A), “narrowed use limit” is defined under SNAP (40 CFR part 82, subpart G), and “substitute” and “technology transitions petition” are defined under the Technology Transitions program (40 CFR part 84, subpart B), respectively. The commenter has not explained what relevance such terms would have to this rulemaking and, with the exception of the term “regulated substance” which is used in the regulations finalized in this action, the connection is not apparent to EPA. With respect to the term “regulated substance,” as explained earlier in this section, because EPA is not defining

that term separately in subpart C, the definition under 40 CFR 84.3 also applies in subpart C. No additional definition is needed. EPA further notes that while it is not establishing a definition for “substitute” in this rule, it is defining the term “substitute for a regulated substance” for purposes of the regulation, for the reasons discussed in section IV.A.2 of this preamble.

B. What types of equipment is EPA addressing under subsection (h)?

Subsection (h) of the AIM Act provides EPA authority to promulgate regulations to control, where appropriate, any practice, process, or activity related to the servicing, repair, disposal, or installation of equipment that involves HFCs or their substitutes, or the reclaiming of HFCs or their substitutes used as refrigerants. EPA interprets this provision to include authority to regulate, as appropriate, practices, processes, or activities related to any equipment that uses a regulated substance or a substitute for a regulated substance. Regulated substances and their substitutes are typically used in RACHP equipment as a refrigerant. Regulated substances and/or their substitutes may also be used in other types of equipment, such as equipment used in aerosols, fire suppression, solvent cleaning, foam blowing, and others. However, as explained in section II.B of this preamble, subsection (h)(4) of the AIM Act expressly provides that any rulemaking under subsection (h) shall not apply to a regulated substance or a substitute for a regulated substance that is contained in a foam. Thus, this rulemaking did not propose and is not finalizing any requirements for regulated substances or their substitutes when they are contained in foams. Accordingly, EPA interprets its authority under subsection (h) to include promulgating regulations that control the types of practices, processes, or activities identified in subsection (h)(1) in any of those sectors, subsectors, or applications, with the limitation that EPA does not interpret its regulatory authority under subsection (h) to extend to HFCs or substitutes for HFCs when they are contained in foams.

EPA is establishing requirements for the servicing, repair, disposal, and/or installation of equipment in the RACHP and fire suppression sectors as described in sections IV.C through G of this preamble. EPA interprets subsection (h) to provide authority that could be applied to practices, processes, or activities related to equipment across a broad range of sectors, subsectors, or applications that involve regulated substances and/or their substitutes. At

⁵⁰ Cal. Code Regs. Tit. 17, section 95373.

this time, EPA is focusing on certain sectors and subsectors in the rulemaking. In future rulemakings, EPA may consider establishing requirements for equipment in other sectors, subsectors, or applications that involve regulated substances and/or their substitutes. The relevant sections of this preamble describe the requirements that EPA is establishing for equipment in certain sectors and subsectors and how EPA understands these sectors and subsectors as relevant for these requirements.

Where EPA is establishing requirements for certain sectors or subsectors, we intend to be consistent with how those sectors or subsectors are understood under other provisions of the AIM Act and/or CAA title VI that address the same sector or subsector, such as subsection (i) of the AIM Act, through the Technology Transitions program. EPA issued a final Technology Transitions Rule on October 24, 2023 (88 FR 73098), which provides additional detail on many of the same sectors and subsectors for which this action finalizes certain requirements under subsection (h). EPA also considered how those sectors or subsectors are addressed in the 2023 Technology Transitions Rule in finalizing this rule under subsection (h) of the AIM Act.

EPA is establishing certain provisions, as described later in this preamble, for certain equipment in applicable subsectors within the RACHP sector in this action. Such subsectors within the RACHP sector include: supermarket systems; refrigerated transport; and automatic commercial ice makers.⁵¹ EPA is also establishing certain provisions for equipment in the fire suppression sector, as described later in this preamble.

C. How is EPA addressing leak repair?

EPA is finalizing aspects of the proposed leak repair requirements, with modifications after consideration of the comments and information received on the proposed rule, as discussed in further detail in the following sections. The Agency is finalizing leak repair requirements for refrigerant-containing

appliances with a charge size of 15 pounds or more that contain an HFC or substitute for an HFC with a GWP greater than 53. In the proposal, EPA bifurcated its compliance dates based on charge size, with refrigerant-containing appliances containing 50 pounds or more needing to comply within 60 days of publication in the **Federal Register** and refrigerant-containing appliances between 15 and 50 pounds having a compliance date of one year after publication in the **Federal Register**. In this final rule, after consideration of the comments, EPA is establishing one compliance date for all applicable appliances: January 1, 2026. The Agency views this change as reasonable to provide additional time for owners or operators with an appliance with a charge size of 50 pounds or more to comply with the leak repair requirements and avoid potential confusion due to varied compliance dates. Additionally, EPA is finalizing the narrow exemption of refrigerant-containing appliances in the residential and light commercial air conditioning and heat pumps subsector from the leak repair provisions in this final rule.

1. What refrigerants are subject to the leak repair requirements?

EPA is finalizing, as proposed, that the leak repair requirements apply to certain appliances that contain refrigerants that are composed in whole or in part of either a regulated substance or a substitute for a regulated substance with a GWP greater than 53, for reasons discussed in the proposal and in this final rule. To determine if the refrigerant contains a regulated substance, the owner or operator should consult the list of regulated substances provided in appendix A to 40 CFR part 84.⁵² In the proposed rule, to determine whether an appliance containing a substitute for a regulated substance is required to comply with the leak repair provisions, EPA described the process for determining the GWP of regulated substances and/or their substitutes in the proposed Technology Transitions Rule (87 FR 76738, 76750, December 15, 2022). In the 2023 Technology Transitions Rule, published in the **Federal Register** on October 24, 2023 (88 FR 73098), EPA established a table listing the GWP values for substances that are not regulated substances. In this final rule, EPA is adopting the same approach for determining GWPs for those substances as in the final 2023 Technology Transitions Rule, codified at 40 CFR part 84, subpart B (40 CFR

84.64(a)–(c)) and, for consistency, is referencing the table at 40 CFR 84.64(b) for determining the GWPs of the listed commonly used non-HFC constituents. For purposes of this rulemaking, owners or operators should use the GWPs listed in that table to determine if the refrigerant contains a substitute for an HFC with a GWP greater than 53.

Comment: The Agency received multiple comments on the refrigerants subject to the leak repair provisions, including comments opposing a limit of 53 GWP for substitutes of HFCs. Some commenters suggested the Agency use a more generic value such as 100 or 150 to be consistent with the 2023 Technology Transitions Rule's approach. Another commenter expressed support for EPA's continued use of 100-year GWPs for the implementation and administration of provisions under the AIM Act and stated that they oppose the use of 20-year GWPs for the implementation of AIM Act rules. Finally, one commenter described issues with the proposal's resources to determine the GWPs of constituent parts of refrigerant blends or commonly used refrigerant alternatives. The commenter suggests that EPA compile a singular comprehensive list encompassing all substitute substances for GWPs exceeding 53. Additionally, the commenter stated that there is no reason to provide reference to substances with GWPs less than 53 to avoid confusion as these substitutes are not subject to this regulation.

Response: In response to these comments, EPA notes that it is finalizing, as proposed, that the leak repair requirements apply to refrigerant-containing appliances containing an HFC refrigerant or a substitute for HFC refrigerants that has a GWP above 53. EPA acknowledges comments seeking consistency across programs for GWP limits and finds it appropriate to continue to use 100-year GWPs for this rulemaking given the AIM Act uses 100-year GWPs. As discussed in the 2023 Technology Transitions Rule, the final limits in that rule were informed by a range of information, including the petitions, the Agency's evaluation consistent with the factors identified in subsection (i)(4) of the AIM Act, and comments received on that rule. Those considerations do not apply to this rulemaking, which is being undertaken under a different statutory provision and which establishes requirements that apply to certain substitutes for HFCs. As stated in the proposed rule under subsection (h), the GWP of 53 for substitutes for HFCs was chosen, given it is the lowest GWP of the HFCs that could be listed as a regulated substance

⁵¹ In other actions by EPA, such as the 2023 Technology Transitions Rule or rulemakings and/or notices under the SNAP program, EPA refers to this subsector as "automatic commercial ice machines" or "commercial ice machines," respectively. EPA is clarifying that in this rulemaking, we intend for the term "automatic commercial ice makers" to cover the same types of refrigerant-containing equipment as those covered under "automatic commercial ice machines" in the 2023 Technology Transitions Rule or those covered as "commercial ice machines" under SNAP.

⁵² This list currently matches the list of regulated substances in subsection (c) of the AIM Act.

under subsection (c)(3)(A)(i)(II) of the AIM Act. For purposes of this rulemaking, the Agency concludes it appropriate to parallel this statutory provision for the GWP of the substances that could be designated as regulated substances under the Act. Regardless of GWP, any refrigerant that contains an HFC is covered under the leak repair provisions. Using a GWP of 53 for substitutes maintains consistency between the HFCs and their substitutes that are regulated under this rule under subsection (h). Moreover, the Agency notes that currently the vast majority of HFC refrigerants and refrigerant blends containing HFCs in equipment have much higher GWPs, often 20 to 50, or even more than 75 times as high as this cutoff. The Agency is aware of one HFC blend, IKON-A, currently in use for IPR which has a GWP below 53. However, the inclusion of a regulated HFC in the refrigerant blend means that any refrigerant-containing appliances using this blend are subject to the leak repair provisions of this final rule. In the future, EPA may find similar blends acceptable to use in specific applications, under other regulatory programs, but their applicability for the leak repair provisions of this final rule is subject to whether a blend contains an HFC or a substitute with a GWP greater than 53, not the GWP of the blend overall. Additionally, EPA acknowledges that over time the refrigerant market is likely to shift, particularly in light of the HFC phasedown under both the AIM Act and Montreal Protocol, the 2023 Technology Transitions Rule, and business decisions to use refrigerants that do not contain HFCs or a substitute with a GWP above 53.

EPA is establishing a lower-GWP threshold for the leak repair requirements in this final rule than it established under the 2023 Technology Transitions Rule for the use of an HFC in certain new equipment. EPA considers this lower threshold to be appropriate given the different goals of these regulations. One purpose for regulations under subsection (h), including the leak repair requirements, is minimizing releases of regulated substances from equipment. The 2023 Technology Transitions Rule was focused on restricting the use of higher-GWP HFCs in new equipment. Equipment that is compliant with the subsection (i) requirements may still be regulated under subsection (h) to minimize releases of HFCs from the equipment. Using a GWP of 53 as the cutoff under these regulations will address the release of substitutes with

potentially comparable climate impacts to that of substances that are or could be listed as regulated substances. Further, if EPA were to establish a higher-GWP as the threshold, such as 150 or 700, that could create an incentive to switch to a substitute with a GWP greater than 53 but below that 150 or 700 GWP cut off to avoid a need to comply with leak repair requirements, even though those substitutes could have greater climate impact if released than some listed regulated substances.

Regarding the comments related to how to determine the GWP of substitutes, EPA responds that in the final rule, EPA has streamlined the process for owners or operators to determine the GWP of HFCs or substitutes for HFCs. An owner or operator can view GWP values for regulated substances by consulting the table in appendix A to 40 CFR part 84. Owners or operators can consult the table at 40 CFR 84.64(b) for determining the GWPs of listed commonly used non-HFC constituents to determine if the refrigerant contains substitute for an HFC with a GWP greater than 53. The list at 40 CFR 84.64(b) contains substitutes with GWPs less than 53 for purposes of the regulations under subpart B, but EPA disagrees that their inclusion would create confusion, as the regulatory text established in this rulemaking is clear that this list is being consulted for purposes of the subpart C regulations to determine whether a refrigerant contains a regulated substance with a GWP greater than 53.

Comment: Two commenters stated that EPA should consider safety aspects (e.g., toxicity, flammability) of particular substances when deciding whether to apply the leak repair provisions, adding that subsection (h) specifically directs the Agency to ensure the safety of technicians and consumers. One commenter asked the Agency to consider whether a system is in direct or indirect contact with building occupants and charge size in its determination around applicability, rather than solely basing mandates on GWP. One of the commenters stated that the 53 GWP limit would drive more use of HFC-152, which the commenter claims is not a viable refrigerant and has historically been used agriculturally as a rodenticide.

The same commenter also requested that the Agency consider the provisions for leak repair under the parameters of safety and performance. The commenter specifically highlighted environmental concerns regarding the toxicity of fluorinated hydrocarbons that contain per- and polyfluoroalkyl substances

(PFAS) and degrade into trifluoroacetic acid (TFA). They suggested that the Agency require leak repair of systems with a charge size of 50 or more pounds for any HFCs, HFOs, or hydrochlorofluoroolefins (HCFOs) if the decomposition of said substance decomposes into TFA at levels greater than a 10 percent yield. The commenter used HFO-1234yf as an example, which produces byproduct yields of TFA greater than 10 percent.

Response: With respect to the comment suggesting that EPA consider performance as a parameter for these regulations, EPA notes that the statutory text under subsection (h)(1) does not mention consideration of performance as a separate parameter in establishing regulations under this provision. Further, the commenter did not provide any supporting analysis or technical information to explain why it would be useful to consider performance as a parameter in establishing the leak repair requirements, or how doing so might affect the final rule. Nothing in the comment suggests that performance of refrigerant-containing appliances would be negatively affected by this final rule or that this rule would prevent an owner or operator from addressing performance issues as appropriate. Thus, the Agency is not using performance as a separate parameter in establishing the final rule's leak repair requirements. Additionally, the Agency is aware that leaky equipment can have performance issues, and following the requirements in this rule may also have the effect of helping address those issues.

With respect to comments on safety, The Agency agrees that subsection (h)(1) of the AIM Act identifies ensuring the safety of technicians and consumers as one of the purposes for regulations under this subsection. EPA has a long history of screening the risks of ODS, HFCs, and their substitutes under SNAP, which for decades has provided a list of acceptable alternatives for a number of sectors. EPA does not view the GWP threshold, and the applicable refrigerants covered in the final rulemaking, as a significant safety risk to technicians and consumers if the refrigerants are properly managed. Refrigerants used in appliances have been thoroughly screened for risks associated with toxicity, flammability, asphyxiation, and physical hazards before being listed as acceptable for use under SNAP's comparative risk framework. While some refrigerants may be mildly flammable (e.g., A2L refrigerants) or have toxicity (e.g., ammonia), proper system design, engineering controls, and other

techniques mitigate the risk for the use of refrigerants in appliances. EPA also notes the existence of other regulations that address the risks related to specific compounds, like ammonia (*e.g.*, EPA's Risk Management Program under the CAA). EPA disagrees with one commenter's suggestion to base the applicability of the leak repair requirements on whether the appliance is in direct or indirect contact with building occupants or other suggested factors (*e.g.*, toxicity). The commenter has not persuasively explained why such an approach would better serve the goals of ensuring the safety of technicians and consumers than having the leak repair requirements apply to equipment regardless of whether it is in direct or indirect contact with building occupants (or technicians and consumers, for that matter), particularly considering the rigorous evaluation of refrigerants under SNAP's comparative risk framework and other regulations addressing potential health and safety concerns. It is also not clear how such an approach would serve other statutory goals for regulations under subsection (h)(1) such as maximizing reclamation and minimizing releases of HFCs from equipment. Considering all three purposes, EPA concludes that it is appropriate to apply the leak repair requirements to equipment that is in both direct and indirect contact with consumers. With respect to the comment suggestion that EPA consider charge size in determining applicability of the leak repair provisions, EPA has considered charge size, as discussed in section IV.C.2 of this preamble. In response to one commenter's specific concern with HFC-152, the Agency responds that we are not aware of any use of HFC-152 in the RACHP sector in the United States. Further, as HFC-152 is a listed regulated substance, if it were used in refrigerants, the leak repair requirements would apply; thus, EPA disagrees that the GWP threshold of 53 for substitutes for HFCs would drive additional use of HFC-152. However, EPA is aware of significant use of HFC-152a with a GWP of 124, which is also a regulated substance and above the 53 GWP threshold.

EPA acknowledges the concerns one commenter raised regarding PFAS. There is currently no single commonly agreed definition of PFAS, and whether HFCs, HFOs, or HCFOs are classified as PFAS depends on the definition being used. EPA's PFAS roadmap sets timelines for specific actions and outlines EPA's commitments to new policies to safeguard public health, protect the environment, and hold

polluters accountable.⁵³ This rule does not in any way establish a definition of PFAS, nor do the leak repair or other requirements in this final rule depend on a specific definition. As previously stated, SNAP already considers potential risks to human health and the environment via its comparative risk framework. Regardless of what definition of PFAS is used, not all PFAS are the same in terms of toxicity, for example. If a chemical has been found to present lower overall risk to human health or the environment, it might be found acceptable under SNAP regardless of whether or not it falls under a particular definition of PFAS. Potential risks to human health or the environment regarding PFAS have been considered directly on a chemical-by-chemical basis and are not based on whether a specific chemical falls into a particular category of substances. Therefore, EPA elected in this final rule to require leak repair for all refrigerants that contain an HFC or an HFC substitute with a GWP greater than 53, without regard to whether or not the substance falls within a particular definition of PFAS. Under that approach, regulated entities are not required to use any particular HFC or HFC substitute, and the approach inherently permits equipment owners and operators to make decisions about what refrigerants are appropriate for use in their particular equipment.

Regarding the commenter's related concern regarding atmospheric decomposition of certain HFCs, HFOs, and HCFOs to TFA, EPA notes that TFA is a perfluorinated acid. Where TFA has been included in a particular definition of PFAS, it is often part of a class of chemicals containing more than 4,730 substances. According to the Montreal Protocol's Environmental Effects Assessment Panel (EEAP)⁵⁴ about 256 PFAS are in commercial use, with widely differing physical, chemical, and biological properties.⁵⁵ The 2022 EEAP Assessment Report⁵⁶ explained that one source of TFA in the environment is the degradation of some HFCs, HCFCs, HFOs, and HCFOs, while other potential sources of TFA include geogenic sources; effluents and releases from the manufacture of fluorinated chemicals; combustion and degradation of

fluorinated chemicals in commercial and household waste; and biological and environmental degradation of chemicals such as certain pharmaceuticals and pesticides. The 2022 EEAP Assessment Report indicates that while TFA "is unlikely to cause adverse effects in terrestrial and aquatic organisms, [continued] monitoring and assessment are nevertheless advised due to uncertainties in the deposition of TFA and its potential effects on marine organisms." The report notes that "TFA does not bioaccumulate nor is it toxic at the low to moderate exposures currently measured in the environment or those predicted in the distant future." It further explains that because the HCFCs and HFCs are long-lived in the atmosphere, they distribute globally, and TFA from these substances is more evenly deposited. The HFOs and HCFOs have shorter lifetimes in the atmosphere, and deposition of TFA from these substances is likely to be more localized. This will result in greater concentrations near the locations of release. These greater concentrations are unlikely to present a risk to humans or the environment in these locations, but changes in concentration in surface water (or soil) would respond rapidly to releases. The 2022 Assessment EEAP Report states, "[monitoring] of the environment for residues of TFA would provide an early warning if trends in concentration indicate rapid increases." EPA reiterates that the SNAP program considers ecotoxicity as a criterion when evaluating alternatives under its comparative risk framework and has considered the potential impacts of TFA in past actions where SNAP found HFO-1234yf acceptable in certain end uses. The myriad studies EPA referenced in those actions all concluded that the additional TFA from HFO-1234yf did not pose a significant additional risk, even if it were assumed to be used as the only refrigerant in all refrigeration and air conditioning equipment (76 FR 17492–17493, March 29, 2011). The Agency intends to continue its approach to evaluating the potential risks from TFA in the future. However, in light of this scientific and technical information regarding the potential impacts of TFA from releases of HFCs, HCFCs, HFOs, and HCFOs, EPA does not agree that it is necessary to apply the leak repair requirements based on whether a refrigerant decomposes into TFA at levels greater than a 10 percent yield.

Comment: Some commenters stated that the leak repair provisions should apply to substitutes regardless of GWP as this would result in decreasing

⁵³ Available at <https://www.epa.gov/pfas>.

⁵⁴ The EEAP is an advisory body to the Montreal Protocol Parties that evaluates the consequences of stratospheric ozone depletion and additional areas of potential importance to the Montreal Protocol.

⁵⁵ UNEP. 2022 Assessment Report of the Environmental Effects Assessment Panel. Available at: <https://ozone.unep.org/system/files/documents/EEAP-2022-Assessment-Report-May2023.pdf>.

⁵⁶ *Ibid.*

refrigerant emissions. One commenter suggested that the Agency omit the GWP threshold for “non-natural” (*i.e.*, fluorinated) substitute refrigerants. One commenter did not express an opinion on the proposed GWP limit of 53 but appreciated that the Agency could extend beyond a GWP of 53 in the future.

Response: EPA acknowledges that in the future the Agency could consider whether a GWP limit lower than 53 is appropriate. One of the purposes stated in the AIM Act for regulations under subsection (h) is minimizing releases of regulated substances from equipment, and the 53 GWP threshold in this final rule parallels the lowest listed GWP of regulated substances in the AIM Act. Given the range of refrigerants currently in use that have a variety of properties and characteristics (including a wide range of GWPs), EPA concludes that it is appropriate to use a GWP of 53 as the threshold for substitutes for HFCs that would be subject to leak repair requirements in this rulemaking, as that will address the release of substitutes with potentially comparable climate impacts to that of substances that are or could be listed as regulated substances, regardless of whether that substance is a fluorinated substitute. Further, non-HFC refrigerant substitutes below the 53 GWP threshold do not have commensurate climate impacts on HFCs or their covered substitutes. Therefore, EPA finds it is appropriate to not establish leak repair requirements for non-HFC substitutes with a GWP below 53 at this time. If EPA becomes aware of concerns related to this limitation as the refrigerant market shifts to lower-GWP substitutes for HFCs, EPA could consider revisiting the requirement via a notice-and-comment rulemaking. By finalizing a GWP threshold of 53, as well as the provision to include refrigerant blends with any HFCs as components regardless of their GWPs, EPA is not precluding further consideration of a lower-GWP threshold in the future.

The Agency is finalizing leak repair requirements for appliances that use a refrigerant blend that contains an ODS and an HFC or a substitute for an HFC with a GWP greater than 53 to simultaneously meet the leak repair provisions promulgated under CAA section 608 at 40 CFR 82.157, and the provisions in this action, to the extent that either set of requirements is applicable. EPA intends for the leak repair requirements in this rulemaking to be sufficiently consistent with the requirements at 40 CFR 82.157 such that both sets of requirements could be met for refrigerant-containing appliances

that use a refrigerant blend containing an ODS and an HFC or a substitute for an HFC with a GWP above 53 and that have a full charge of 50 or more pounds of refrigerant. Due to the difference in charge sizes for equipment covered by 40 CFR 82.157 and the leak repair requirements finalized in this action, such appliances using such a refrigerant blend with a charge size of 15 pounds or higher but below 50 pounds are only subject to the requirements under subsection (h).

Comment: One commenter stated that the proposed requirements for owners and operators with an appliance using both ODS and HFCs were unnecessarily burdensome. The commenter expressed the view that any differences with the 40 CFR 82.157 ODS requirements (*e.g.*, leak rate calculations, lowering the proposed threshold for chronically leaking appliances) would significantly increase the complexity and burden of requirements. Another commenter requested clarification on the types of appliances containing ODS that would be subject to the leak repair provisions. The commenter posited two scenarios. One would imply that all appliances containing only ODS refrigerant are exempt from the provisions of the rule, and the other would imply that appliances regulated by 40 CFR part 82, subpart F are excluded from this rule’s leak repair requirements. One commenter stated that having the requirements be consistent with those for ODS would make it easier for the many end users who are already required to comply with ODS substance requirements.

Response: EPA acknowledges that where appropriate, consistent leak repair requirements could smooth implementation of both programs. As described in this section, the conclusion that refrigerant-containing appliances using a refrigerant blend containing an ODS and an HFC or a substitute for an HFC with a GWP greater than 53 is subject to leak repair requirements under both CAA section 608 and subsection (h) of the AIM Act is the result of how applicability is determined for these provisions. EPA intends for the leak repair requirements in this rulemaking to be sufficiently consistent with the requirements under CAA section 608 such that both sets of requirements could be met for refrigerant-containing appliances using an ODS/HFC blend. The Agency did not reopen the requirements promulgated under CAA section 608, codified at 40 CFR part 82, subpart F, in its proposed rule under subsection (h) of the AIM Act and is not amending those regulations in this final rule, including the

applicability provisions through this action. Thus, those provisions continue to apply for appliances using a refrigerant that contains an ODS with a full charge of 50 or more pounds of refrigerant.

In consideration of (h)(3), which authorizes EPA to coordinate with other similar EPA regulations, including the extensive experience in implementing leak repair requirements under CAA section 608 codified at 40 CFR 82.157, EPA is finalizing many provisions that are identical or similar to those in 40 CFR 82.157. Examples include the methodology for determining the leak rate, the timing for repairs, and verification tests. One notable difference between the regulatory requirements under CAA section 608 and subsection (h) of the AIM Act is the applicable charge size, which is discussed in section IV.C.2 of this preamble. The similarities in these requirements should facilitate compliance with both sets of requirements where both apply. Accordingly, EPA does not agree with the comments that complying with the ODS and HFC leak repair provisions simultaneously would be unduly burdensome. Furthermore, the commenters did not provide sufficient data to support this statement or to allow EPA to fully evaluate commenter’s claims of undue burden and other potential approaches to addressing such burden. The grants of authority under CAA section 608 and subsection (h) of the AIM Act are not identical, and more than 30 years have passed since the issuance of the initial regulations under CAA section 608. Therefore, in some instances, this final rule does differ from the CAA section 608 regulations. EPA is not establishing an exemption from the requirements in this rule for equipment that is subject to the requirements under 40 CFR part 82, subpart F, because, if such equipment also contains an HFC or a substitute for an HFC with a GWP above 53, it is appropriate for it to comply with the leak repair requirements under subsection (h)(1). This approach ensures that such equipment is subject to requirements designed to meet the direction under and the particular statutory purposes identified in subsection (h), such as maximizing reclaim and minimizing releases of HFCs from equipment.

To address one commenter’s request for clarity on the overlap of leak repair requirements for appliances containing ODS and HFCs and their substitutes, EPA reiterates that owners and operators would only need to comply with the leak repair provisions under both 40 CFR part 82, subpart F and 40

CFR part 84, subpart C if the refrigerant-containing appliance uses a refrigerant containing ODS and an HFC or HFC substitute with a GWP greater than 53. If an appliance uses a refrigerant that solely contains ODS (and meets the other applicability criteria), it is subject to 40 CFR part 82, subpart F leak repair requirements, but not the leak repair requirements under this final rule. Conversely, if an appliance solely contains an HFC or HFC substitute with a GWP greater than 53 (and meets the other applicability criteria) the owner will need to comply with the leak repair provisions in this final rule, but not the leak repair requirements in 40 CFR 82.157. EPA is not aware of any widespread use of ODS/HFC blends. However, to the extent such blends are in use, requirements under the CAA title VI regulations and the CAA itself restrict use of ODS in new and existing equipment, thus further limiting the likelihood of one appliance being subject to the two sets of leak repair requirements.

2. Appliances with what charge size are subject to the leak repair requirements?

EPA is finalizing that, with certain exceptions, appliances with a charge size of 15 pounds or more of refrigerant that contains a regulated substance or a substitute for a regulated substance with a GWP greater than 53 are subject to the leak repair requirements under subsection (h) of the AIM Act, for reasons discussed in the proposal and in this final rule. This establishes a lower threshold than in the regulations established under CAA section 608 nearly 30 years ago. As discussed in the proposal, applying the leak repair requirements to more equipment will reduce the release of HFCs from equipment and increase the amount of HFCs that will be available for recovery and reclamation because of avoided releases of HFCs from leaks. The AIM Act provides a schedule for a phasedown of HFCs, as opposed to the phaseout of ODS under the CAA. Therefore, there may be continued introduction of HFC-containing appliances indefinitely, which is a notable difference from the restrictions on ODS under the CAA. As described more fully in section II.B of this preamble, subsection (h)(1) of the AIM Act tasks the Agency with promulgating “regulations to control, where appropriate,” certain practices, processes, or activities for certain purposes, including minimizing the release of regulated substances from equipment and maximizing the reclamation of regulated substances. As described previously, the phrase “where

appropriate” in subsection (h)(1) provides EPA with discretion to reasonably determine how the regulations under subsection (h)(1) will apply, including by making determinations about the charge size threshold of equipment that is subject to the leak repair requirements. In exercising its discretion under this provision, EPA has taken a number of considerations into account, such as: the text of subsection (h)(1) including the statutory purposes identified in that provision; the anticipated effectiveness of the requirements under consideration in serving those purposes; the intent of subsection (h), considering the overall context and structure of the AIM Act; and information and insight drawn from EPA’s past experience with the same or similar practices, processes, or activities, as well as sectors, subsectors, and markets, gained from implementing other programs, including under other provisions of the AIM Act and the CAA. In establishing the 15-pound threshold for leak repair requirements in this rulemaking, EPA considered both the purposes of minimizing the release of HFCs from equipment and maximizing reclamation, as well as other factors as discussed further in other responses to comments in this section. For example, EPA considered information regarding refrigerant-containing appliances where HFCs or their substitutes are currently being used and where they are expected to be used in the coming years; the universe of affected appliances subject to the leak repair requirements at 40 CFR 82.157 and how the refrigerant-containing appliances being used in the market and aftermarket has changed over time, including with respect to charge size; and design elements of different types refrigerant-containing appliances with different charge sizes and the propensity of that equipment to leak (e.g., whether the equipment is hermetically sealed), as well as whether it is typically repaired for continued use, or alternatively disposed of, if it is not functioning properly. Consideration of these factors informed EPA’s evaluation of the charge sizes of refrigerant-containing appliances for which leak repair is likely to be effective at minimizing releases of refrigerant from appliances and maximizing reclamation. EPA also considered the importance of proper refrigerant management for successful implementation of the phasedown and for supporting the existing installed base of appliances. Based on such considerations, and as discussed in greater detail below, EPA concludes it is appropriate to use a 15-pound threshold

for the leak repair requirements under this rule and that this threshold will further serve the purposes identified in subsection (h)(1) of minimizing the release of HFCs from equipment and maximizing reclamation.

By establishing an applicable charge size of 15 pounds or more of refrigerant, with certain exemptions, the universe of affected appliances covered by the leak repair requirements under subsection (h) is larger than the universe of appliances containing ODS refrigerants and subject to the leak repair provisions at 40 CFR 82.157. For example, the applicable charge size of 15 pounds or more of a refrigerant that contains an HFC or substitute refrigerant with a GWP above 53 is expected to cover certain appliances in the following subsectors:

- Train air conditioning;
- Passenger buses (e.g., school, coach, transit, and trolley buses);⁵⁷
- Refrigerated transport—rail;
- Large retail food remote condensing units (e.g., cold rooms in supermarkets); and
- Commercial unitary air conditioning (e.g., a system for a mid-sized office building).

EPA is establishing a 15-pound refrigerant charge size threshold for refrigerant-containing appliances subject to the leak repair requirements in this final rule based in part on consideration of an analysis of refrigerant-containing appliances where HFCs or their substitutes are currently being used and where they are expected to be used in the coming years. EPA conducted an analysis⁵⁸ using the Vintaging Model to estimate the quantity of refrigerants used in equipment of varying charge sizes (also called the “installed stock”). The Vintaging Model tracks the transition from ODS to substitutes including HFCs by modeling the total pieces of equipment and average charge sizes—which could vary over time based on vintage and the ODS or substitute used—in over 60 subsectors. Doing so allows us to analyze the pieces of equipment and total refrigerant in equipment by charge size. A current snapshot of the model’s estimates of the installed stock of HFC and HFC substitute refrigerants in 2025 shows

⁵⁷ “Bus” is defined at 40 CFR 1037.801 and means “a heavy-duty vehicle designed to carry more than 15 passengers. Buses may include coach buses, school buses, and urban transit buses.”

⁵⁸ U.S. EPA. 2023. EPA’s Vintaging Model representing the Allocation Framework Rule as modified by the 2024 Allocation Rule RIA Addendum and the 2023 Technology Transitions Rule RIA Addendum. VM IO file_v4.4_02.04.16_Final TT Rule 2023 High Addition.

that approximately 42 percent of refrigerants (on a weighted carbon dioxide equivalent (CO₂e) basis) are used in appliances with a charge size above 15 pounds. In evaluating where leak repair could be effective at reducing releases of refrigerant from appliances (e.g., trains and passenger busses), which may result in additional environmental benefits, as well as looking at changes in the RACHP market and aftermarket over the past few decades, EPA finds it appropriate to establish a charge size threshold of 15 pounds for refrigerant-containing appliances to be subject to the leak repair requirements. As a general matter, appliances containing less than 15 pounds of refrigerant are significantly more likely to be hermetically sealed (and thus less prone to leaking) and more likely to be replaced rather than be repaired.

EPA considered the statutory purposes in subsection (h)(1) to maximize the reclaiming and minimize the release of regulated substances from equipment when setting the threshold for appliances covered for the leak repair requirements. These purposes guided EPA's considerations in exploring different charge sizes, as did the Agency's consideration of what regulations would be "appropriate" to control the relevant practices, processes, or activities to serve these purposes, consistent with subsection (h)(1).

Comment: EPA received many comments supporting the 15-pound charge size threshold. One commenter expressed support of EPA's proposed rule, stating that HFC emissions do not respect State boundaries and a Federal approach is critical to avoid piecemeal regulations and facilitate the implementation of industry-wide emissions reductions. Another commenter stated that it was reasonable for EPA to have a different charge size threshold than the ODS regulations to preserve the supply of HFC refrigerants. Several commenters in favor of the proposal recommended EPA consider a lower charge size threshold (e.g., five pounds) to avoid additional GHG emissions. One commenter suggested a charge threshold size between one and five pounds to include smaller appliances and achieve additional reductions to HFC emissions. Another commenter stated that lowering the charge size threshold decreases the incentive for owners and operators to replace one large system with smaller systems to skirt regulatory obligations. One commenter stated that EPA's estimates (on a weighted CO₂e basis) show that appliances below 15 pounds account for around 39 percent of total

HFC refrigerants. The commenter suggested that lowering the threshold will close the gap on HFC management and build on existing recordkeeping requirements for technicians who evacuate refrigerant from appliances with a full charge between 5 and 50 pounds.

Response: EPA is finalizing the 15-pound charge size threshold as proposed. The Agency acknowledges the numerous supportive comments for the 15-pound charge size threshold. Since the 1990s, when EPA established the 50-pound charge size for ODS refrigerant-containing appliances, there have been changes in appliance design, use, and practices. In 2016, EPA updated the leak repair program under CAA section 608, partly in consideration of these changes. For the most part, the leak repair provisions for HFCs finalized in this action are consistent with that rule. However, EPA did not change the 50-pound threshold in the 2016 CAA Section 608 Rule, and thus the 15-pound threshold is different from the threshold under the CAA section 608 regulations at 40 CFR part 82, subpart F. Through this notice-and-comment rulemaking, the Agency provided notice of this lower threshold level and considered the public comments received. The Agency's rationale for a 15-pound threshold is discussed in the proposal and in section IV.C.2 of this preamble. As discussed previously, applying the leak repair requirements to more refrigerant-containing appliances will reduce the release of HFCs from said appliances and increase the amount of HFCs available to recover that would be otherwise lost because of leakage from appliances. Furthermore, the HFC phasedown will not eliminate the use of HFCs in the U.S. market, so there may be continued introduction of new HFC-containing appliances; thus, proper management of these refrigerant-containing appliances is necessary for the successful implementation of the HFC phasedown, and to ensure there is an adequate supply of reclaimed HFCs to support the existing installed base of HFC-containing appliances. The Agency also disagrees with one commenter's statement that a lower threshold would disincentivize owners or operators from installing multiple smaller refrigerant-containing appliances to skirt the leak repair requirements of this final rule. The 15-pound threshold is intended to be low enough to hinder efforts to avoid applicability of the leak repair requirements and ensures a sizeable proportion of refrigerant-containing appliances are subject to the leak repair

requirements of the final rule. After further evaluation informed by consideration of these comments, EPA is finalizing a 15-pound charge size requirement for HFC and covered HFC substitute refrigerants.

EPA took comment on, but is not finalizing, leak repair requirements for equipment with charges of less than 15 pounds. One commenter stated that a lower threshold could bridge that gap on HFC emissions by capturing more refrigerant-containing appliances. While EPA agrees that there could be instances where this may reduce releases of refrigerants, we also note that many refrigerant-containing appliances with charge sizes under 15 pounds are typically hermetically sealed, which means they are less leak prone; these refrigerant-containing appliances are also normally disposed of once they stop functioning properly, rather than being repaired for further use. The commenter stated that lowering the threshold would build on existing requirements to recover refrigerants from small appliances (5 pounds or less) under 40 CFR 82.155, which apply to HFCs. However, as previously discussed, these types of refrigerant-containing appliances are at low risk for leakage. Although the safe disposal requirements for small appliances under CAA section 608 do not address leaks, the provision ensures that the refrigerant within these appliances is not released at disposal. Further, EPA notes that refrigerant-containing appliances between 5 and 15 pounds are still subject to the venting prohibition under section CAA section 608(c) (codified in EPA's regulations 40 CFR 82.154(a)(1)), which prohibits the knowing venting or release of HFCs from refrigerant-containing appliances during the maintaining, servicing, repairing, or disposing of the appliance. While EPA agrees that there could be reasons to consider lowering the charge size threshold to five pounds or lower, the Agency would want to further evaluate various aspects of a lower threshold before proposing to establish one, such as the potential for such a threshold to serve the purposes identified in subsection (h)(1), whether there are particular considerations about what types of requirements might be appropriate for such appliances, including common design elements for these appliances, and any information available about the occurrence or cause of leaks in such appliances.

Comment: A number of commenters opposed the 15-pound charge size threshold for leak repair and stated that the threshold is not cost-effective, may confuse owners and technicians, will

increase repair cost, and will double the regulatory responsibilities for industry as compared to CAA section 608 regulations, without commensurate environmental benefits. Several commenters provided estimates for the number of refrigerant-containing appliances subject to the leak repair requirements, which ranged from two to five times greater than the number of refrigerant-containing appliances that would be subject to the leak repair provisions at a 50-pound threshold. Several commenters requested that EPA require leak repair for appliances with a full charge of 50 or more pounds as this is the current ODS threshold under CAA section 608 regulations. One commenter claimed that it could be difficult to effectively distinguish between units charged with HFCs, ODS, or a combination of both for purposes of compliance, and that it would be difficult for equipment owners and certified technicians to determine the applicability threshold for any particular refrigerant/appliance. The commenter asserted that EPA should maintain the 50-pound threshold for applicability to promote compliance, maintain consistency in operations, and avoid unjustified costs. Another commenter urged EPA to direct leak repair requirements to larger appliances with a charge size of 50 pounds or more, as technological advancements have allowed for smaller charge sizes in appliances and therefore have reduced the potential harm to the environment in the event of a leak. The commenter also asserted that the 15-pound threshold could discourage manufacturers from improving the efficiency of refrigeration appliances to reduce overall refrigerant usage. One commenter suggested EPA wait a period of time (e.g., five years) from the effective date of the final rule to see if there is a reduction in HFC use and their corresponding emissions. The commenter recommended that if substantial HFC use and emissions reductions are not observed, then EPA could evaluate and propose a new applicability threshold. Alternatively, the commenter suggested EPA could establish a charge size threshold at 40 pounds, as there have been technological reductions in charge sizes due to the phaseout of ODS. A few commenters recommended that EPA increase the threshold from the proposed 15 pounds to 30, 40, or 50 pounds to better align with CAA section 608 regulations. One commenter claimed the 15-pound threshold does not provide enough environmental benefits to justify the cost increases to

small business owners, local school systems, and mass transit operators. The commenter stated that while a 50-pound threshold is preferable, a 30-pound threshold would mitigate some of these costs and challenges. Another commenter stated that the 15-pound threshold was too low and would dramatically increase the number of affected appliances; suggesting that a 30-pound threshold would be more appropriate and still expand upon the CAA regulations.

Response: EPA disagrees with commenters that the 15-pound threshold will confuse technicians and facility owners. While this lower threshold will affect different sizes and types of refrigerant-containing appliances than the 50-pound threshold for ODS appliances, the leak repair activities are consistent with the subpart F requirements. Through this notice-and-comment rulemaking the Agency informed stakeholders of this lower threshold level and explained the Agency's rationale for a 15-pound threshold in section IV.C.2 of this preamble. EPA intends to provide information to the regulated community on its website and additional communication about the requirements to affected stakeholders. EPA also disagrees that owners or operators would have difficulty determining what refrigerants are being used within a refrigerant-containing appliance or that they would have difficulty determining the charge size of a refrigerant-containing appliance. An owner or operator should be fully aware of the type of refrigerant that is being used in a refrigerant-containing appliance, and the determination of an appliance's full charge (as described in section IV.A.2 of this preamble) is the same as its use under the CAA section 608 regulations.

The Agency disagrees with a commenter's claim that the 15-pound threshold would uniquely burden small businesses, schools, and mass transit operators. Small businesses and schools, depending on equipment type, may fall under the narrow leak repair exemption for residential and light commercial air conditioning and heat pumps, easing some of their regulatory burden. The final rule's leak repair provision may affect operators of air conditioning on mass transit (e.g., trains) and school buses, but the commenter did not provide specific evidence to support their claim that the leak repair requirements would increase costs to an extent that it unduly burdens these refrigerant-containing appliance owners.

EPA disagrees with a commenter's suggestion to pause the compliance date of the leak repair provisions to see if

there is a substantial reduction in HFC use and emissions. The Agency notes that the HFC phasedown is substantially reducing the production and consumption of HFCs; thus, the overall use of virgin HFCs is going to be reduced as the phasedown progresses. However, as previously stated, the phasedown will not eliminate the production and consumption of HFCs, and specific measures are necessary to limit the impacts of HFCs on the environment and ensure that the supply of HFC refrigerants is available for use in existing systems. This action is focused on implementing subsection (h) of the AIM Act, which establishes distinct authorities focused on minimizing the release of HFCs and maximizing the recovery of HFCs for reclamation. The vast majority of HFCs are used in the RACHP sector and its subsectors; thus, leak repair requirements for this sector are vital to minimizing the release of HFCs and maximizing reclamation. Additionally, in the context of the HFC phasedown, not establishing requirements to limit the release of HFCs will create supply issues as the phasedown progresses. Therefore, the timing of the leak repair requirements in this final rule is vital to the implementation of the HFC phasedown and ensures that a supply of reclaimed HFCs is available for owners or operators to continue to use HFCs for their refrigerant-containing appliances. The Agency agrees that additional data may inform future decisions under subsection (h) and more broadly under the AIM Act. Such information could lead to a future notice-and-comment rulemaking that may consider a lower threshold for refrigerant-containing appliances subject to leak repair requirements. However, based on the data available now, the Agency concludes that it is appropriate to proceed with the leak repair requirements for appliances with a full charge size of 15 pounds or more and with a compliance date of January 1, 2026, as part of implementing subsection (h).

The Agency also disagrees with some commenters' assertions that the 15-pound threshold would increase the number of refrigerant-containing appliances subject to leak repair by a factor of two to five times the number of affected appliances under CAA section 608. The final rule will include a substantial number of new appliances under the leak repair provision but not the extent claimed by the commenter. Vintaging Model estimates on the total number of refrigerant-containing appliances subject to the leak repair

provisions of the final rule are estimated to affect 971,133 appliances with a charge size between 15 and 50 pounds and 580,653 appliances with a charge size above 50 pounds. As previously stated, EPA understands that the 15-pound threshold does increase the number of refrigerant-containing appliances subject to leak repair. This decision was based on EPA's evaluation of changes in the RACHP market and aftermarket (e.g., the overall reduction of refrigerant charge size). With these considerations, EPA determined that capturing refrigerant-containing appliances at charge sizes below 50 pounds will further serve the purposes of minimizing the release of HFCs from equipment. Therefore, the Agency finds it appropriate to establish a charge size threshold of 15 pounds for refrigerant-containing appliances to be subject to the leak repair requirements.

For these reasons EPA also disagrees with one commenter's claim that refrigerant-containing appliances below 50 pounds should not be subject to the leak repair provision because their reduced charge size has mitigated their potential to harm the environment. The extension of the leak repair requirements to refrigerant-containing appliances below 50 pounds was found to be feasible because of the technological improvements to refrigerant charge size over decades. These changes in charge size in the RACHP sector informed EPA's decision to capture appliances between 15 and 50 pounds because those appliances still contain HFCs or covered substitutes that have a detrimental effect on the environment. The reduction in charge size does mitigate the total amount of refrigerant that is capable of being lost during a leak event, but it does not account for the proper management of refrigerant-containing appliances and fixing leaks within said appliances. EPA also disagrees with the commenter's assertion that lowering the threshold to 15 pounds will deter manufacturers from continuing to make technological advancements to appliance charge size. Manufacturers' incentives to create smaller refrigerant-containing appliances are not solely based on the charge size threshold for leak repair in this final rule, nor was this the case in the context of the 50-pound threshold under the CAA section 608 regulations. The commenter did not provide additional information to sufficiently reason that this would be the case, and EPA notes that charge size reductions have occurred over decades because of improvements to appliance design and energy efficiency.

EPA acknowledges commenters' concerns regarding the costs and benefits associated with leak repair. Further discussion on the costs and benefits associated with this final rule and discussions on the draft RIA addendum and Economic Impact and Benefits TSD can be found in section VI.B of this preamble. EPA is not relying on those analyses as a record basis for this rulemaking, and the Agency would reach the same conclusions on the suitability of a 15-pound charge size threshold without those analyses. However, the analyses in the TSD reflect that the leak repair requirements in this final rule will provide several benefits to owners or operators and EPA acknowledges that certain costs will be associated with the implementation of the leak repair provisions. First, the leak repair requirements of this rulemaking are likely to provide owners or operators information that leaks are occurring earlier than would have otherwise been known. Fixing those leaks will reduce the amount of refrigerant needed to be added to the system thereby reducing refrigerant costs for the owner/operator. Secondly, a system that is operating with less than the full charge of refrigerant is likely to consume more energy or not provide the desired cooling effect, both of which increase the owner's operating costs. As an example, a unit cooler with 15 to 50 pounds of refrigerant might be used for a large cold room. If that cooler is not providing the cooling needed, products could spoil, representing a potential large cost to the owner, in addition to the costs of the additional energy used to operate the off-specification equipment, which may be potentially avoided if the owner or operator performs the leak inspection and repair requirements of this rulemaking.⁵⁹ Regarding the issue of cost-effectiveness of a 15-pound threshold raised by some commenters, the Agency refers the reader to section VI.B of the preamble. The Agency reiterates that this rulemaking is designed to serve the purposes identified in subsection (h)(1) of the AIM Act, including maximizing reclamation and minimizing the release of regulated substances from equipment.

Comment: A commenter in opposition of the 15-pound threshold claimed that the reasoning for changing the charge size threshold appears to be arbitrary and capricious. The commenter claims the reduction is unmerited based on the

availability of newer technologies using smaller charge sizes. They further assert the replacement of older appliances with new and more efficient appliances is one of the goalposts of the AIM Act. The commenter stated that applicability of the leak repair and detection requirements will act as a deterrent for replacing appliances and is unnecessary and unreasonable given reductions in available HFC stocks. The Agency also received a similar comment stating that the proposal did not provide clear justifications for lowering the charge size threshold below 50 pounds.

Response: The Agency disagrees that the 15-pound threshold is arbitrary and capricious. Subsection (h)(1) of the AIM Act directs the Agency to promulgate "regulations to control, where appropriate," certain practices, processes, or activities, for certain purposes, including minimizing the release of regulated substances from equipment and maximizing their reclamation of regulated substances. As explained earlier in this preamble, the phrase "where appropriate" in subsection (h)(1) provides EPA with discretion to reasonably make determinations on how the regulations should apply including, among other things, to select an appropriate charge size threshold for refrigerant-containing appliances subject to the leak repair provision. As previously stated, the Agency is applying leak repair requirements to more refrigerant-containing appliances than under the CAA section 608 rules to reduce the release of HFCs from said appliances and increase the amount of HFCs available for recovery that would otherwise be lost because of leakage from such appliances. Given that the purposes identified for regulations under subsection (h)(1) include maximizing reclamation and minimizing release of HFCs from equipment, EPA interprets the intent of subsection (h)(1) to be that the regulations promulgated under it may apply as broadly as needed to serve those purposes, while also being mindful of the statutory text indicating that the controls should apply "where appropriate." EPA finds it appropriate to apply the leak repair requirements to equipment with a charge size below 50 pounds for several reasons. Technological advancements have lowered the charge sizes of many refrigerant-containing appliances, such that using a charge size threshold of 50 pounds today would leave many such appliances unregulated. Refrigerant-containing appliances between 15 and 50 pounds still contain climate-

⁵⁹ Impacts of Refrigerant Charge on Air Conditioner and Heat Pump Performance" (2010). International Refrigeration and Air Conditioning Conference, Paper 1122. Available: <http://docs.lib.purdue.edu/iracc/1122>.

damaging HFCs or HFC substitutes that are appropriately addressed under subsection (h)(1). Such appliances can still leak, and if they are not repaired, could release refrigerant, which would not be available for reclamation once it had leaked. Thus, applying the leak repair requirements to this equipment is part of the regulatory design to better serve the purposes identified in subsection (h)(1) of maximizing reclamation and minimizing release of HFCs from equipment. With respect to the commenter's reference to reductions in HFC stocks, EPA notes that the HFC phasedown will greatly reduce the overall consumption and production of HFCs but will not eliminate their use in the U.S. market. Therefore, continued introduction of HFC-containing appliances may still occur, and EPA concludes it is appropriate for these appliances to be subject to these requirements for the reasons described earlier in this response. For these reasons, EPA finds the 15-pound threshold as appropriate for serving the purposes described in subsection (h).

The Agency disagrees with the commenter's assertion that the 15-pound threshold would deter the transition to newer, more efficient refrigerant-containing appliances, as in the Agency's experience several factors inform the decision of whether to replace equipment and if so, what to replace it with (such as the age, functionality, and costs of operating the existing equipment, and the price of new equipment and costs of operating that equipment). EPA notes that the commenter did not provide additional information to support their assertion that such deterrence would actually occur. EPA is not clear on what the commenter is referring to when it says that one of the goal posts of the Act is the replacement of older equipment with newer and more efficient equipment. To the extent the comment is referring to the implementation of subsection (i) of the AIM Act, EPA clarifies that those provisions are out of the scope of this rulemaking and thus any comment addressing those requires no response. To the extent that the comment pertains to appliances subject to the leak repair requirements in this final rule the Agency notes the overall applicability of appliances is subject to whether or not they contain an HFC or substitute for an HFC with a GWP greater than 53. The final 2023 Technology Transitions Rule applies certain GWP-based restrictions on use of HFCs in new equipment in certain sectors or subsectors in which those HFCs are used. If an equipment owner

were to decide to replace a refrigerant-containing appliance above the 15-pound threshold with a new refrigerant-containing appliance that is subject to under 2023 Technology Transitions Rule, they would need to consider compliance with those requirements. If they also wish to avoid the applicability of leak repair requirements established in this rule to the new appliance, they may have options that would achieve that goal. For example, an owner or operator may be able to select an appliance that uses a refrigerant that does not contain an HFC or a substitute with a GWP greater than 53. However, if they are selecting a refrigerant-containing appliance that uses HFCs, it would not serve the purposes identified in subsection (h)(1) of maximizing reclamation and minimizing release of HFCs from equipment to allow that refrigerant-containing appliance to avoid application of the leak repair requirements simply because it is new, even if it is more efficient. Thus, their inclusion in the leak repair requirements at the 15-pound threshold is warranted.

Comment: One commenter stated that many food industry leaders are part of the GreenChill voluntary partnership that made charge size reduction a priority and challenged equipment manufacturers to lower the amount of refrigerant needed in the retail food industry. The commenter asserted that the current charge size threshold of 50 pounds has served as a motivation to select lower-charge appliances, which leak less refrigerant in situations where catastrophic leaks occur and stated that the proposed threshold penalizes food retailers for the progress under the GreenChill partnership. The commenter asserts that the lower threshold would decrease any motivation for food retailers to purchase expensive appliances that operate at lower charge sizes below 50 pounds. The commenter also expressed concern that many smaller appliances would need to be added to a company's recordkeeping, because appliances not previously covered under section 608 would not have had their full charge data captured.

Another commenter indicated that the provision poses a significant challenge to a cost-conscious industry using centralized HFC systems which are reliable and remain cost-effective for years if well maintained. The commenter asserted that the leak repair requirements would force owners or operators who have recently transitioned to HFO systems to transition again or to cause smaller facilities to transition to fan systems which may paradoxically increase

emissions from electricity generation. The commenter also stated that the rule disproportionately impacts owners or operators in States with higher heat indexes and limited alternative chilling methods.

Response: The Agency disagrees that the final rule's 15-pound threshold for leak repair unduly burdens the retail food industry. EPA acknowledges that these newer designs may use both less refrigerant overall and refrigerants with lower-GWPs but disagrees that the leak repair requirements penalize food retailers that have switched to such equipment because these requirements apply equally to equipment subject to the requirements. Furthermore, the Agency has previously stated that the overall reduction in charge size the RACHP sector is part of EPA's rationale for lowering the charge size threshold to 15 pounds. Refrigerant-containing appliances between 15 and 50 pounds still contain HFCs and covered substitutes which have a detrimental effect on the environment. The extension of the leak repair requirements to capture refrigerant-containing appliances between 15 and 50 pounds will ensure that less HFCs are emitted. The Agency responds that the GreenChill partnership is a voluntary partnership program and does not require the supermarket industry as a whole or the partnership to meet specific leak repair requirements. Advancements in refrigerant charge sizes cannot solely be attributed to the GreenChill partnership as appliance manufacturers and supermarket owners had incentives to lower the charge size of supermarket systems to save on refrigerant costs and improve energy efficiency. The Agency, however, does recognize that supermarkets in the GreenChill voluntary partnership are uniquely positioned to meet the leak repair requirements as partners have been able to consistently achieve lower leak rates by adopting newer system technologies, using newer refrigerants, applying best practices, and maintaining leak-tight systems to decrease refrigerant emissions. The Agency also disagrees with the commenters' framing that the 15-pound threshold would disincentivize owners or operators from investing in refrigerant-containing appliances at lower charge sizes. Owners and operators may decide to transition to refrigerant-containing appliances with smaller charge sizes to save money on refrigerant costs and mitigate the potential of leakage characterized by refrigerant-containing appliances at larger charge sizes. EPA does not find that owners or operators

would solely transition to appliances with small charge sizes to avoid leak repair requirements.

EPA also disagrees with one commenter's assertion that owners or operators who have recently transitioned to HFO systems will need to transition again. This final rule is not regulating the transition of refrigerant-containing appliances, rather, the final rule is establishing leak repair requirements for refrigerant-containing appliances with a charge size 15 pounds or greater which use an HFC or substitute for an HFC with a GWP greater than 53. EPA did not propose and is not finalizing requirements for refrigerant-containing appliances to transition or be replaced (unless a refrigerant-containing appliance is not able to be repaired and is subject to the retrofit or retirement requirements described in section IV.C.3.f of this preamble). The Agency views the leak repair requirements of the final rule to provide numerous benefits to owners or operators (e.g., reduced costs to replace lost refrigerants due to leaks). As the commenter stated, HFC centralized systems if well maintained can be reliable and cost-effective for owners and operators and the leak repair requirements of the final rule ensure that these systems are well maintained. Further, owners or operators who are using HFOs or HFO blends are only subject to the leak repair requirements if the refrigerant used contains an HFC or has a GWP greater than 53. For these reasons, the Agency also disagrees that smaller facilities will transition to fan refrigeration systems in order to avoid the leak repair requirements of the final rule. EPA does not foresee fan systems as being a replacement to refrigerant-containing appliances that use HFCs and notes that there are non-HFC alternatives available for certain refrigerant-containing appliances used by the retail food industry.

EPA also disagrees that the leak repair requirements disproportionately impact owners or operators in States with higher heat indexes and limited alternatives. As stated previously, this rule is not requiring the transition to different alternatives or prohibiting the use of HFCs, rather, the rule is establishing requirements to ensure leaks in refrigerant-containing appliances containing HFCs or covered substitutes are repaired in a timely manner. The Agency understands that differences in ambient temperature will affect the need for RACHP appliances, however, the leak repair requirements apply equally to refrigerant-containing appliances regardless of geographic location. Furthermore, the prompt

repair and management of refrigerant-containing appliances in States with higher heat indexes where RACHP is utilized more, will help save owners and operators costs associated with leaky appliances.

EPA is finalizing as proposed, the exemption of the residential and light commercial air conditioning and heat pump subsector⁶⁰ from the leak repair provisions in the final rule. This subsector is categorized by refrigerant-containing appliances that are used to cool individual rooms, single-family homes, and small commercial buildings. The Agency notes that the description of the subsector is consistent with the description used by the SNAP program since 2009,⁶¹ owners or operators should be familiar with the terminology and implementation under the SNAP program. EPA is not providing a regulatory definition of residential and light commercial air conditioning and heat pumps and clarifies that we are using the terminology developed by SNAP to denote the types of refrigerant-containing appliances that would be considered to fall under the subsector. The determination of whether or not a refrigerant-containing appliance is exempt from the leak repair provision is reliant on such appliances being considered to fall within the parameters of the terminology. As described in the proposal, the vast majority of refrigerant-containing appliances in the residential and light air conditioning subsector typically have a charge size of less than 15 pounds; however, EPA is providing an exemption in the case that an appliance is used within this subsector with a charge size of 15 pounds or more. These refrigerant-containing appliances are used in residences (but this subsector does not include larger centrally-cooled

⁶⁰ The residential and light commercial air conditioning subsector includes equipment for cooling air in individual rooms, single-family homes, and small commercial buildings, including both self-contained and split systems. Self-contained systems include some rooftop AC units (e.g., those ducted to supply conditioned air to multiple spaces) and many types of room ACs, including packaged terminal air conditioners (PTACs), some rooftop AC units, window AC units, portable room AC units, and wall-mounted self-contained ACs, designed for use in a single room. Split systems include ducted and non-ducted mini-splits (which might also be designed for use in a single room), multi-splits and variable refrigerant flow (VRF) systems, and ducted unitary splits. For additional information on the types of equipment, see EPA's website at <https://www.epa.gov/snap/substitutes-residential-and-light-commercial-air-conditioning-and-heat-pumps>.

⁶¹ This subsector was previously characterized as "household and light commercial air conditioning" (61 FR 4736, February 8, 1996). EPA later revised this subsector's name because it was recognized the "house" might be taken to exclude other types of dwellings, such as apartments.

apartment/condominium buildings—where a chiller is likely used), and small retail and office buildings. The types of specific refrigerant-containing appliances used in this subsector could include but are not limited to:

- Packaged terminal air conditioners (PTACs);
- Variable refrigerant flow (VRF) appliances;
- Unitary air conditioning; and
- Some rooftop air conditioning.

There are several reasons for this exemption. Since the majority of appliances in this subsector have a refrigerant charge below the 15-pound cutoff for leak repair requirements, enforcement of these appliances may be challenging due to the number of appliances that would be covered. Further, the number of refrigerant-containing appliances in this subsector may cause additional strain on contractors and technicians who are necessary to complete the repair of leaking appliances. Therefore, EPA's exemption of appliances in this subsector from the leak repair requirements is administratively more efficient and will facilitate compliance of affected appliances under the provision.

Comment: EPA received generally positive comments on the exemption of residential and light commercial air conditioning with the majority of comments requesting clarity of what appliances are covered by the exemption. One commenter stated that codifying a definition for residential and light commercial air conditioning and heat pumps would avoid confusion in the regulated community. Two commenters requested EPA consider codifying the industry definition of light commercial defined as having a cooling capacity below 65,000 BTU/h. One commenter urged EPA to clarify what it considers a "small commercial building." One commenter stated that EPA should define residential and light commercial refrigeration to be consistent with how SNAP defines the residential and light commercial air conditioning and heat pump subsector. The commenter stated that a definition of light commercial air conditioning consistent with SNAP would exclude chillers but include most other forms of household and commercial cooling. Another commenter requested clarification on whether air conditioning systems for supermarkets would be classified as light commercial and therefore exempt from leak repair requirements. The commenter added that if EPA were to clarify that supermarket air conditioning appliances do not fall under light commercial air

conditioning, the Agency would need to evaluate the significant cost burdens associated with the decision.

Response: EPA is finalizing the leak repair exemption of residential and light commercial air conditioning and heat pumps. The Agency acknowledges comments in support of the provision. In response to commenters' request that EPA better define residential and light commercial air conditioning and heat pumps the Agency has provided additional description and discussion in the preamble of this rule. EPA clarifies that it is not codifying a definition of the subsector nor is it adopting a 65,000 BTU/h industry standard as one commenter suggested, because we find the additional clarification of the subsector included in the preamble to be sufficient in alleviating potential confusion with what refrigerant-containing appliances are included in the residential and light commercial air conditioning and heat pumps subsector. The Agency reiterates that the majority of appliances subject to this narrow exemption are below the final rule's 15-pound charge size threshold for the leak repair provision. EPA notes that the terminology used for the residential and light commercial air conditioning and heat pumps sector mirrors the terminology created and implemented under the SNAP program under the CAA, which has been used in that context since 2009. As used in the context of SNAP, this residential and light commercial air conditioning and heat pumps end-use includes equipment that cools enclosed spaces in households and commercial premises (excluding chillers) which include room air conditioning such as window units, PTACs and heat pumps, and portable air conditioners; central air conditioners (*i.e.*, ducted); non-ducted systems (both mini and multi splits); packaged rooftop units; water-source and ground-source heat pumps; and other products. Residential and light commercial air conditioning and heat pumps are often distinguished from chillers by the fact that they condition the air directly, rather than cool (or heat) water that is then used to condition air.⁶² The Agency intends for the term as used in the context of this rulemaking under subsection (h) to have the same meaning as it has under the SNAP program, given the Agency's experience in regulating this end-use under SNAP and its expectation that the regulated community is familiar with this term and its use under SNAP.

The SNAP terminology is based, in part, on ASHRAE's standard 15–2022

which provides more clarity of what types of occupant spaces that fall into the category of what EPA refers to as residential and light commercial. For “residential occupancy” some premises include but are not limited to dormitories, hotels, multiunit apartments, and private residences. For “commercial occupancy” some premises include office and professional buildings, markets, and other work or storage areas. EPA notes that ASHRAE standards are primarily addressing issues with safety in relation to “residential occupancy” or “commercial occupancy” whereas SNAP is addressing the safety and applicability of specific refrigerants which are determined as acceptable for use in specific end-uses. Further, while these descriptions of “residential occupancy” and “commercial occupancy” are helpful in the determination of the types of premises which may fall within the purview of residential and light commercial, the Agency clarifies that the exemption applies to the categories of refrigerant-containing appliances used at these premises. In this final rule, EPA is using the types of refrigerant-containing appliances described under SNAP's terminology for residential and light commercial air conditioning and heat pumps to determine what refrigerant-containing appliances fall under the exemption. For example, a central air conditioner being used to provide cooling for occupants in a commercial setting that has the same shape, size, and cooling load as a refrigerant-containing appliance used in a residential setting would fall under this exemption. An air conditioning appliance at a light commercial building would most likely be a rooftop AC unit, which is one type of light commercial air conditioning.⁶³ In addition to rooftop AC units, other types of air conditioners and heat pumps are part of the residential and light commercial AC and HP subsector and hence are exempt from the leak repair requirements, such as single packaged units, split system central air conditioners and heat pumps,

⁶³ The Technology Transitions Rule describes rooftop AC units as products that combine the compressor, condenser, evaporator, and a fan for ventilation in a single package and may contain additional components for filtration and dehumidification. Most units also include dampers to control air intake. Rooftop AC units cool or heat outside air that is then delivered to the space directly through the ceiling or through a duct network. Rooftop AC units are common in small commercial buildings such as a single store in a mall with no indoor passageways between stores. They can also be set up in an array to provide cooling or heating throughout a larger commercial establishment such as a department store or supermarket. <https://www.federalregister.gov/d/2023-22529/p-903>.

window-mounted air conditioners, through-the-wall units, and portable air conditioners. EPA clarifies that the exemption does not apply to a chiller, a type of air conditioning system that is often used to provide comfort cooling to office buildings, malls, stadiums, arenas, hotels, convention centers, airport terminals, etc.

In response to the question regarding supermarket air conditioning, the Agency clarifies that some but not all supermarket air conditioning systems would fall under the definition of residential and light commercial air conditioning based on the refrigerant-containing appliance being used to cool occupants. However, if a supermarket refrigeration rack is providing comfort cooling as well as refrigeration for perishable foods, it would not be exempt from the leak repair requirements (unless it contained less than 15 pounds of a regulated HFC or HFC substitute with a GWP greater than 53) because this type of refrigerant-containing appliance does not fall under the terminology of residential and light commercial AC and HP. With regards to the assertion that there are significant costs if not all supermarket air conditioning systems were exempt from the leak repair requirements, EPA refers the reader to the Economic Impact and Benefits TSD.

Comment: A few commenters suggested that residential and light commercial air conditioning and heat pump systems should not receive an exemption from leak repair requirements. Several commenters specifically called out the need to include VRF systems under the leak repair provision. One commenter highlighted that multi-split RACHP and VRF systems can contain large refrigerant charges, have many points of potential leakage, and may be more limited in regard to low-GWP alternatives. Another commenter requested that commercial rooftop systems with a charge size above five pounds be covered under the leak repair provision. The commenter agreed with the Agency's decision to exclude residential systems but encouraged EPA to establish leak repair requirements for light commercial air conditioning and heat pumps. A separate commenter in support of the exemption suggested that the Agency could revisit the leak repair exemption for residential air conditioning and heat pump systems at a future date as leak detection solutions become available and cost-effective for these systems.

Response: EPA disagrees with comments requesting that the exemption for residential and light

⁶² SNAP Notice 23 (January 2, 2009; 74 FR 21).

commercial air conditioning not be finalized. In the context of the 608 ODS regulations, residential and light commercial air conditioning were not anticipated to be affected by the leak repair provisions because of the regulation's 50-pound charge size threshold. Under the authority of the AIM Act, EPA sought to align with the 608 regulations where appropriate and to lower the charge size threshold to 15 pounds for reasons as further discussed in section IV.C.1 of the preamble. In the proposed rule, EPA recognized that a lower leak repair charge size threshold might implicate appliances that are used in the residential and light commercial air conditioning subsector that were not previously subject to leak repair requirements. The Agency notes that the inclusion of refrigerant-containing appliances would greatly expand the number of refrigerant-containing appliances subject to the leak repair requirements and may make the enforcement of the leak repair provisions inefficient. While a portion of the refrigerant-containing appliances used in the residential air conditioning subsector may have charge sizes above 15 pounds, the Agency found it prudent to not require wide breadth of leak repair for this category of appliances in the final rule. The Agency also notes that the specific exclusion of residential air conditioning may ease implementation for this first rule under subsection (h). With a similar reasoning, the Agency notes similar concerns would arise from making appliances commonly used in light commercial air conditioning (e.g., central air conditioners, rooftop AC units, etc.) adhere to the leak repair requirements. For these reasons the Agency disagrees with one commenter's recommendation to apply the leak repair requirements to light commercial rooftop systems with a charge size greater than five pounds. As one commenter indicated, leak detection could be less costly in the future. The Agency agrees it could, in a future notice-and-comment rulemaking, reconsider the leak repair exemption for residential and light commercial air conditioning and heat pumps.

While EPA agrees that VRF appliances could have higher refrigerant charge sizes, the Agency disagrees that VRF appliances should be excluded from the exemption for leak repair as VRF is a general term describing a type of appliance which is included in the description of the residential and light commercial air conditioning and heat pumps subsector. VRF appliances are refrigerant-containing appliances that can handle differentiated loads. EPA is

using the SNAP terminology to determine the categories of refrigerant-containing appliances that are exempt from the leak repair provision; VRF appliances have been considered to be part of that SNAP terminology. In the 2023 Technology Transitions Rule, VRF appliances above 65,000 BTU/h were split off from the residential and light commercial AC and HP subsector, and defined as its own subsector, in part because of the complexity of the design and installation of larger VRF systems. The additional year was given to ensure the effective transition to lower-GWP alternatives in the subsector. Further, annual industry estimates by AHRI⁶⁴ show that refrigerant-containing appliances with capacities of 65,000 BTU/h or more constitute roughly three percent of all residential and light commercial refrigerant-containing appliances sold. VRF appliances of this size are a subset of this three percent. Additionally, EPA did not propose and is not finalizing to separate VRF appliances from the leak repair exemption for the residential and light commercial AC and HP subsector. EPA in a future notice-and-comment rulemaking may reconsider the inclusion of certain VRF appliances which currently are exempt from the leak repair requirements of this final rule.

The Agency is requiring leak repair provisions for new and existing passenger buses,⁶⁵ including school, coach, transit, and trolley buses with charge sizes at or above 15 pounds. The heavy-duty vehicle category⁶⁶ incorporates all motor vehicles with a gross vehicle weight rating of 8,500 pounds or greater. Air conditioning systems used to cool passenger compartments in these buses mainly use HFC-134a or R-407C,⁶⁷ and are typically manufactured as a separate unit that is pre-charged with refrigerant and installed onto the vehicle in a separate enclosure (e.g., roof mounted). The refrigerant charge for these systems is larger than those for other MVAC systems (e.g., light-duty motor vehicles), typically ranging from 15 to 30 pounds. MVAC systems used to cool passenger compartments in light-duty, medium-

duty, heavy-duty on-road and nonroad (off-road) vehicles are typically charged during vehicle manufacture and the main components are connected by flexible refrigerant lines. MVAC systems in these vehicles typically have charge sizes ranging from one to eight pounds depending on the manufacturer and cab size.^{68 69}

Comment: One commenter expressed support for EPA's inclusion of MVAC systems with charge sizes over 15 pounds in the leak repair provisions. The commenter asserted that these MVAC systems, such as those on buses and trains, may lose large amounts of refrigerant over time.

Response: EPA acknowledges the commenter's support for this provision and is finalizing the requirement for MVAC and MVAC-like appliances.

Comment: A commenter questioned the authority of EPA to regulate the commercial aviation sector, including refrigerant-containing appliances aboard aircraft and at airports and hangars. The commenter stated that the Federal Aviation Administration (FAA) has the authority and responsibility to ensure such requirements do not adversely affect efficient operation and aircraft safety. The commenter asserted that EPA has not coordinated with the FAA regarding the potential application of the rule's requirements. Additionally, the commenter stated that the proposed rule lacked clarity regarding how the rule would apply to the commercial aircraft sector and questioned why the rule did not exempt the commercial aviation sector from the leak repair and ALD requirements. Lastly, the commenter stated the proposed rule did not provide sufficient time for the sector to safely comply with the rule's leak repair requirements and specified that EPA must extend the applicable leak repair compliance deadlines for commercial aircraft.

Response: EPA disagrees with the commenter's broad assertion that EPA does not have the authority to issue regulations pertaining to aircraft and aircraft operations. While EPA agrees that the FAA has jurisdiction over matters related to aircraft safety and operations consistent with its Congressionally mandated authorities,

⁶⁴ AHRI 2024; available at: <https://www.ahrinet.org/analytics/statistics/historical-data/central-air-conditioners-and-air-source-heat-pumps>.

⁶⁵ "Bus" is defined at 40 CFR 1037.801 and means "a heavy-duty vehicle designed to carry more than 15 passengers. Buses may include coach buses, school buses, and urban transit buses."

⁶⁶ Defined at 40 CFR 86.1803-01.

⁶⁷ Chemours, Freon™ Refrigerant for Bus and Rail Air Conditioning; available at: <https://www.freon.com/en/industries/stationary-ac-heat-pumps/public-transport-ac>.

⁶⁸ ICF, 2016. Technical Support Document for Acceptability Listing of HFO-1234yf for Motor Vehicle Air Conditioning in Limited Heavy-Duty Applications. Available at: <https://www.regulations.gov/document/EPA-HQ-OAR-2015-0663-0007>.

⁶⁹ EPA, 2021. Basic Information about the Emission Standards Reference Guide for On-road and Nonroad Vehicles and Engines. Available at <https://www.epa.gov/emission-standards-reference-guide/basic-information-about-emission-standards-reference-guide-road>.

under CAA Title VI and the AIM Act, EPA has issued numerous regulations that concern the use of ODS and HFCs in many applications including onboard aviation and flight operations. With respect to this action, the AIM Act does not exclude aircraft or aircraft operations from the scope of implementing regulations. Notably, the inclusion in subsection (e)(4)(B)(iv) of the statute of “on board aerospace fire suppression” which includes aircraft,⁷⁰ indicates that Congress did not intend to exempt aircraft and aircraft operations from the AIM Act. In addition, the commenter does not address the provisions of subsection (h) itself. None of the text of subsection (h) indicates that Congress contemplated that these provisions would not apply to equipment used in commercial aviation. Congress expressly addressed inapplicability of regulations under (h) in subsection (h)(4), in which it provided that regulations under subsection (h) shall not apply to HFCs or their substitutes contained in foams. If Congress had intended to exclude equipment used in commercial aviation from regulations promulgated under subsection (h), it would be reasonable to expect that the statute would include similar language creating that exclusion. Although the comments do not appear to base their objections on the text of subsection (h), to the extent they intend to claim that this rulemaking exceeds EPA’s authority under that provision, EPA notes that it is establishing the subsection (h) requirements in this final action to control practices, processes, or activities regarding the service, repair, disposal, or installation of equipment that involves a regulated substance or a substitute for a regulated substance and to serve the statutory purposes identified in subsection (h). Thus, this final action is within the scope of EPA’s authority under subsection (h)(1), including as it pertains to equipment used in commercial aviation.

With respect to the commenters’ assertions that finalizing the proposed rule would conflict with the Federal Aviation Act’s statutory purpose and scheme and that this statute reserves to the FAA jurisdiction over matters related to aircraft safety and operations

and broadly preempts the field of regulation with respect to commercial aviation, aircraft operations, and aircraft safety, EPA responds that the information presented in the comment letter does not indicate that EPA is generally precluded from including requirements related to the commercial aviation sector in this rulemaking. The comment cites and quotes cases that speak to the pervasive nature of Federal regulation in this area and address the preemption of State and local regulations. However, preemption of State and local laws is not relevant to EPA’s authority to establish regulations under the AIM Act.

In response to the commenter’s assertions that EPA did not consult with the FAA on these regulations, particularly for any leak repair requirements that may apply to the commercial aviation sector, the Agency notes that it reached out to FAA on certain topics in developing the draft final rule prior to interagency review.⁷¹ Further, FAA and other Federal agencies had an opportunity to review a draft of the final rule during interagency review. The Agency also notes that these leak repair provisions mostly align with the regulations under CAA section 608. For decades these rules have applied to the refrigeration and air conditioning appliances at airports and within aircraft hangers, and the Agency has considered commercial aircraft to be non-MVAC appliances covered under CAA section 608. The Agency also disagrees with the commenter’s argument that owners and operators in the commercial aviation sector do not have enough time to safely comply with the provision. EPA notes that the 30-day timeframe timeline for repairs is the same as in the CAA section 608 rules, which does not exempt the commercial aviation sector. The leak repair provisions also provide owners or operators the ability to submit extension requests if some unforeseen circumstances (e.g., necessary components to complete leak repair are unavailable during the 30-day leak repair timeframe) prohibit an owner or operator from completing leak repair within the normal 30-day timeframe. Moreover, the comment also did not provide substantive evidence as to why aircraft owners and operators would not be able to safely comply with the leak repair provisions, nor did the commenter identify any information that suggests that these requirements

would adversely affect the proper functioning of aircraft air conditioning.

Finally, EPA notes that the 2023 Technology Transitions Rule provided a temporary exclusion to onboard galley refrigeration on aircraft due to their unique operating environment and the fact that these units are subject to FAA’s design and installation requirements under 40 CFR 25.1365. The Agency clarified the intention to revisit this application through a notice-and-comment rulemaking no later than five years after the compliance date for retail food refrigeration-stand-alone units—*i.e.*, no later than January 1, 2030. The temporary exclusion for this specific application was given in the context of subsection (i) and the transition of sectors and subsectors to lower-GWP alternatives. However as previously discussed elsewhere, the criteria and purposes of subsection (i) and (h) are different. This rulemaking is finalizing leak repair requirements for the purposes of minimizing the release of regulated substances from equipment and maximizing the reclamation of regulated substances. The repair of leaks does not have the same implications for the design and installation of refrigerant-containing appliances as restrictions on the use of higher-GWP HFC refrigerants. The Agency also notes that the exemption for onboard galley refrigeration does not extend to ground-based appliances used by the commercial aviation industry because maintenance and ground operations are not subject to the same FAA requirements as onboard galley refrigeration. Likewise, the repair of leaks in appliances used in ground and maintenance operations (e.g., aircraft hangers) are not exempt from the leak repair requirements in this final rule, nor are they out of the scope of EPA’s authority to regulate appliances at airports or aboard aircraft. With these considerations EPA finds it appropriate to apply the leak repair requirements to the commercial aviation sector.

The Agency is finalizing a compliance date of January 1, 2026, for all appliances with charge sizes of 15 pounds or more of a refrigerant containing an HFC or a substitute for an HFC with a GWP greater than 53, including for such appliances with a charge size of 50 pounds or more, which is a modification from the proposal. In the proposal, the Agency proposed a compliance date of 60 days from publication in the **Federal Register** for appliances with a charge size above 50 pounds and a compliance date of one year from the final rule’s publication in the **Federal Register** for appliances with a charge size between 15 and 50

⁷⁰ EPA’s regulations at 40 CFR 84.3 define *on board aerospace fire suppression* to mean “use of a regulated substance in fire suppression equipment used on board commercial and general aviation aircraft, including commercial-derivative aircraft for military use; rotorcraft; and space vehicles. On board commercial aviation fire suppression systems are installed throughout mainline and regional passenger and freighter aircraft, including engine nacelles, auxiliary power units (APUs), lavatory trash receptacles, baggage/crew compartments, and handheld extinguishers.”

⁷¹ See memo titled *EPA Questions to FAA*, which is available in the docket for this rulemaking, EPA–HQ–OAR–2022–0606.

pounds. EPA reasoned that the compliance date for appliances above 50 pounds could be sooner because the leak repair provisions in the final rule are similar to those that have been in place, for some time, for ODS-containing appliances at or above a full charge size of 50 pounds. Further, prior to the rescission in 2020 (85 FR 14150, March 11, 2020), the final rulemaking under CAA section 608 in 2016 (81 FR 82272, November 18, 2016) applied leak repair provisions for HFC-containing appliances with a charge size of 50 pounds or greater. The 2016 CAA Section 608 Rule became effective on January 1, 2017, and the relevant leak repair requirements for HFCs and other ODS substitutes (now rescinded) applied as of January 1, 2019 (81 FR 82272, 82356, November 18, 2016). Thus, the Agency reasoned that industry was, at a minimum, familiar with the leak repair provisions under CAA section 608, which are similar to the leak repair requirements established under subsection (h) in this action. In regard to refrigerant-containing appliances with a full charge that is at least 15 pounds but less than 50 pounds, the proposal included a slightly longer compliance timeline, as EPA had not previously required leak repair for these appliances. The additional time was intended to allow the regulated community time to familiarize themselves with the requirements and make preparations to comply with them.

Based on further consideration and information provided by commenters, EPA is finalizing a single compliance date, January 1, 2026, to provide owners and operators additional time to comply with the leak repair provisions in the final rule. EPA concludes that this additional time will allow parts of the regulated community that may not have previously had to comply with the leak repair requirements under CAA section 608 time to familiarize themselves with the provisions. While EPA still finds, as at proposal, that parts of the regulated community are already familiar with the requirements based on their experience with similar requirements under CAA section 608, EPA concludes that they would also benefit from additional time to prepare for compliance. During the interim period before the leak repair requirements go into effect, owners or operators can begin determining which refrigerant-containing appliances within a facility will be subject to the leak repair requirements, including conducting inventories, determining the refrigerants used within said appliances, and determining the full charge of refrigerant-containing appliances in

their ownership. EPA does not expect this process to take an exceptional amount of time; however, the extension to the compliance date is being provided to ensure owners and operators can complete the necessary steps to prepare for the leak repair requirements, consistent with this final rule.

Comment: The Agency received mixed comments on the proposed compliance date for the leak repair provisions with the majority of comments asking EPA to re-evaluate the proposed timeline and provide additional time to comply with the leak repair requirements. Commenters suggested a longer period to allow manufacturers, facility owners and operators, and other stakeholders sufficient time to prepare for the regulations. Suggested compliance timelines ranged from an additional one to three years, with some commenters suggesting staggered compliance timelines based on charge size. One commenter stated that a compliance date after three years from the rule's finalization would be needed for stakeholders to plan, procure, and implement the leak detection and repair requirements. Another commenter suggested a compliance date two years after finalization so that owners and operators of smaller equipment who may have not previously experienced leak repair requirements could design, procure, set up, and implement a refrigerant management program.

One commenter in support of the proposed compliance date noted that California has had similar requirements for appliances using more than 50 pounds of HFC refrigerants since 2011, highlighting that nationwide appliances using more than 50 pounds of ODS refrigerants have had similar rules for several years. Another commenter suggested both appliance categories (*i.e.*, 50 pounds and greater, and 15 to 50 pounds) should have the same compliance date of one year after the date of the final rule. The commenter also asserted that appliances with a charge size of above 50 pounds that are using 100 percent substitute refrigerants will need additional time to conduct inventory, determine the applicability of appliances using substitute refrigerants, and determine the full charge of appliances. The commenter suggested that this strategy would avoid market confusion by having multiple compliance dates. One commenter, in general support of the leak repair provision, stated the proposal's compliance timeline presumes that the regulated community is familiar with the leak repair provision promulgated

under the CAA. The commenter stated that a number of new facility owners or operators have little to no experience with the CAA section 608 regulations and requirements.

Response: Based on further consideration and informed by the comments, the Agency is finalizing a single compliance date, rather than two dates for the leak repair requirements for appliances with a charge size of 15 pounds or more. The Agency is providing additional time from what was proposed in both instances for owners and operators to prepare to comply with the leak repair requirements. EPA disagrees that a staggered compliance date would cause market confusion, as the Agency has previously implemented staggered compliance dates for a number of reasons. For example, the ALD provision in this final rule has a staggered compliance date for new and existing IPR and commercial refrigeration systems with a full charge of 1,500 pounds or greater to ensure, among other considerations, that adequate supply is available for owners and operators to comply with this provision.

The Agency agrees additional time may be necessary for the owners and operators to prepare to comply with the leak repair provisions in this final rule, specifically for owners or operators that may not have been subject to the CAA section 608 requirements during the three-year period described in this section. The Agency disagrees with one commenter's claim that new facility owners would not be aware of the leak repair provisions under the CAA. Before the rescission of the CAA section 608 requirements in 2020, facility owners using appliances containing ODS substitutes (*e.g.*, HFCs) would have been subject to the leak repair requirements under the CAA for three years. The Agency also notes that not all portions of the 2016 CAA Section 608 Rule were rescinded in the 2020 rule. For example, owners and operators utilizing ODS substitutes, including HFCs, are subject to the venting prohibition (40 CFR 82.154). Thus, owners or operators now subject to the leak repair provisions in this rule should be well acquainted with similar requirements under CAA part 82, subpart F or at a minimum, generally aware of the leak repair requirements under CAA part 82, subpart F. While EPA generally disagrees that newer facility owners are not aware of previous requirements for HFCs or requirements for ODS, to the extent this is true, the Agency provided notice in the proposal with regards to the potential to finalize leak repair

requirements for refrigerant-containing appliances containing HFCs and HFC substitutes with a GWP above 53 and is finalizing a later compliance date allowing more time for owners and operators to familiarize themselves with the requirements.

The Agency disagrees that compliance dates beyond January 1, 2026 (*e.g.*, 18 months, two years, three years), are needed in order for owners or operators to comply with the leak repair provision. EPA determined that one year should be sufficient to prepare for the leak repair provision. As discussed previously, the leak repair requirements, aside from the charge size threshold and the limited ALD installation and use requirements, are mostly aligned with the leak repair requirements for ODS under the CAA. Further, the Agency finds the timing of the compliance date to be appropriate, considering the phasedown of HFCs, and does not find it appropriate to delay leak repair of refrigerant-containing appliances that serve the purposes described in subsection (h)(1). Commenters stated that owners and operators need time to plan, procure, and implement the leak repair and detection requirements; however, the commenters did not provide analysis to show that owners and operators would not be able to comply with the leak repair provisions by January 1, 2026, or why any of the longer time frames suggested by commenters would be necessary for compliance. For similar reasons, EPA disagrees with commenters requesting additional time and staggered compliance dates based on charge size. The Agency understands that to some extent, owners and operators may need to conduct inventories of refrigerant-containing appliances under their ownership and determine which appliances are subject to the leak repair provision (*i.e.*, applicability of refrigerant-containing appliances in regard to charge size and refrigerant being used). The Agency does not view this process to take an exceptional amount of time, as owners or operators should be aware of the full charge and type of refrigerant contained in an appliance from previous service records or manufacturer specifications for the refrigerant-containing appliance. The Agency refers owners or operators to section IV.A.1 of this preamble, if they require guidance, for determining the full charge of refrigerant-containing appliances. The Agency also refers owners or operators to section IV.C.1 of this preamble, for further information, regarding the applicability of HFC substitutes to the leak repair

requirements in this final rule. Owners or operators have over a year to determine which refrigerant-containing appliances are subject to the leak repair requirements and resolve any uncertainty concerning the applicability of the refrigerant-containing appliances in their ownership.

3. What leak repair provisions is EPA establishing?

EPA is finalizing the leak repair requirements under subsection (h) largely as proposed. The EPA has made some modifications to the proposed requirements to provide greater clarity or consistency among the provisions. These requirements are part of implementing subsection (h)(1) of the AIM Act, as these provisions control practices, processes, or activities regarding servicing or repair of refrigerant-containing appliances, which are a type of equipment, and involve a regulated substance or a substitute for a regulated substance with a GWP greater than 53. As described in section IV.C.2 of this preamble, these leak repair requirements apply to refrigerant-containing appliances with a charge size of 15 pounds or more where the refrigerant contains an HFC or a substitute for an HFC with a GWP greater than 53. The leak repair provisions finalized in this rule will require action if such a refrigerant-containing appliance has been determined to be leaking above the applicable leak rate threshold, pursuant to the regulations. While most of the actions required under the leak repair provisions are triggered by the determination that the refrigerant-containing appliance has leaked above the applicable leak rate threshold, the leak rate calculations and certain recordkeeping requirements apply to refrigerant-containing appliances that are not leaking above the threshold. While EPA is adopting the same applicable leak rates for the leak repair requirements under subsection (h) as applies under 40 CFR 82.157, as described in section IV.C.3.b of this preamble, EPA is also establishing certain provisions that are different from those included in 40 CFR 82.157, that support identifying and potentially repairing leaks sooner (see section IV.D.1 of this preamble for requirements for ALD systems).

In the proposal, EPA reviewed the regulations promulgated under CAA section 608, as codified in 40 CFR part 82, subpart F, addressing the same or similar practices, processes, or activities as addressed in this rulemaking to consider the extent appropriate to coordinate requirements in those

regulations with those in this action. Specifically, EPA reviewed the leak repair requirements at 40 CFR 82.157, which do not apply to appliances containing HFCs or their substitutes. The leak repair provisions under CAA section 608 contain requirements for practices, processes, and activities related to identifying and repairing leaks in appliances that contain ODS. As discussed further in this section, EPA concludes that it is appropriate to apply these practices, processes, and activities to appliances containing HFCs and certain substitutes for HFCs under subsection (h). EPA notes that in many cases, the same types of appliances (*e.g.*, chillers, rooftop air conditioning units, supermarket systems) are used, since HFCs are substitutes for ODS. EPA did not propose and is not finalizing new requirements in this action where the provisions in 40 CFR part 82, subpart F already apply to appliances containing HFCs and certain substitutes.

The following subsections provide additional information on the leak repair requirements established by this final rule. Section IV.C.3.a of this preamble provides information on leak rate calculations, which are required whenever refrigerant is added to a refrigerant-containing appliance. The Agency allows owners or operators to use one of two leak rate calculation methodologies to determine the leak rate of a refrigerant-containing appliance and whether repair is required. Section IV.C.3.b of this preamble describes the timeline for leak repair, requests for leak repair extensions, and applicable leak rate thresholds for refrigerant-containing appliances. The exceedance of a refrigerant-containing appliance's leak rate threshold triggers the leak repair requirements of this final rule. Section IV.C.3.c of this preamble provides information on verification testing, which is necessary to determine that the repair of a leaking refrigerant-containing appliance has not failed. Section IV.C.3.d of this preamble describes the timeline for quarterly and annual leak inspections for appliances that have passed the follow-up verification tests described in section IV.C.3. Leak inspections of recently repaired refrigerant-containing appliances ensure that repairs hold and assist in determining if further repair action is required in the event a repair fails. Section IV.C.3.e of this preamble provides information on chronically leaking appliances, which are subject to specific reporting requirements if a refrigerant-containing appliance expends more than 125 percent of its

full charge within a year. Section IV.C.3.f of this preamble describes the process of submitting retrofit or retirement plans to the Agency in the event a refrigerant-containing appliance cannot be repaired within the leak repair timeframe discussed in section IV.C.3. Finally, section IV.C.3.g of this preamble describes recordkeeping and reporting requirements for owners or operators subject to the leak repair requirements of this final rule.

Comment: Several commenters in support of the leak repair and detection requirements supported the Agency's efforts to regulate HFCs, as these requirements broadly enhance activities and practices that further lifecycle refrigerant management (LRM). One of the commenters stated that leak prevention is a cornerstone of LRM and stated that the Agency has clear authority under the AIM Act to promulgate robust leak prevention regulations that support LRM.

Response: EPA acknowledges commenters' support for the leak repair and detection requirements in the final rule. While the Agency did not base this rule or its provisions on lifecycle management, EPA agrees that the leak repair and ALD requirements will reduce the severity of leak events, minimizing refrigerant lost. These requirements and other refrigeration management best practices as a part of larger refrigerant management frameworks are important to EPA's implementation of this final rule to serve the purposes described in subsection (h)(1) of minimizing the release of regulated substances. The Agency also agrees that it has the authority under the AIM Act to regulate HFCs and limit their release through the leak repair and ALD requirements in this final rule.

a. Leak Rate Calculations

EPA is adopting the requirements for leak rate calculations under subsection (h) largely as proposed, with some modifications as discussed in this section. Thus, refrigerant-containing appliances with a charge size of 15 pounds or more of a refrigerant that contains an HFC or a substitute for an HFC with a GWP greater than 53 are required to conduct a leak rate calculation if the appliance is found to be leaking. EPA is also requiring that the leak rate of covered appliances be calculated every time refrigerant is added to an appliance, unless the addition is made immediately following a retrofit, installation of a new appliance, or qualifies as a seasonal variance, as described in this and subsequent sections. EPA is not

requiring the repair of all leaks; rather, EPA is requiring repair of leaks such that the appliance is below the applicable leak rate threshold consistent with the requirements at 40 CFR 82.157. The calculation of the leak rate is used to determine whether the appliance is leaking above the applicable threshold, which in turn determines whether further action (*i.e.*, repair) is required. For example, if an appliance owner adds refrigerant to the appliance but does not calculate the leak rate, the owner would have no means of determining if the appliance's leak rate was below the applicable leak rate threshold. Hence, the owner would not know if further action was warranted. Thus, the leak rate calculations are also used to determine compliance with the leak repair requirements. As stated in the proposal, this rulemaking's approach can contribute to minimizing the releases of HFCs or their substitutes by requiring more thorough leak inspections and verified repairs sooner.

In this final rule, the Agency is establishing two leak rate calculation methodologies: the annualizing method and the rolling average method. The utilization of leak rate calculation methodologies is analogous to their use under subpart F. The strength of the annualizing method is that it is future oriented and allows the owner or operator to "close out" each leak event so long as the requirements are followed and does not lump past leak events with the current leak event. It considers the amount of time since the last addition of refrigerant and then scales that up to provide a leak rate that projects the amount of refrigerant lost over a whole year if the leak is not fixed. As a result, this formula will yield a higher leak rate for smaller leaks if the amount of time since the last repair was shorter. The rolling average method also has its strengths. It accounts for all refrigerant additions over the past 365 days or since the last successful follow-up verification test showing that all identified leaks were successfully repaired (if less than 365 days). If an owner or operator verifies all identified leaks are repaired, this method allows an owner or operator to "close out" a leak event. If there is no follow-up verification test showing that all identified leaks were successfully repaired within the last year, the leak rate would be based completely on actual leaks in the past year. Owners and operators are provided the flexibility to choose which methodology is most advantageous to their operations. However, under this final rule once a methodology is chosen, the

owner or operator must continue using the same methodology, so leak rate calculations remain consistent. Further, under this final rule, owners or operators are to use the same leak rate calculation methodologies for all affected appliances at a facility. The two methods use two different paradigms to determine leak rate—one is forward-looking/predictive, while the other is backward-looking/retrospective. If an owner or operator were to switch between methods, they would not get an accurate calculation because the time frame being evaluated would be different for each method. In either methodology, EPA is establishing that when calculating the leak rate, any purged refrigerant that is destroyed is not counted towards the leak rate. To qualify for this exemption, the purged refrigerant must be destroyed at a verifiable destruction efficiency of 98 percent or greater and the owner or operator must meet certain recordkeeping requirements for the amount of refrigerant sent for destruction.

EPA is allowing a narrow exception for owners or operators to change their leak rate calculation method in the final rule. There may be some cases, such as change of ownership, where an owner or operator may need to change the leak rate calculation method so that all facilities under their ownership are using the same method. EPA views this alignment of the leak rate calculation methodologies across facilities as valuable to consistent management of refrigerant-containing appliances across multiple facilities. In order for an owner or operator to make this change in leak rate calculation, the owner or operator must meet certain conditions. First, the owner or operator must have recently purchased or otherwise acquired a new facility with a refrigerant-containing appliance that was using a different leak rate calculation method than the current leak rate calculation method used by the owner or operator. Second, the owner or operator must ensure the refrigerant-containing appliances at the purchased facility are leaking below the applicable leak rate when the leak rate is calculated using both methodologies. Third, if the leak rate calculation is changed, the owner or operator is required to document why the change was made, the date the change was made, and that the new leak rate calculation methodology is used consistent with the record keeping requirements in 40 CFR 84.106(l)(3). EPA clarifies that an owner or operator cannot change their leak rate calculation if it results in the avoidance of leak repair (*e.g.*, if an appliance

would be over the leak rate threshold using one method and below the threshold using the other method).

Lastly, EPA acknowledges that the leak rate calculation requires prior records in order to calculate the leak rate. Since owners or operators are not required to keep records of additions of refrigerants to an appliance prior to January 1, 2026, owners or operators may calculate leak rates for appliances containing an HFC or HFC substitute with a GWP greater than 53 as though there were no additions prior to that date. For example, if an owner or operator is using the annualizing method for the first addition of refrigerant in calendar year 2026, the second term would be 365/365 (or "1"). For subsequent additions the second term would be 365 divided by the shorter of the number of days since refrigerant was last added or 365. Alternatively, if an owner or operator is using the rolling average method, for the first addition of refrigerant in calendar year 2026, the numerator would be the pounds of refrigerant added since the shorter of January 1, 2026, or the last successful follow-up verification test, if one was conducted in 2026. For subsequent additions the numerator would be the pounds of refrigerant added since the shorter of 365 days or the last successful follow-up verification test. The Agency clarifies that this method of calculating the leak rate is only allowed when previous records are absent. After the effective date of this provision and the first calculation of an appliance's leak rate, the owner or operator must use the shorter number of days since refrigerant is added or 365 days for subsequent leak rate calculations.

Comment: The Agency received comments in support of the proposed requirements and its alignment with the leak rate calculations under 40 CFR part 82, subpart F. One of the commenters requested that the Agency allow a facility to move from the annualizing method to the rolling average method for appliances regulated under 40 CFR part 82, subpart F, and 40 CFR part 84, subpart C, which is what EPA assumes the commenter intended to cite. The commenter claims that facility owners that had been using the annualizing method prior to the 2016 CAA Section 608 Rule continued to use that method due to the lack of compliance assistance and unknowns regarding technicians' ability to consistently document leak inspections. The commenter suggests that EPA could allow an appliance that has not experienced a leak event in over a year to move to a different leak calculation method.

Response: The Agency acknowledges comments in support of the provision. In response to one commenter's request to allow facility owners to change their leak rate calculation methodology for appliances regulated under 40 CFR part 82, subpart F, and 40 CFR part 84, subpart C, EPA notes that comments related to requirements under 40 CFR part 82, subpart F are outside the scope of this rulemaking and thus require no response. To the extent that the comment pertains to appliances subject to requirements to calculate leak rates under this action, the Agency requires that once a leak rate calculation has been chosen, a facility owner cannot switch to the other method. The leak rate calculation methods use different paradigms to calculate a leak rate, and switching between the two methods would not provide the facility owner with an accurate leak rate calculation. Furthermore, allowing an owner or operator to freely switch between leak calculation methods incentivizes non-compliance with the leak repair requirements in this final rule. As discussed in this section, the two leak rate calculation methodologies are using different time frames (*i.e.*, the annualizing method is prospective, and the rolling average method is retrospective) so switching between the two methods would create inconsistencies.

The Agency is providing a narrow exception for owners or operators to switch their leak rate calculation method in the event of a change in ownership if three conditions are met. First, an owner or operator must have recently purchased or otherwise acquire a separate facility that was using a different leak rate calculation method than the method currently used by the purchaser. Second, the owner or operator must ensure that all refrigerant-containing appliances at their facilities are leaking below the applicable leak rate thresholds for said appliances when the leak rate is calculated using both methods. For example, if one supermarket were to purchase another supermarket that was using a different leak rate calculation than the purchaser, the owner or operator may change the leak rate calculation method to ensure that all appliances at their facilities are using the same leak rate calculation. The owner or operator must ensure that refrigerant-containing appliances at both facilities are leaking below the applicable leak rate threshold when calculating the leak rate using both methods (*i.e.*, that there is no exceedance of the leak rate threshold under either method) and must

document and keep a record of this change. Third, records of this change must be kept in accordance with 40 CFR 84.106(l)(3). EPA clarifies that an owner or operator may not change their leak rate calculation if it results in the avoidance of leak repair (*e.g.*, if an appliance would be over the leak rate threshold using one method and below it using the other method).

Comment: One commenter did not support the leak rate methodologies in the proposed rule. One commenter stated the methodologies were unduly complicated and resource-intensive and pose significant challenges for companies that have multiple sites with appliances subject to these requirements. The commenter's perspective on the rule led them to believe that each leak must be documented separately, with its own verification test. The commenter further asserted that it would be impossible to know how much refrigerant was lost for each leak and that finalizing the proposed methods would thus be arbitrary and capricious. This commenter suggested that EPA could greatly simplify compliance by allowing owners and operators to calculate leak rates (and by setting compliance obligation triggers) based upon the percentage of total full charge that an appliance has leaked, cumulatively, during a calendar year. The commenter incorrectly stated that this calculation would mirror the process that owners or operators use to calculate whether an appliance is above the 125 percent threshold for chronically leaking appliances. The commenter also requested clarification on the leak calculation if there are two simultaneous leaks.

Response: EPA is finalizing use of the methodologies for leak rate calculations as proposed. The Agency notes that the later compliance date as compared with the proposal should provide time for owners and operators that were not subject to the ODS requirements to familiarize themselves with the leak calculation methods. The Agency disagrees with the commenter's assertion that the methodologies are overly burdensome or complicated. The leak rate calculation methodologies are identical to the requirements in the CAA section 608 regulations that have been successfully used for nearly 30 years (see 1995 CAA Section 608 Rule; 60 FR 40420, August 9, 1995). EPA is providing owners and operators flexibility by allowing them to use either methodology for a facility, and therefore, the owner and operator can select whichever they judge optimal for their specific appliances.

EPA disagrees with the commenter's recommended leak calculation method because the annual calculation of a leak rate would allow for refrigerant to be added throughout the year without the determination of a leak rate. The final rule's basis for leak repair is the determination of whether a leaking appliance has exceeded its applicable leak rate when refrigerant has been added to the appliance, as described in section IV.C.3.b of this preamble. The commenter's proposed method would allow for the unmitigated release of refrigerant in between leak rate calculations and would not achieve the final rule's purpose of minimizing the release of refrigerants from appliances. Further, EPA clarifies that the separate provision for chronically leaking appliances does not mirror the leak calculation provision and does not serve the purpose of ensuring appliances leaking above the applicable leak rate threshold are repaired. As further explained in section IV.C.3.e of this preamble, owners and operators of a chronically leaking appliance (an appliance that leaks more than 125 percent of its full charge in one year) are required to submit an annual report describing the efforts to identify leaks and repair the chronically leaking appliance. This provision is intended to provide information to EPA and further support efforts to minimize releases from chronically leaking appliances, not to determine when appliance repair is required.

EPA also disagrees with the commenter's assertion that the final rule's leak rate calculation methodologies are arbitrary and capricious. This comment appears to be based on a misunderstanding of how the leak rate calculation applies, as the commenter states that it would be impossible to know how much refrigerant was leaked from each individual leak. The Agency clarifies that the leak rate calculation is required when refrigerant is added to an appliance. The leak repair requirements of the final rule are triggered when an appliance reaches a leak rate above the applicable leak rate thresholds described in section IV.C.2.b of this preamble. EPA is not requiring the mandatory repair of all leaks discovered by an appliance owner. The Agency is requiring leak repair for appliances above the applicable leak rate and requiring the appliance owner to conduct leak repairs so that the appliance is leaking below that threshold. While certain documentation is required for individual leaks, that does not mean that the leak rate

calculation needs to be applied to each leak individually. The commenter also asked for clarity of the leak rate calculation in the event of multiple simultaneous leaks. EPA responds that simultaneous leaks on the same appliance identified at the same time (e.g., during the same inspection or servicing event) would require just one leak rate calculation. The addition of refrigerant to an appliance triggers the leak rate calculation for the appliance. If the appliance is leaking above the applicable leak rate threshold, the owner or operator must comply with the leak repair requirement and as part of that process may uncover several leaks within an appliance that may require repair in order to bring the appliance under the applicable leak rate threshold.

Comment: One commenter recommended that EPA consider allowing leak rate calculations from indirect ALD systems if acceptable accuracy can be demonstrated at least 85 percent of the time. The commenter claims their manufactured indirect ALD, with reliable data, has the ability to calculate leak rates (in pounds per day) with a margin of error of ± 25 percent.

Response: EPA acknowledges the suggestion on how indirect ALD could be further used to manage leaks but disagrees that it is an acceptable or viable alternative to the leak rate calculations required by this final rule. Performing a leak rate calculation using one of the methods in the final rule will provide a facility owner with an accurate leak rate to determine if further leak repair action is necessary every time. An approach that need only be demonstrated to be accurate 85 percent of the time, as commenter requested, could result in the failure to identify and address leaks that exceed the leak rate threshold and that this rule intends to address. Additionally, while an indirect ALD system can calculate daily leak rates, the margin of error would cause the leak rate calculation to be inaccurate. The leak rate methodologies provide an accurate snapshot of an appliance's leak rate when refrigerant is added and provides an owner or operator with an immediate determination of whether an appliance needs to be repaired.

Comment: One commenter requested clarification on whether the addition of certain components to existing appliances where refrigerant is added would require a leak rate calculation, using the example of an installation of a new refrigerated case in an existing supermarket system. The commenter indicated the addition would necessitate a charge size adjustment and the addition of new refrigerant to meet

the appliances' new BTU/h load. The commenter further stated that in this scenario the refrigerant added to an existing appliance was not to replace leaked refrigerant and that EPA should provide an exception to the leak rate calculation provision in these specific cases.

Response: EPA clarifies that the immediate addition of refrigerant following a retrofit, installation of a new appliance, or seasonal variance does not require a leak rate calculation. The Agency agrees that the addition of refrigerant immediately after additional components are added to an existing appliance does not reflect a leak within the appliances, and thus does not necessitate a leak rate calculation. However, EPA clarifies that a full charge calculation, as outlined in section IV.A.1 of this preamble, must be conducted to determine the change in charge size when additional appliances are added to an existing system. The determination of an appliance's full charge is necessary for subsequent leak rate calculations.

b. Requirement To Repair Leaks, Timing, and Applicable Leak Rates

EPA is finalizing several leak repair requirements related to determining when a leak needs to be repaired, the extent of the repair required, and the timing of such repairs as proposed. EPA is requiring the repair of leaks in refrigerant-containing appliances with a charge size of 15 pounds or more with a refrigerant that contains an HFC or a substitute for an HFC with a GWP greater than 53. Under this rulemaking, owners or operators are required to repair an appliance within 30 days (or 120 days if an industrial process shutdown is required) of refrigerant being added to an appliance, if the appliance is leaking above the applicable leak rate. Leaks must be repaired such that the leak rate of the refrigerant-containing appliance is brought below the applicable leak rate. Depending on the nature of the leaks, it may be necessary to repair or replace multiple components or parts of the refrigerant-containing appliance to comply with this requirement. These requirements are consistent with the requirements found at 40 CFR 82.157(d) to repair leaks for ODS-containing equipment. Repairing leaks in a timely manner helps serve the purposes identified in subsection (h)(1). For example, timely repair is critical to reducing the emissions of refrigerants from leaking appliances, and thus to minimizing releases of HFCs from equipment. In addition, by repairing leaks in a timely manner, additional

HFC refrigerant will be subsequently available for reclamation, which supports maximizing reclaiming of HFCs.

In some unforeseen circumstances, repair of leaks may require additional time beyond that of the 30-day timeframe. EPA is finalizing specific extensions that may be available for owners or operators to repair leaks if certain conditions are met. Among these conditions, EPA is requiring that one or more must be met to qualify for additional time. Extensions for the leak repair requirements are available if the appliance is located in an area subject to radiological contamination or if shutting down the appliance will directly lead to radiological contamination. Additional time is permitted to the extent necessary to allow the completion of the repairs in a safe working environment. Extensions are also available to owners or operators if the requirements of any other Federal, State, local, or tribal regulations make a repair within 30 days (or 120 days if an industrial process shutdown is required) impossible. Additional time is permitted to the extent needed to comply with the applicable regulations. EPA is also finalizing extensions for when needed components that must be replaced as a part of the leak repair are not available within the leak repair timeframe of 30 days (or 120 days if an industrial process shutdown is required). In this case, additional time is permitted of up to 30 days after receiving the needed component, with the total extension not to exceed 180 days (or 270 days if an industrial process shutdown is required) from the date that the appliance exceeded the applicable leak rate. In all cases of potential extensions to the leak repair timeframe, an owner or operator is still required to repair leaks that the technician has identified as significantly contributing to the exceedance of the applicable leak rate and that do not require additional time and to verify those repairs within the initial 30 days (or 120 days if an industrial process shutdown is required). Owners or operators availing themselves of this flexibility are also required to document all repair efforts and provide a reason for the inability to repair the leak within the initial 30-day (or 120-day if an industrial process shutdown is required) time period. All extension requests must be submitted electronically using the Agency's applicable reporting platform and include pertinent information as described in the regulatory text at 40 CFR 84.106.

In the final rule, a leak is presumed to be repaired if there is no further

addition of refrigerant to the equipment for 12 months after the date of repair as demonstrated by a successful follow-up verification test or if there are no leaks identified by either the required periodic leak inspection(s) or an ALD system, where applicable. Further information on the requirements for ALD systems are described in section IV.D.1 of this preamble. While EPA is requiring ALD systems for certain refrigerant-containing appliances, there may be some cases where an owner or operator chooses to use ALD systems for equipment where it is not required. Whether use of the ALD system is due to requirements in section IV.D.1 of this preamble or used as a compliance option in lieu of leak inspections (see section IV.C.3.d of this preamble) for a specific appliance, if the ALD system detects a leak in the 12-month period after the date of repair as demonstrated by a successful follow-up verification test, the leak repair would be presumed to have subsequently failed, unless the owner or operator can document that the ALD system leak detection was due to a new leak that is unrelated to the previously repaired leak. Such documentation includes, but is not limited to, the records required to be kept under 40 CFR 84.108(i). Additional information on leak inspections is described in section IV.C.3.d of this preamble. If an appliance is mothballed, the timeframes for repair, inspections, and verification tests are temporarily suspended and will resume when additional refrigerant is added to the appliance (or component of an appliance if the leaking component was isolated).

Comment: EPA received several comments related to the leak repair timeline in the proposed rule. One comment, in support of the leak repair provision, appreciated the clear timeline for leak repair and ability to extend the timeline for repairing leaks to account for delays in component shipments and arrivals. Some commenters requested EPA lower the number of days to repair after initial detection. One commenter suggested the Agency align its leak repair timeline with CARB, requiring leaks to be repaired within 14 days after initial detection to provide additional emissions reductions and reduce refrigerant costs to appliance owners and operators. The commenter shared that between 2020 and 2022, 99 percent of leak repairs under CARB's refrigerant management program were completed within the 14-day window. The commenter preferred EPA set the time extension to 45 days from the date of leak detection for situations where

certified technicians or necessary components are not available and when an industrial process shutdown is required. The commenter did not support any extension more than 180 days. Another commenter did not support leak repair extensions for appliances with smaller refrigerant charge sizes.

Response: The Agency acknowledges the comments in support of the provision. The Agency is finalizing the requirements for the timely repair of leaks as proposed, recognizing that these timelines and the potential extensions are consistent with the longstanding requirements under 40 CFR part 82, subpart F. EPA is not finalizing a shorter leak repair timeline in the final rule, as one commenter suggested. The Agency recognizes that leaks often can be adequately repaired in under 30 days, including, as the commenter stated, in as little as 14 days. However, EPA finds it prudent to keep the existing leak repair timeline and extensions in part because EPA anticipates that applying a time frame that is consistent with the leak repair timeline under part 82, subpart F, will facilitate compliance with both regimes and reduce the potential for confusion. The Agency encourages owners or operators to strive to repair leaks as soon as practicable and in less than the required timeframes when possible, so as to, for example, reduce emissions, improve system efficiencies, and avoid spoilage of perishable goods. However, in other circumstances the full 30 days may be needed to adequately complete the repairs, so the final rule's leak repair timeline provides owners or operators with sufficient time and flexibility to repair leaks correctly. The final rule also provides owners or operators an opportunity to extend the leak repair time up to 180 days (270 in the event of an industrial process shutdown) if sufficient reasoning is provided. Additionally, EPA notes that the final rule's leak repair extension provisions encourage the proper repair of an appliance where additional time is needed. In EPA's view, such repairs may include the replacement of major components, if necessary, rather than simply patching those components, an approach that may not be successful in the longer term. Furthermore, some owners or operators may prefer to replace a faulty component before they are required to retrofit or retire an entire appliance and believe this could, in many instances, be an equally effective means to address needed repairs. This extension should also reduce the potentially large burden upon owners or

operators of requiring a large-scale retrofit or retirement when replacing the leaking component might satisfactorily repair the appliance. For these reasons, EPA disagrees with one commenter's recommendation that the Agency adopt a shorter leak repair timeline (*i.e.*, 14 days) or not allow timeline extensions beyond 180 days.

EPA is also not differentiating the leak repair timeline based on charge sizes as one commenter recommended. This final rule lowered the applicable charge size threshold for leak repair to 15 pounds, extending leak repair requirements to refrigerant-containing appliances not previously subject to the leak repair provisions under part 82, subpart F. In this action, the leak repair timeline for all appliances is the same regardless of charge sizes. Although appliances at lower charge sizes may be less complex and easier to repair in a timeframe lower than 30 days, the Agency reiterates the final rule's repair timeline is intended to provide sufficient time to correctly repair appliances below their applicable leak rate thresholds. EPA also notes that smaller refrigerant-containing appliances are not precluded from submitting extension requests as long as the owner/operator has provided sufficient reasoning. The only narrow differentiation in the timing of leak repair in the final rule is for IPR systems in the event of an industrial process shutdown due to the complexity of adequately repairing these refrigerant-containing appliances. Additionally, the Agency views this change as unnecessary because the addition of variable leak repair timelines based on charge size may introduce additional complexity and reduce compliance with the provision. As discussed previously, the leak repair timeline under this final rule is consistent with the leak repair timeline under part 82, subpart F, as a means of facilitating compliance with both regimes and reducing confusion for owners or operators.

Comment: A few commenters requested the compliance timelines for leak repair be extended. Two of the commenters emphasized that the complexity and size of supermarket and IPR systems, the current shortage of technicians, the long lead time for obtaining replacement equipment, and potential operational disruptions will make the leak repair timeline unfeasible. One commenter requested that the timeline extension should not be limited to a maximum of 180 or 270 days because the process to identify and repair a leak in IPR appliances is likely to exceed the applicable timeframes. Another commenter suggested that all

but *de minimis* leaks be identified and repaired "promptly" without a specified deadline. The commenter stated that EPA could require an owner/operator to report the progress of leak repair without an arbitrary mandatory deadline. Alternatively, the commenter suggested EPA should not start the leak repair "clock" when a leak is detected but rather when the exact location of a leak is determined, further claiming this would allow technicians time to implement mitigation measures and therefore reduce any incentive for owners and operators to delay repairs. Another commenter suggested EPA could consider an exception process to grant additional time and temporarily or permanently extend the leak repair timeline for situations with technician and component shortages, supply chain disruptions, and other reasonable circumstances.

Response: EPA disagrees with the commenter's recommendation that leak repairs should not have a set timeline for completion or that EPA should consider an exception process. Timely repair of leaks contributes to reducing emissions. As stated in responses to other similar comments, the Agency understands that repairs often happen faster than the designated timelines. Regarding IPR appliances, the Agency is aware, as the commenter stated, that IPR appliances are large and complex and may require additional time or operational shutdowns to determine the leak location. The regulation includes a longer timeline for repairs to IPR, which EPA considers appropriate in light of the differences between IPR and other appliances. Similarly, although supermarket systems and commercial refrigeration systems may be complex, owners or operators should typically be able to repair appliance leaks under the applicable threshold within the final rule's allotted timeframe. For example, the final rule allots up to 180 days for commercial refrigeration appliances (*e.g.*, supermarket systems) to complete repairs in the event necessary components or replacement equipment are not readily available (noting that the owner/operator would need to complete the repair within 30 days of receiving the missing component or replacement equipment).

EPA disagrees that owners or operators would be unable to determine the location of a leak and repair the leak within 30 days (120 days for an industrial process shutdown). As experience with the CAA section 608 programs shows these have been reasonable timelines, including for IPR and commercial refrigeration appliances with charge sizes of 50 pounds or

higher. The Agency also notes that extension requests function similarly as they did under the CAA, providing a process for an owner/operator to extend the timeline in the event of technician shortages, component supply issues, and industrial process shutdowns. If an extension is not available and the leak repair requirements cannot be met in the final rule's timeframe (*e.g.*, due to the severity of the leak or condition of the appliance), the owner or operator would need to create a retrofit or retirement plan as described in section IV.C.3.f of this preamble. Allowing for an unlimited time to repair leaks would not provide any incentive for an owner or operator to repair the leak, which would release more refrigerant from the equipment and thus make less HFCs available for recovery from the appliance and reclamation.

EPA also disagrees with one commenter's assertion that the 30-day leak repair timeline is arbitrary. The authority granted to EPA under subsection (h) of the AIM Act directs the Agency to establish certain regulations for purposes including minimizing the release of regulated substances from equipment and maximizing the reclamation of regulated substances. The Agency concludes that the final rule's leak repair timeline is an important component of the leak repair requirements serving these statutory purposes while also providing owners and operators with the flexibility to repair leaks in a timely and efficient manner. The Agency reiterates that the same leak repair timeline has been in effect under the CAA section 608 regulations for decades. For similar reasons, the Agency disagrees with one commenter's suggestion to not start the leak repair "clock" until the exact location of the leak is detected. EPA disagrees that this method of leak repair timing would reduce incentive for owners or operators to delay the repair of leaks. The Agency views the commenter's suggestion as providing an indeterminate amount of time to repair leaks, which in turn incentivizes owners or operators to delay finding and repairing leaks, as the timeline for repair is subject to the discovery of a leak location, not based on the appliance leaking above the applicable leak rate threshold. The final rule provides ample time for owners or operators to determine the source of an appliance's leak and provides additional flexibility to extend the leak repair timeline if certain conditions are met. Thus, the Agency finds the commenter's suggested approach flawed with regard to repairing leaks in a timely manner. The

Agency also disagrees with the commenter's request that EPA require all but *de minimis* leaks to be repaired. In the context of the prohibition on venting or otherwise releasing into the environment any refrigerant under CAA section 608 (40 CFR 82.154), the term "*de minimis*" refers to releases associated with good faith attempts to recycle and recover refrigerants, noting that such releases are not subject to the prohibition. In other words, were EPA to require all but *de minimis* leaks to be repaired, and to interpret the term consistently with how it has been interpreted under CAA section 608, the Agency would be finalizing repair of nearly all leaks, not repairs to below a threshold. That would be a significant change that the Agency did not propose and is not finalizing in this rulemaking.

Comment: One commenter suggested that EPA should also consider a condition that the refrigerant must be removed to trigger the proposed leak validation exclusion for mothballed equipment.

Response: EPA is unclear as to what the commenter refers to as a "leak validation exclusion"; however, we clarify that mothballed appliances must have their refrigerant evacuated before the leak repair timeline is suspended. The definition of "mothball" is available at 40 CFR 84.104, which is being finalized in this action, and reads:

Mothball, as it relates to a refrigerant-containing appliance, means to evacuate refrigerant from an appliance, or the affected isolated section or component of an appliance, to at least atmospheric pressure, and to temporarily shut down that appliance.

EPA is finalizing the applicable leak rate thresholds for refrigerant-containing appliances with a charge size of 15 pounds or more with a refrigerant that contains an HFC or a substitute for an HFC with a GWP above 53 as follows: 20 percent leak rate for commercial refrigeration equipment; 30 percent leak rate for IPR equipment; and 10 percent leak rate for comfort cooling appliances, refrigerated transport appliances, or other refrigerant-containing appliances not covered as commercial or industrial process refrigeration appliances. The leak rate thresholds are used to determine whether repair is needed for an appliance that is leaking, as the leak repair requirements are triggered if the appliance exceeds the leak rate threshold. See 40 CFR 84.106(c)(2). EPA is applying applicable leak rates that mirror those currently in effect for ODS-containing appliances under the 2016 CAA Section 608 Rule. See 40 CFR 82.157(c) (d). These rates were in effect for appliances containing 50 pounds or

more of HFCs for a period of time. After reviewing the information and analysis that supported application of these leak rates to those HFC appliances and considering the provisions of subsection (h) and the comments offered on the proposal to extend these thresholds to the equipment subject to the leak repair requirements under this rule, EPA has determined it is appropriate to finalize them, as proposed, in this action.

As discussed in section IV.C.2 of this preamble, EPA is finalizing, as proposed, the application of leak repair requirements to appliances using an HFC and/or a substitute for HFCs with a GWP greater than 53, as a refrigerant (neat or in blends) based on a charge size threshold of 15 pounds or greater, with certain exceptions. EPA is requiring the use of the same leak rate threshold across categories of equipment for all covered appliances. In other words, a 20 percent leak trigger rate applies for commercial refrigeration equipment with a full charge size of 15 pounds or more, and a 10 percent trigger leak rate applies for comfort cooling appliances with a full charge size of 15 pounds or more. For refrigerant-containing appliances in certain subsectors and applications that have not been previously covered under 40 CFR 82.157, EPA is finalizing determinations for the applicable leak rates listed in 40 CFR 84.106(c)(2)(iii). For example, for refrigerated transport—rail, EPA is finalizing that this application is considered under the comfort cooling and other appliances category and has an applicable leak rate of 10 percent.

As noted in the proposal, EPA views these applicable leak rates per the type of appliance as appropriate for the leak repair provisions in this action under subsection (h) of the AIM Act. This rulemaking draws on EPA's experience implementing similar requirements under CAA section 608, where these thresholds have provided a practical and effective method for determining when leaks must be repaired. In the proposal, the Agency considered whether a lower percent leak rate for some or all of the categories of appliances would be more appropriate for appliances that contain HFCs and/or substitutes for HFCs. EPA reviewed the docket for the 2016 CAA Section 608 Rule, which lowered the applicable leak rates for each of the appliance categories.^{72 73} EPA also evaluated leak

rate data of appliances in each of the applicable categories to determine the appropriate applicable leak rates and reviewed information from stakeholders shared during public meetings held in the development of this rulemaking.⁷⁴ EPA did not propose and is not finalizing changes to the applicable leak rates for categories of appliances containing HFCs and covered substitutes. However, the Agency notes that we could revisit the applicable leak rates as appropriate to support the overall purposes of subsection (h) in the future.

Comment: EPA received mixed support for the applicable leak rates for commercial refrigeration, IPR, and comfort cooling. Some commenters stated that EPA could go lower for some of the appliance sectors, and others suggested that EPA increase the leak rate thresholds for certain subsectors. One commenter, in support of the provision, stated that leak rate thresholds aligned with the CAA section 608 regulations are appropriate and should not be further adjusted. Another commenter echoed that the leak rate thresholds did not need to be changed because the final rule would already subject a large group of appliances to mandatory time-limited repairs, reporting, and in some cases, retrofit or retirement. The same commenter stated that lowering the leak rate threshold would make appliances impossible to manage due to the number of appliances affected by the leak repair provisions in the final rule.

Two commenters did not support the proposed leak rates, citing difficulty to manage, the number of systems it would affect from the outset, and impracticality and burden of the requirements. One commenter stated that small chillers used in the semiconductor industry are not applicable to the provision because leaking chillers are normally removed from service. The commenter requested clarity on whether equipment removed from service is exempt from the leak repair requirement. One of the commenters stated that typical food retail refrigeration appliances have an estimated 25 percent annual leak rate and the rule would force the average supermarket system into immediate repair, verification, and potential retrofit or retirement. The commenter also

Benefits of Final Revisions to the National Recycling and Emission Reduction Program, available in the docket for the 2016 CAA Section 608 Rule (EPA-HQ-OAR-2015-0453)

⁷⁴ EPA held stakeholder meetings for public input on November 9, 2022, and March 16, 2023, and also solicited feedback through a webinar for EPA's GreenChill Partnership program on April 12, 2023.

⁷² Docket No. EPA-HQ-OAR-2015-0453

⁷³ For further information, please see the discussion in the 2016 CAA Section 608 Rule at 81 FR 82272, 82317 and the technical support document, Analysis of the Economic Impact and

suggested EPA eliminate the leak rate thresholds altogether and allow operators to perform a calendar year leak rate calculation each time the operator adds refrigerant, as owners or operators are incentivized to repair leaks to avoid high refrigerant costs and store operations.

Several commenters did not support EPA's proposed leak rate threshold of 20 percent for commercial refrigeration appliances and suggested lower targets to ensure climate and economic benefits. Commenters recommended EPA lower the applicable leak rate to 15 percent. One commenter incorrectly stated that the GreenChill voluntary program requires a maximum 15 percent leak rate for stores and 5 percent for the platinum standard, which over half of certified stores in this program have achieved.

EPA received similar comments regarding the 30 percent leak rate threshold for IPR. Several commenters recommended EPA lower the applicable leak rate for IPR to 20 percent. The commenters also stated that the 20 percent threshold would align with CARB's refrigerant management program and push more facilities to require mandatory repairs. One commenter stated that an IPR system can leak a quarter of its full charge without triggering any leak repair requirements. The commenter asserted that a facility leaking 25 percent of its refrigerant annually will leak out five times as much refrigerant over the course of its life as will be available to recover when it is eventually retired. The commenter also stated that trigger leak rates create a perverse incentive for underreporting and repairing leaks and suggested the Agency revisit these thresholds in the future. Another commenter suggested EPA instate a 10 percent leak rate for IPR chillers specifically because they are compact, sealed appliances with a similar design to comfort cooling appliances that have a 10 percent leak rate threshold. Another commenter suggested the IPR and comfort cooling leak rates should align with Washington State's requirements of 24 percent and 8 percent, respectively. The commenter also urged EPA to consider setting a time frame to revisit reducing these leak thresholds to provide greater climate benefits and guarantee that leak detection systems meet minimum standards.

Response: The Agency is finalizing the leak rate thresholds as proposed. When developing the proposed rule, the Agency considered a number of options for the appropriate leak rate thresholds for commercial refrigeration, IPR, and

comfort cooling and decided on proposed requirements that were consistent with the trigger rates that were finalized in the 2016 CAA Section 608 Rule. Under the 2016 CAA Section 608 Rule, EPA determined that lowering the leak rate thresholds was reasonable when considering the compliance costs, savings, environmental benefits and fewer emissions of both ODS and, at the time, non-exempt substitute refrigerants (e.g., HFCs). The Agency found it prudent to align the leak rate thresholds in this final rule with CAA section 608 based on similar factors. Further, the alignment of this provision with leak rate thresholds under CAA section 608 should assist in facilitating compliance with the provision, as owner/operators should be familiar with the similar requirements under CAA section 608. EPA also notes that this rulemaking extends the leak repair requirements to a larger group of appliances that were previously not subject to the leak repair requirements under CAA section 608. The Agency wants to ensure that all appliances subject to the leak repair requirements are able to meet the standards in the provision, and lowering the leak rates at this time may further limit compliance with the provisions of this final rule. Commenters' views include those expressing support for consistency and those suggesting more or less stringent trigger rates. None of these commenters provided sufficient information to conclude that a more or less stringent trigger rate is appropriate. Therefore, EPA is finalizing, as proposed, trigger rates that generally align with 40 CFR part 82, subpart F, in agreement with commenters indicating a preference for consistency. EPA notes that we may revisit the leak rate thresholds in the future through a separate notice-and-comment rulemaking if the Agency finds that the alternate thresholds suggested by commenters are warranted. Furthermore, the Agency disagrees with one commenter's argument that leak rate thresholds create perverse incentives to underreport leaks and avoid repair of appliances. Leak rate thresholds have been utilized as a method of compliance for leak repair for nearly 30 years under the rationale that fixing all leaks in an appliance may hamper compliance and force appliances into early retrofit or retirement before the end of their useful life. EPA acknowledges that, for example, small pin hole leaks in a complex IPR system may be hard to find and repair and ultimately have a low leak rate compared to larger leak events that push a refrigerant-containing appliance above the applicable leak rate

threshold. As stated previously in the preamble, when the applicable leak rate is exceeded, repairing those leaks is warranted to minimize the release of refrigerants from equipment.

EPA disagrees with commenters' assertions that the leak rate thresholds would be unduly burdensome. While there are more affected appliances under this final rule given the lower charge size threshold compared to ODS appliances, the Agency notes that on the whole, commenters supported that 15-pound threshold. Moreover, there have been changes to the appliance design since the Agency first established leak repair requirements for ODS refrigerant-containing appliances. The Agency does not view applying the leak repair provisions in this final rule, specifically the applicable leak rate threshold, to appliances with a charge size between 15 and 50 pounds as unduly burdensome. Many of the appliances with a charge size under 50 pounds have an applicable leak rate of 10 percent (e.g., appliances that are not IPR or commercial refrigeration); however, refrigerant-containing appliances at this charge size are at a relatively low risk of leaking compared to larger appliances. Additionally, appliances closer to a charge size of 15 pounds are also more likely to be hermetically sealed and thus have a low leak potential. Furthermore, as detailed in IV.C.2 of this preamble, EPA has provided a narrow exemption from the leak repair provision for residential and light commercial air conditioning and heat pumps, which will further limit the number of refrigerant-containing appliance subject to the leak repair requirements.

Further, given that HFCs are being phased down as compared to ODS, which are being phased out, HFCs and HFC substitute refrigerants with a GWP greater than 53 can be used indefinitely. Given that there is no date by which HFCs can longer be charged into appliances, it is paramount that EPA take steps to prevent leaks, reduce emissions, and maximize reclamation. Additionally, because the HFC phasedown will greatly limit the supply of virgin HFCs available to service appliances, the timely repair of leaks is required to limit the emissions of HFCs. The leak rate thresholds, in the final rule, facilitate the timely repair of leaking appliances, which will mitigate the amount of refrigerant lost and needed to service an appliance. Leak rate thresholds ensure owners and operators will take appropriate action to repair leaks so that their appliances are below the applicable leak rate threshold.

In regard to chillers used in the semiconductor industry, the commenter stated that small semiconductor chillers are typically removed from service if they begin leaking. EPA understands that these chillers are distinct, hermetically sealed devices that are removed when in need of servicing, and that such servicing is performed at a separate location, including at locations outside of the United States. If the chiller contains less than 15 pounds of refrigerant, as would be the case with many in this industry, the leak repair requirements do not apply. For chillers with 15 pounds of refrigerant or more, the Agency clarifies that appliances removed from service, that have their full charge evacuated and recovered, are not subject to the full suite of the leak repair requirements. An owner/operator may do this to conduct further repairs, to mothball the appliance for future repairs, or due to a retrofit or retirement plan (see section IV.C.3.f of this preamble). In the specific case of these semiconductor chillers, once the determination has been made that the appliance is leaking above the threshold rate and needs to be taken out of service, the owner/operator would need to evacuate and recover all refrigerant from the appliance in a way similar to how an owner/operator would mothball an appliance. Once repairs are made and the appliance is recharged for service, it is required to meet all of the requirements in the final rule's leak repair provision.

EPA also disagrees with one commenter's suggestion to forgo leak rate thresholds in favor of allowing calendar year leak rate calculations each time the owner or operator adds refrigerant because owners and operators should already be using some methodology for calculating their leak rate after adding refrigerant into an appliance. The Agency clarifies that leak inspections and the calculation of a leak rate does not equate to leak repair. Under the provisions finalized in this action, if an appliance is leaking above the applicable leak rate threshold, the owner or operator must repair any leaks to ensure the appliance's leak rate is brought below said threshold. Without a leak rate threshold there would not be a clear metric for determining when the leak repair requirements were triggered or when the appliance had been sufficiently repaired. The Agency also disagrees that appliance owners would repair leaks in a timely manner based on the incentive to save on refrigerant costs or to avoid operational disruptions alone. While EPA agrees that the leak repair

provisions in this final rule are anticipated to have the effect of avoiding additional refrigerant costs and operational disruptions in many situations, financial motivations to conduct leak repair do not always align with the rule's purpose of minimizing the release of HFCs and their covered substitutes. For example, an owner/operator, in some cases, may find it more financially optimal to continually add refrigerant to an appliance instead of repairing it, or an owner/operator may not have adequate information about the costs associated with failure to repair leaks in making decisions about whether to voluntarily repair leaks. In EPA's view, the leak rate thresholds are an important part of the regulatory design of the leak repair requirements and help ensure that they serve the statutory purposes identified for regulations under subsection (h) to minimize the release of regulated substances from equipment and maximize reclamation.

The commenter also stated that the average annual leak rates for supermarkets is 25 percent and that the rule would require immediate repair of supermarket systems. The Agency responds that the purpose of the final rule is to minimize the release of regulated substances from appliances. If a supermarket system is leaking at a rate higher than 20 percent, the owner/operator would be required to repair leaks to the extent and within the timeframe specified in the final rule. Furthermore, the Agency disagrees with the commenter's assertion that the final rule would force supermarket owner/operators to repair and potentially retrofit or retire systems immediately, once the leak repair provisions go into effect, because the average supermarket has an annual leak rate of 25 percent. EPA reiterates that the leak repair provisions of this final rule are relatively consistent with the requirements for ODS refrigerants that have been and continue to be in use in supermarkets throughout the United States. EPA has also extended the compliance date for the leak repair provision by more than one year to further accommodate owner/operators' compliance with the provision. Moreover, the Agency notes that the 25 percent leak rate average that FMI cites for supermarkets is nearly double the less than 15 percent average leak rate GreenChill partners voluntarily report to EPA on an annual basis. Many GreenChill partners have been able to consistently achieve lower leak rates by adopting newer system technologies, using newer refrigerants, applying best

practices, and maintaining leak-tight systems to decrease refrigerant emissions. The GreenChill voluntary partnership has also hosted webinars discussing these topics, which are available to the public. The purpose of this rule is to minimize the release of regulated substances from appliances. If any commercial refrigeration system is leaking above the applicable leak rate of 20 percent, an owner or operator is required to take the necessary steps to repair their appliance to the extent required within the timeframe specified in this final rule.

In response to one commenter's characterization of leak rates reported under the GreenChill voluntary partnership, the Agency clarifies that GreenChill does not have any requirements for specific leak rates in order to be a member. The leak rate thresholds cited by the commenter are award thresholds used by the Agency to recognize lower leak rates reported to EPA. The partnership represents over a third of U.S. supermarkets; however, the Agency does not know if supermarkets not in the GreenChill voluntary partnership are doing better or worse than the voluntary members. As previously stated, the Agency may reconsider the leak rate thresholds in a future notice-and-comment rulemaking but cannot justify changes to those thresholds solely on the basis of voluntary reporting under the GreenChill voluntary partnership.

c. Verification Testing

EPA is finalizing its requirements for initial and follow-up verification tests as proposed. The Agency is requiring initial and follow-up verification for refrigerant-containing appliances with a charge size of 15 pounds or more of a refrigerant that contains an HFC or a substitute for an HFC with a GWP greater than 53 as a part of the leak repair provisions under subsection (h). These requirements are analogous to similar provisions for affected ODS-containing appliances under CAA section 608 under 40 CFR 82.157(e). The final rule requires owners or operators to conduct initial and follow-up verification tests within specified timeframes for each leak that is repaired. The initial verification test is required to be performed within 30 days (or 120 days if an industrial process shutdown is required) of an appliance exceeding the applicable leak rate and must demonstrate that leaks are repaired, where a repair attempt was made. The initial verification test verifies that the leak has been repaired prior to adding refrigerant back into the appliance, and the follow-up

verification test confirms that the repair held after refrigerant has been added and the appliance has been brought back to normal operating characteristics. The follow-up verification test is required to be conducted within 10 days of a successful initial verification test or 10 days after the appliance has returned to normal operating conditions (if the appliance or isolated component of the appliance was evacuated to perform repairs). The follow-up verification test is necessary to confirm that the leak repair has held after the refrigerant-containing appliance has been recharged, pressurized, and returned to normal operating conditions. If the initial or follow-up verification tests indicates that a leak repair was not successful, the owner or operator may conduct as many additional repairs and initial or follow-up verification tests as needed to achieve a successful leak repair within the applicable time period.

EPA notes that in some cases, a follow-up verification test may be impossible; for example, when it would be unsafe to be present when the system is at normal operating characteristics and conditions. Where it is unsafe to be present or otherwise impossible to conduct a follow-up verification test when the system is at normal operating characteristics and conditions, the Agency is requiring that where practicable, the follow-up verification test be conducted prior to the system returning to normal operating characteristics and conditions. In such situations, the owner or operator has the burden of showing that it was unsafe to be present when the system is at normal operating characteristics and conditions.

As discussed in the proposal, verification testing involves important practices, processes, and activities regarding the repair and servicing of equipment. The tests are performed shortly after an appliance has been repaired to confirm that the leak has been successfully repaired. Without the verification tests, it may take additional time for the owner or operator to realize that the repair has been unsuccessful and during that time refrigerant could continue to leak from the appliance. The provision is designed to help ensure that leaks are repaired successfully and that the repair holds, so that repair has the intended effect of limiting refrigerant emissions from the appliance. EPA is finalizing requirements that the verification tests must be performed for all leak repairs to ensure that the leak repair is done correctly the first time, holds, and has its intended effect, which will help minimize releases of HFCs from the

appliance, and also help maximize HFCs available for eventual reclamation by limiting such releases.

Comment: A commenter stated that a properly commissioned system should not require an additional verification step in later weeks or follow-up leak requirements. They asserted that properly commissioned maintenance work, as required by UL 60335–2–40 and UL 60335–2–89, or another appropriate standard should be sufficient. The commenter recommended EPA restrict this requirement to systems with very large charge sizes, perhaps above 500 pounds, to be consistent with other thresholds set in the rule. The commenter also suggested EPA should require reporting if a leak is repaired in a system that has to be recharged again within six months.

Response: EPA is finalizing the verification test provision as proposed. The Agency disagrees that properly commissioned maintenance work does not need to go through the leak repair verification process. The standards required by UL 60335–2–40 and UL 60335–2–89 are industry standards, developed by consensus and concerned with appliance design and manufacture. The standards do not speak to the operations of an appliance over multiple years. Instead, UL standardizes leak prevention requirements in the appliance's design, standardizes leak detection through sensors or other mechanisms, and provides standards to mitigate the release of refrigerants via releasable charge considerations.⁷⁵ Moreover, the leak repair requirements and thus the need for verification tests begin when an appliance exceeds its applicable leak rate. If an appliance is well designed and follows practices consistent with the requirements of the standard, perhaps there will not be an occurrence of leaks that result in an exceedance of the applicable leak rate and thus the owner/operator would not need to proceed with the final rule's leak repair process.

The Agency also disagrees that the verification requirement be restricted to appliances with very large charge sizes because the purpose of the provision is to ensure that leaks are properly repaired and that those repairs hold, such that the repair has its intended effect and emissions are minimized. We also disagree with the suggestion that EPA require reporting if an appliance is recharged within six months of a leak repair, as this is not a reasonable

substitute for verification tests or leak inspections of repaired appliances. EPA clarifies that a leak is considered repaired if refrigerant is not added within 12 months of the previous leak repair or if there are no leaks identified by either the required periodic leak inspection(s) or an ALD system, where applicable. Verification tests ensure repairs hold and leak inspections verify that the repaired leak has not failed over a 12-month period; both are warranted portions of the leak repair process and support meeting the purposes identified in subsection (h)(1), including minimizing the release of regulated substances from equipment.

d. Leak Inspections

The Agency is finalizing leak inspection requirements as proposed for refrigerant-containing appliances with a charge size of 15 pounds or more of a refrigerant that contains an HFC or substitute for an HFC with a GWP greater than 53 that are found to be leaking above the applicable leak rate threshold. As discussed in the proposal, the leak inspection requirements involve processes, practices, and activities regarding the repair of refrigerant-containing appliances that are designed to ensure the long-term effectiveness of a successful leak repair. Thus, the requirements will help minimize any releases of HFCs from equipment over time and also help maximize HFCs available for eventual reclamation by limiting such releases. The owner or operator is responsible for ensuring that the leak inspections are conducted consistent with the applicable requirements in 84.106.

Leak inspection frequency is dependent on the type of appliance and the size of the appliance (by refrigerant charge size). For commercial refrigeration and IPR appliances that have a charge size of 500 pounds or more of a refrigerant that contains an HFC or a substitute for an HFC with a GWP greater than 53, EPA is requiring leak inspections to be performed every three months after the date of repair as demonstrated by a successful follow-up verification test until the owner or operator can demonstrate that the appliance has not exceeded the applicable leak rate for four consecutive quarters. For commercial refrigeration and IPR appliances that have a charge size between 15 and 500 pounds of a refrigerant that contains an HFC or a substitute for an HFC with a GWP greater than 53, EPA is requiring that leak inspections be performed once per year after the date of repair demonstrated by a successful follow-up verification test until the owner or

⁷⁵ ASHRAE Standard 15–2022 defines releasable charge as a portion of the system refrigerant charge that can be released into a space as a result of a single point failure.

operator can demonstrate that the refrigerant-containing appliance has not exceeded the applicable leak rate for one year (*i.e.*, 12 months). For comfort cooling and other appliances that have a charge size of 15 pounds or above of a refrigerant that contains an HFC or a substitute for an HFC with a GWP above 53, EPA is requiring that leak inspections be performed once per year after the date of repair demonstrated by a successful follow-up verification test until the owner or operator can demonstrate that the equipment has not exceeded the applicable leak rate for one year (*i.e.*, 12 months). In each case, to demonstrate an appliance has not exceeded the applicable leak rate, the leak rate is calculated during a leak inspection as described in section IV.C.3.a of this preamble. EPA is establishing that it is appropriate to require more frequent leak inspections for larger commercial refrigeration and IPR appliances (*i.e.*, charge sizes at or above 500 pounds), as the larger charge size means that potential emissions from the appliance are greater if a leak is not properly repaired.

EPA is also finalizing the use of ALD systems as a compliance option in lieu of quarterly or annual leak inspections. Owners or operators voluntarily using an ALD system to monitor leaks in a refrigerant-containing appliance that are not subject to the ALD requirements in the final rule (see section IV.D.1 of this preamble) are not required to conduct periodic leak inspections unless an applicable leak rate threshold has been exceeded. Once the applicable threshold has been exceeded the owner or operator is required to perform leak inspections on any portions of the appliance where the ALD system is not monitoring for leaks. Owners or operators choosing to install an ALD system, in lieu of the required leak inspections, must meet the requirements for ALD systems (including annual ALD system audit and calibration requirements). The Agency is also finalizing separate requirements for the use of ALD systems for commercial refrigeration and IPR appliances that have a charge size of 1,500 pounds or more of refrigerant that contains an HFC or a substitute for an HFC with a GWP greater than 53. That is, the leak inspections that are being codified at 40 CFR 84.106(g) and the requirements related to ALD systems that are being codified at 40 CFR 84.108 are separate provisions that apply in different circumstances. For further information and requirements related to ALD systems in this action, refer to section IV.D.1 of this preamble.

Comment: EPA received mostly supportive comments on the proposed rule's leak inspection provisions. One commenter supported the option to use ALD in lieu of quarterly or annual leak inspections. Another commenter supported the provision to require periodic manual leak inspections for portions of the appliance that are not being monitored by an ALD system. The commenter suggested that EPA require quarterly inspections for portions of an appliance with a charge size of 1,500 pounds or more that are not covered by an ALD system regardless of whether the appliance is leaking above its applicable leak rate. Another commenter in support of the varying leak inspection requirements in the final rule encouraged EPA to adopt routine leak inspections regardless of whether the refrigerant-containing appliances are found to be leaking or not. The commenter stated that routine leak inspections are a good way to catch leaks early and prevent high-volume leakage. One commenter requested clarification on whether EPA intended for leak inspections to be performed "once per year" or "within 365 days of the repair." The commenter suggested the "within 365 days of the repair" interpretation would align with 40 CFR part 82, subpart F.

Response: EPA is finalizing the leak inspection requirements as proposed. We acknowledge the comments in support of the provision. EPA acknowledges one commenter's support for the use of ALD as a compliance option. This decision was based on considerations of previous utilization of ALD systems under CAA section 608 where the Agency provided additional flexibility to facility owners to opt into ALD. The Agency agrees that routine leak inspections are helpful in preventing high-volume leakage from appliances and generally recommends periodic leak inspections as a best practice, even for well-maintained appliances. EPA did not propose and is not finalizing the repair of all leaks or more frequent leak inspections; however, the Agency encourages owners or operators to adopt strategies to ensure their refrigerated-containing appliances are operating with minimal leaks. EPA clarifies that leak inspections are not tied to the discovery of a leak, but rather to the determination that an appliance is leaking above the applicable threshold and occur on a set timeline based on charge size (except for appliances where all portions of the appliance are monitored by ALD). EPA also clarifies that quarterly or annual leak inspections are required for

portions of an appliance that are not being monitored by an ALD system when an appliance has exceeded its leak rate threshold. The Agency reiterates that the final rule is requiring the repair of leaks so that the appliance is under the applicable leak rate threshold, not the repair of all leaks. The addition of periodic inspections not related to the final rule's leak repair timeline would add additional burden to owner/operators and dampen the flexibilities in the leak repair provision. The Agency may reevaluate the frequency of leak inspections in a future notice-and-comment rulemaking but is not finalizing additional periodic leak inspections in this rulemaking.

The Agency disagrees with one commenter's suggestion to require periodic inspections of portions of an appliance not covered by an ALD system. EPA views the continuous monitoring of an appliance as serving the function of monitoring for leaks. Thus, a requirement for performing periodic leak inspections on those portions of the appliance is unneeded. The final rule does require leak inspections for portions of the appliance not monitored by ALD when the appliance is leaking above the applicable leak rate; however, this requirement is needed to ensure the repairs of leaks have not failed. Leak inspections serve as a method of determining whether repairs of refrigerant-containing appliances are adequate and if further action is needed.

The Agency clarifies that quarterly and annual leak inspections are to be conducted within 365 days from the date of repair, demonstrated by a successful follow-up verification test. For example, an owner or operator of a 500-pound IPR appliance that was found to be leaking above the applicable threshold would need to repair the leaks in the appliance (and conduct verification tests) so that the appliance is below the applicable threshold. The owner or operator, starting from the completion of repair, as demonstrated by a successful follow-up verification test, must then conduct quarterly leak inspections for a year and demonstrate that any leaks from the appliance are under the applicable threshold. Leak inspections would then cease until the next leak event above the applicable threshold occurs. The Agency also clarifies that the use of the term "calendar year" in the proposal's preamble was intended to mean "365 days" in the context of the timing of leak inspections.

Comment: One commenter objected to EPA implementing more frequent inspections than currently existing

requirements under 40 CFR part 82, subpart F. Specifically, the commenter stated EPA should not require more frequent inspections than annually for systems between 15 and 500 pounds, and asserted that owners and operators would experience significant burden from more frequent inspections given the increase in appliances covered by the 15-pound threshold, the process for sniffing, and the additional work required if a leak is found. While the comment was less clear on this point, it also stated the view that it is not necessary to increase the frequency of leak inspections to be more than annual for equipment with a charge of 500 pounds or more.

Response: The Agency clarifies that the final rule's leak inspection requirements mirror the frequency of similar requirements under 40 CFR part 82.157(g). The Agency disagrees with the commenter's recommendation to only require annual leak inspections for all charge sizes. EPA is requiring quarterly inspections of appliances with charge sizes above 500 pounds given the risk of additional leaking (e.g., that the leak could recur) once an appliance has exceeded the leak rate threshold and given that such large systems could release more refrigerant than smaller systems if additional leaking occurs. With these considerations, it is critical to ensure larger appliances are more frequently monitored for leaks. Quarterly leak inspections for large refrigerant-containing appliances ensure that the leak repair requirements operate as intended to minimize releases of HFCs from equipment, consistent with the purposes identified in subsection (h).

e. Chronically Leaking Appliances

As part of the leak repair provisions under subsection (h), EPA is finalizing specific requirements for refrigerant-containing appliances with a charge size of 15 pounds or more of a refrigerant that contains an HFC or a substitute for an HFC with a GWP greater than 53 that meet the criteria for a chronically leaking appliance. The requirements are designed to gather information and support efforts to address such chronic leaks, which have the effect of further minimizing emissions from equipment. A refrigerant-containing appliance is considered a chronically leaking appliance if it leaks 125 percent or more of its full charge within a calendar year. The requirements for chronically leaking appliances are similar, but not identical to, analogous requirements under 40 CFR 82.157(j). In the final rule, EPA is requiring reporting for covered refrigerant-containing appliances that

meet the criteria to be considered chronically leaking. Submitted reports must describe the efforts taken to identify leaks and repair the appliance.

To better serve the purposes of minimizing releases of regulated substances and allow EPA to verify the information being reported more easily, EPA is standardizing the reporting format for chronically leaking appliances. EPA is requiring that the reports must be submitted no later than March 1 of the following calendar year of the ≥ 125 percent leak. EPA is requiring that these reports cover basic identification information (i.e., owner name, facility name, facility address where appliance is located, and appliance ID or description), appliance type (comfort cooling, IPR, or commercial refrigeration), refrigerant type, full charge of appliance (pounds), annual percent refrigerant loss, dates of refrigerant addition, amounts of refrigerant added, date of last successful follow-up verification test, explanation of cause of refrigerant losses, repair actions taken, a signature from an authorized company official, and whether a retrofit or retirement plan has been developed for the appliance, and, if so, the anticipated date of retrofit or retirement. EPA proposed and is finalizing that these reports be submitted electronically using the Agency's applicable reporting platform. The information in these reports would either be contained in the records EPA is establishing that owner or operators are required to maintain or is the type of information that is on hand during the ordinary course of business. Because of the amount of refrigerant emitted, chronically leaking appliances warrant special attention. These reporting requirements for chronically leaking equipment are designed to help ensure that owners or operators are complying with the leak repair provisions and that they have taken appropriate steps to identify the leaks and correct the root cause of those leaks. These reports will allow EPA to evaluate compliance with the regulatory requirements and to identify entities that may benefit from compliance assistance and other outreach efforts. These reports will also allow EPA to assess common root causes for appliances that chronically leak, which would facilitate consideration of approaches to mitigate these leaks and minimize the releases of HFCs from such equipment. EPA discusses whether this information is entitled to confidential treatment in section V.A.1 of this preamble.

Comment: Some commenters suggested that EPA should require reporting when system leak rates exceed

110 percent per year rather than the proposed 125 percent value. One commenter indicated that this lower threshold would support close monitoring of systems that experience a loss of full charge so that unrepaired faults are repaired. One commenter suggested that EPA should set a quicker timeline for required leak repairs for chronically leaking appliances.

Response: The Agency is finalizing the chronically leaking appliances provision as proposed. EPA acknowledges the comments suggesting that it should lower the chronic leak rate but finds the 125 percent threshold more appropriate, as the Agency intends to focus on gathering information from chronically leaking appliances and to avoid capture of refrigerant-containing appliances affected by unavoidable losses that do not reflect a chronic issue. The 125 percent threshold allows the Agency to focus on chronic leakers, as systems would have to lose their full charge and then a significant quantity more to trigger the requirements. The Agency also notes that the 125 percent threshold aligns with the chronic leak rate established in the CAA section 608 regulations which may allow the Agency to compare or combine information obtained under this program with that obtained under CAA section 608 and develop a better understanding of the issues that lead to chronic leaking across a broader group of appliances. In response to the commenter's view that a chronic leak rate of 110 percent would support closer monitoring of appliances, especially appliances with large charge sizes, the Agency notes that a chronic leak rate of 110 percent may still capture appliances affected by unavoidable losses and thus dilute focus on the target group of appliances. One commenter requested that chronically leaking appliances be required to repair leaks on a quicker timeline. EPA responds that the timeline for repair of a chronically leaking appliance is the same as for any other appliance that triggers the leak repair requirements. The Agency further notes that some chronically leaking appliances would be subject to the retrofit or retirement provisions in the final rule, for example, if they continue to leak above the applicable leak rate after having conducted the required repairs and verification tests.

Comment: Another commenter suggested an alternative to EPA's proposal to require reporting when system leak rates exceed 125 percent in one year. The commenter suggested the annual leak rate percentage to require reporting should be 100 percent plus the allowed annual leak rate percentage for

an equipment category plus five percent. Alternatively, the commenter suggested that EPA could choose a lower percentage and allow an exception for a single catastrophic leak.

Response: EPA disagrees with the commenter's suggested approach. The commenter's suggestion would allow certain appliances (*i.e.*, IPR) to leak 135 percent in one year before becoming subject to the chronic leaker provision. Thus, for some appliances, the commenter's suggested approach would prevent EPA from obtaining information about certain appliances that may chronically leak but not at such a high rate, and thus might limit the Agency's understanding of the issues that may lead to chronic leaking at the 125 percent threshold. This approach would also differ from the approach under the CAA section 608 regulations, which may limit the Agency's ability to compare or combine the information obtained under this program with that obtained under CAA section 608. For the same reason, EPA is not adopting a lower percentage together with an exception for a single catastrophic leak event because EPA is not persuaded that this approach would allow us to obtain information focused on the appliances of most interest under this requirement.

Comment: One commenter stated that if EPA lowers the leak repair threshold to appliances with a charge size of 15 pounds, there will be a large number of reportable, chronically leaking appliances with full charge sizes between 15 and 49 pounds. The commenter stated that appliances with small charge sizes tend to lose their entire charge size before anyone realizes there is a leak, and therefore any appliance with more than one leak in a calendar year will be reportable to EPA. The commenter further claimed that the amount of refrigerant added to these small appliances does not necessarily reflect the amount of refrigerant leaked out of them, and that technicians tend to put whole cylinders worth of refrigerant into appliances whether the appliance requires it or not, because technicians do not like carrying partially empty cylinders on their trucks. The commenter asserted that this would lead to a larger number of chronically leaking appliances, not because these appliances are in fact leaking chronically, but rather because of the nature and size of the appliances that would be regulated under the proposed rule.

Response: EPA views the chronic leak reports as necessary to supporting the Agency's efforts to reduce emissions of refrigerants from appliances. EPA does not view an increase in chronic leak

reporting for appliances below 50 pounds negatively because the Agency wants to ascertain issues with refrigerant-containing appliances and better understand why such appliances at all charge sizes are chronically leaking. For example, as the commenter stated some appliances with small charge sizes lose their full charge very quickly, and the Agency wants to know why these appliances are leaking at such a high rate and what owners or operators are doing to repair the leaks to ensure that the appliances are no longer chronically leaking. The Agency disagrees that these appliances would not be considered chronically leaking because of their size or the way they are serviced. EPA also notes that the commenter's description of servicing a small appliance is concerning because the overcharging of an appliance may lead to additional issues with leaks. It is unclear from the commenter's description why a technician would potentially overcharge a system simply to avoid having to carry partial cylinders. Regardless of the commenter's example, any appliance leaking more than 125 percent of its full charge in one year is subject to the final rule's chronic leak reporting.

f. Retrofit and Retirement Plans

EPA is finalizing aspects of the proposed retrofit and retirement plan provision, with modifications after consideration of the comments and information received on the proposed rule. EPA is requiring the development of retrofit and retirement plans for refrigerant-containing appliances that contain HFCs and certain substitutes for HFCs, where leaks cannot be repaired, or when an owner or operator chooses to retrofit or retire an appliance rather than repair a leak. As further discussed in section IV.A.2 of this preamble, EPA is not finalizing the aspect of the proposed definition of retrofit that would require that a retrofit be to a lower-GWP alternative than the original refrigerant; thus, the final rule allows the retrofit of refrigerant-containing appliances to a refrigerant that does not have a lower-GWP than the original refrigerant. This determination is based on consideration of the potential compliance burden of requiring retrofits to lower-GWP refrigerants for certain appliances subject to the leak repair provision. However, the Agency encourages owner/operators to choose lower-GWP options when considering retrofits.

The final rule provides the details on the timing for creating a retrofit or retirement plan for covered refrigerant-containing appliances, and what must

be contained in a retrofit or retirement plan. EPA is requiring that a retrofit or retirement plan be created within 30 days of certain scenarios. The Agency understands this timing is sufficient for an owner or operator to either attempt to repair the leak with all the necessary requirements as described in section IV.C.3.b of this preamble or make a business decision to directly begin the retrofit or retirement process. It is necessary to cap this timing requirement to minimize emissions from leaks in the case where an owner or operator fails to take any action after finding that their applicable refrigerant-containing appliance is leaking above the applicable leak threshold. After 30 days, the owner or operator must begin developing a retrofit or retirement plan. The following scenarios describe when a retrofit or retirement plan must be developed:

- A refrigerant-containing appliance is leaking above the applicable leak rate, and the owner or operator intends to retrofit or retire the appliance rather than repair the leak;
- A refrigerant-containing appliance is leaking above the applicable leak rate, and the owner or operator fails to take action to identify or repair the leak; or
- A refrigerant-containing appliance is continuing to leak above the applicable leak rate after an attempted leak repair and verification testing.

EPA is requiring that the retrofit or retirement plan include information regarding the location of the appliance, characteristics of the appliance, a procedure for how the appliance will be converted to accommodate a different refrigerant (if the appliance is being retrofitted), plans for the disposition of any recovered refrigerant and the appliance (if the appliance is being retired), and a schedule for the completion of the appliance retrofit or retirement. Characteristics of the appliance that will be retrofitted or retired include the type and full charge of the refrigerant used in the appliance, and for retrofitting, the type and full charge of the refrigerant to which the appliance will be retrofitted. In describing how the appliance will be retrofitted, the owner or operator must include an itemized procedure for converting the appliance to a different refrigerant, including changes required for compatibility. This also includes any changes for compatibility that relate to safety considerations to ensure the safety of technicians and consumers when converting an appliance to a different refrigerant, which further serves one of the purposes identified in subsection (h)(1). EPA is also requiring that the retrofit or retirement plan must

include information on how any recovered refrigerant is being dispositioned. In the case of retiring an appliance, the retirement plan needs to include how the appliance is being disposed of. EPA is establishing that the retrofit or retirement plan must include a schedule for completion of the retrofit or retirement and, unless additional time is granted, that the schedule may not exceed one year of the plan's date (not to exceed 12 months from when the plan was finalized). Owners or operators may request relief from the provisions of a retrofit or retirement plan if they are able to prove that an appliance is no longer leaking above the applicable leak rate within 180 days of creating the plan and they agree to repair all identified leaks within one year of the plan's date. The owner or operator is required to submit specified information to EPA, including information regarding leaks in the appliance, descriptions of the work completed/to be completed, and more, per 40 CFR 84.106(h)(5)(ii).

For IPR equipment, extension requests are allowed in cases where requirements or other applicable Federal, State, local, or tribal regulations make it impossible to complete the retrofit or retirement within one year. In this case, owners or operators could be permitted additional time to the extent needed to comply with the applicable regulations. EPA is also establishing a provision that allows for extensions to be requested for IPR equipment if the equipment is custom-built and the supplier of the appliance or one of its components has quoted a delivery time of more than 30 weeks. In such cases, the appliance or component must be installed within 120 days of receipt. If additional time is needed, the owner or operator would need to submit a request for the additional time to EPA. Further, extensions can be requested to complete a retrofit or retirement if the IPR equipment is located in an area subject to radiological contamination or if shutting down the appliance will directly lead to radiological contamination. In this case, EPA is allowing additional time to the extent necessary to complete the retrofit in a safe working environment. EPA did not propose and is not finalizing extensions specifically applicable to federally owned equipment (see, e.g., the provisions at 40 CFR 82.157(i)(3)). EPA discussed in the proposal that these circumstances can be addressed under the other extension provisions.

As noted in the proposal, these requirements reduce emissions by capping the amount of time an appliance can remain in operation when it is known to be leaking above the leak

rate threshold. Developing the retrofit or retirement plan is a key process in ensuring that each step of the plan is successfully performed such that releases of HFCs are minimized and the reclaiming of the HFCs can be maximized. Owners or operators may choose to retrofit or retire a leaking appliance rather than repair a leak, or, in some situations, may be required to retrofit or retire the appliance if successful leak repair cannot be achieved and verified. The requirements also further serve the purposes of minimizing releases and maximizing the reclaiming of HFCs, as proper retrofit or retirement of a leaking appliance helps ensure that further HFC emissions from such equipment are mitigated. Additionally, in the process of retrofitting or retiring an appliance, the refrigerant that was remaining in the leaking appliance must be recovered and could then subsequently be reclaimed.

Comment: Several commenters provided recommendations for EPA's proposal regarding retrofit and retirement plans. Two commenters requested that retrofit and retirement plans include a provision to retrofit an appliance with a lower-GWP refrigerant. Another commenter suggested EPA allow for a repair plan for IPR appliances to ensure continued operation of industrial manufacturing processes that rely on IPR systems to continue to operate while the owner or operator pursues repair of the appliance. Specifically, the commenter stated that it is unfeasible to retrofit IPR appliances with evaporator temperatures below -50°C (-58°F) because low-temperature appliances are typically not retrofitting and have limited lower-GWP options, as demonstrated by the 2023 Technology Transitions Rule exclusion of these systems. The commenter stated that the design and replacement of these systems may take several years, and a repair plan should allow the facility to continue operations while taking the necessary steps to address the leaks.

Response: EPA is finalizing aspects of the proposed retrofit and retirement plan provision, with modifications after consideration of the comments and information received on the proposed rule. In the final rule, the Agency is not requiring that retrofit plans must transition to lower-GWP refrigerants (see section IV.A.2 of this preamble). The decision of what type of retrofit is appropriate when a refrigerant-containing appliance cannot be repaired is the decision of the owner/operator; however, EPA encourages owners or operators to retrofit appliances to lower-GWP refrigerants. It is also up to the

discretion of the owner or operator to decide if an appliance can be retrofitted or retired and replaced when an owner or operator cannot repair a leak below the applicable threshold within the final rule's provided leak repair timeframe. While some commenters suggest the Agency should require retrofitted appliances to use lower-GWP refrigerants, EPA has determined that requiring the use of lower-GWP refrigerants may pose a compliance issue with the provision. For certain appliances with limited lower-GWP alternatives, the proposal's definition of retrofit would have limited said appliances from having the option to retrofit. As previously discussed in this section, the retrofit and retirement provision reduces emissions of HFCs and covered substitutes by capping the amount of time an appliance can remain in operation when it is known to be leaking above the applicable leak rate threshold. Limiting certain appliance owners to one method of compliance (i.e., retirement) would not further the purpose of this rule to reduce emissions from equipment and may increase non-compliance with the provision in certain instances (e.g., an owner or operator is unable to retrofit an appliance with a lower-GWP refrigerant). EPA notes that not all appliances are fit to be retrofitted; however, the proposal's definition of retrofit may have been too restrictive in how appliances could be retrofitted to comply with the leak repair provisions in the final rule.

EPA disagrees with one commenter's request to allow for a repair plan for appliances incapable of repairing leaks in the final rule's specified timeframe. The continuous operation of an appliance that is leaking above its applicable leak rate threshold is directly opposed to reducing emissions and further serving the purposes outlined in subsection (h)(1). The commenter's suggested repair plan would not adequately address leaks in a timely manner in order to minimize the release of refrigerants, and continued operation of the appliance would necessitate the addition of more refrigerant that would also be at risk of being emitted. The final rule provides 12 months from the approval of a retrofit or retirement plan to retrofit or replace a system. There is also the ability to extend the implementation of an owner or operator's retrofit or retirement plan by one year if certain conditions are met. The Agency finds this timing to be sufficient and notes that the commenter did not provide sufficient evidence to prove that these specific IPR systems

take an exceptionally long time to replace. In regard to the commenter's concerns on retrofitting not typically being an option for certain low-temperature IPR systems due to limited lower-GWP options, EPA reiterates that changes to the definition of retrofit should permit the retrofit of these appliances. This change should provide owners and operators with the option to retrofit or retire an appliance, even under the circumstances described by the commenter.

Comment: One commenter stated that 30 days is inadequate to develop a retrofit and retirement plan for complex appliances like supermarket systems. The commenter claimed that multiple repair attempts may be necessary to effectuate a repair and stated that owners or operators would not have the opportunity to conduct multiple repair attempts and would therefore be pushed into developing a retrofit and retirement plan. Further, the commenter asserted that there is uncertainty on the timeframe to complete retrofit or retirement plans because the approval of extension requests is at EPA's discretion. For these reasons, the commenter suggested EPA extend the time to create a retrofit and retirement plan to 90 days to allow for sufficient development of the plan. Additionally, the commenter suggested EPA could adopt retrofit or retirement planning if an appliance has two or more leaks during which a certain percentage of the full charge is lost in a calendar year. The commenter also proposed an alternative relief provision if the owner or operator has a zero percent leak rate for the first 180 days of the following calendar year.

The commenter also asserted that the rule exceeds EPA's authority under the AIM Act because it would undermine key flexibilities intended by Congress in phasing down HFCs. The commenter asserted that the AIM Act does not confer limitless authority to EPA to impose the expansive and unnecessarily burdensome leak detection and repair requirements set forth in the proposed rule. The commenter also claimed that subsection (h) does not authorize the Agency to compel retrofit of existing refrigeration appliances with lower-GWP refrigerants or to require system retrofit or retirement in situations where leaks cannot be addressed under the narrow leak repair timeline in the final rule. The commenter further stated that finalizing these requirements would contravene the congressional intent that EPA establish a market-based mechanism to phase down HFCs in an economically efficient way and that existing systems be exempt from

technology-forcing regulations, which are only authorized under subsection (i).

Response: The Agency disagrees that 30 days is not enough time to prepare a retrofit or retirement plan. Owners or operators will typically know during the leak repair process whether they will retrofit or retire an appliance. Some owners or operators might also prefer to opt into a retrofit or retirement plan in lieu of attempting a leak repair or if the appliance is continuing to leak above the applicable leak rate after an attempted leak repair(s) and verification testing. The Agency clarifies that the leak repair provision does not bar owners or operators from conducting multiple repair attempts and verification tests within the leak repair timeline described in section IV.C.3.b of this preamble, contrary to the commenter's claim. If the owner or operation intends to repair the leaks and a repair is attempted, the retrofit or retirement requirement in this final rule does not begin until the required repairs and verification tests have been completed but the appliance has not been brought below the applicable leak rate threshold in the allotted leak repair timeframe (see 40 CFR 84.106(h)(1)(iii)). If the initial verification test indicates that the repairs have not been successful, the owner or operator may conduct as many additional repairs and initial verification tests as needed within the applicable time period (see 40 CFR 84.106(e)(1)(iii)) and may also request an extension if the applicable requirements under 40 CFR 84.106(f) are met; such requests are considered approved unless EPA notifies the owners or operators otherwise. Additionally, the required information (40 CFR 84.106(h)(2)) for retrofit or retirement plans should be readily available to the owner or operator. EPA clarifies that retrofit or retirement plans are not required to be submitted to the Agency; the plans must be retained as record on the site of the refrigerant-containing appliance that can be made readily available for inspection by EPA. Therefore, there is no uncertainty with whether the Agency would accept a retrofit or retirement plan, because it is not required to be reported to the Agency unless the owner or operator is requesting relief from a retrofit or retirement plan or the owner or operator is requesting an extension in time to complete the retrofit or retirement of an appliance. Further, the Agency is providing clarity in the final rule that a retrofit or retirement plan is necessary when:

- A refrigerant-containing appliance is leaking above the applicable leak rate, and the owner or operator intends to

retrofit or retire the appliance rather than repair the leak;

- A refrigerant-containing appliance is leaking above the applicable leak rate, and the owner or operator fails to take action to identify or repair the leak; or
- A refrigerant-containing appliance is continuing to leak above the applicable leak rate, even after attempted leak repair(s) and verification testing.

EPA also disagrees with the commenter's suggested alternative approaches to a retrofit or retirement plan because they would inadequately address emissions from appliances that are leaking above the applicable leak rate threshold compared to the requirements EPA proposed and is finalizing in this rulemaking. Providing 90 days as the default period to develop a retrofit or retirement plan would delay planning for and implementation of certain measures to address such appliances, including in situations where the owner or operator could comply with the 30-day timeframe for the plan. Similarly, waiting for an end-of-year calculation to determine whether an appliance requires retrofit or retirement would lead to an indeterminant amount of refrigerant being emitted during the year. Thus, the commenter's proposals would not promptly address emissions from refrigerant-containing appliances and would further delay the process for retrofitting or retiring a refrigerant-containing appliance that continues to leak above the applicable leak rate threshold, including in situations where the leaks cannot be repaired; those appliances would be expected to continue to leak above the applicable threshold during that delay, thus leading to additional emissions from these appliances. For these reasons, the commenter's proposals would not be a well-suited approach compared to the provisions for retrofit and retirement plans that EPA proposed and is finalizing to minimize releases from equipment and maximize reclamation. Additionally, the commenter's alternative to the relief provision is not reasonable, as having a zero percent leak rate in the first 180 days of the following calendar year could cause the relief provision to fall well outside the timeframe for retrofit and retirement plans. The Agency clarifies that retrofit and retirement plans are to be *completed* within 12 months of submitting the retrofit and retirement plan, unless an extension as outlined in 40 CFR 84.106(i) applies. The provision is not based on the calendar year; rather, the timeframe is based on the owner or operator not repairing leaks below the

applicable threshold within the allotted time for leak repair and thus needing to develop a retrofit or retirement plan. Specifically, the timeframe for completion of a retrofit or retirement plan begins when an owner or operator submits their retrofit or retirement plan to the Agency. Owners or operators can apply for relief from their retrofit or retirement plan within 180 days of the plan's date if, among other things, they can establish the appliance is repaired and no longer leaking above the applicable leak rate. EPA also clarifies that the Agency is not requiring appliances to have a zero percent leak rate, because this may be unreasonable for certain appliances at certain charge sizes. Owners or operators must simply ensure that an appliance is leaking below an appliance's applicable leak rate threshold and meet the other requirements listed in 40 CFR 84.106(h)(5)(ii) to apply for relief from their retrofit or retirement plans.

With respect to the comments on EPA's legal authority, EPA notes that it is not further addressing the comments on whether it has legal authority to require that retrofits use a lower-GWP refrigerant because it is not finalizing such a requirement in this action. EPA disagrees with the comments that subsection (h) does not authorize the Agency to require system retrofit or retirement in situations where leaks cannot be addressed under the narrow leak repair timeline, and with those that claim the requirement contravenes congressional intent. EPA interprets its regulatory authority under subsection (h)(1) to include authority to establish requirements related to the prevention and repair of leaks for equipment containing HFCs or substitutes for HFCs, as such requirements control practices, processes, and activities regarding the servicing, repair, disposal, or installation of equipment. These requirements also implement the purposes identified in subsection (h) of minimizing releases of HFCs from equipment and maximizing reclamation. The leak detection and repair requirements finalized in this rule, including the retrofit or retirement requirements, fit squarely within this grant of authority. The retrofit or retirement requirements apply when the leak has not been repaired consistent with the regulatory requirements and are designed to ensure that additional action is taken to address such leaks and limit the ongoing release of the refrigerant to the environment, thus serving the purposes identified in subsection (h) of maximizing reclamation and minimizing release of

HFCs from equipment. The types of activities taken as part of retrofit or retirement—such as modifications to the appliance needed to convert it to a new refrigerant, switching the refrigerant from the old to the new refrigerant, and repairing all identified leaks for a retrofit, or actions to retire and dispose of the appliance in the case of a retirement—are typical examples of the kinds activities related to the servicing, repair, installation, or disposal of equipment that Congress authorized EPA to control through regulations under subsection (h).

EPA also disagrees with the commenter's characterization of Congressional intent, as that characterization ignores the role of subsection (h) in the overall statutory scheme. The AIM Act contains a variety of provisions that are targeted at addressing different aspects of regulated substances. This rule does not address the Act's phasedown provisions, nor does it address the technology transition provisions; thus, comments directed at those provisions are beyond the scope of this rulemaking and require no further response. However, to the extent that the comment suggests that these aspects of the AIM Act preclude EPA from issuing regulations that subsection (h) directs it to issue, EPA disagrees. Rather, EPA views the Act as providing separate and distinct regulatory authorities, which can be implemented in ways that reinforce and complement one another. EPA also disagrees with the commenter's implication that technology-forcing regulations are only authorized under subsection (i) of the Act. The plain text of the Act includes no such limitation. Interpreting the Act to include one would limit EPA's ability to fulfill the direction and achieve the purposes stated in subsection (h). While EPA acknowledges that subsection (i)(7)(B), entitled "Applicability of Rules," includes the limitation that a "rule promulgated under this subsection shall not apply . . . except for a retrofit application, equipment in existence in a sector or subsector before December 27, 2020," that restriction expressly applies only to rules issued under subsection (i); it does not apply to rules promulgated under subsection (h), such as this rule. In fact, subsection (h) includes its own provision addressing inapplicability for regulations under (h) at (subsection (h)(4) entitled "Inapplicability"). That provision does not mention any limitation on application of the rules to existing equipment. If Congress had intended for such a limitation to apply under subsection (h), it is reasonable to expect

that legislators would have explicitly included it in this provision, as they did in subsection (i)(7)(B).

Regarding the commenter's assertion that the AIM Act does not confer limitless authority to EPA to impose the proposed "expansive" and "unnecessarily burdensome" leak detection and repair requirements, the Agency does not view the AIM Act as conferring limitless authority. Instead, EPA concludes that in this rule the requirements that are being finalized are well within the scope of authority provided by the AIM Act and are consistent with subsection (h), for the reasons described previously in this response and elsewhere in this final rule. EPA disagrees with the characterization of this rule as "unnecessarily burdensome" for the reasons described in section IV.C.2 of this preamble. Further, the Agency has explained why these requirements are appropriate for serving the purposes under subsection (h) as described throughout this section of the preamble.

Comment: One commenter recommended that EPA align the requirements for retrofit or retirement plans with the CAA section 608 regulations to reduce uncertainty and compliance costs. The commenter also suggested that EPA consider merging the entire leak detection and repair programs under CAA section 608 and subsection (h) of the AIM Act into one regulation to help streamline the respective requirements and avoid confusion in compliance on the part of owners and operators.

Response: EPA clarifies that this specific provision and many other leak repair provisions in the final rule largely aligned with regulations under CAA section 608. When creating this final rule, EPA looked to align the provisions with the CAA while also building on the CAA regulations where appropriate (e.g., changing the charge size threshold to 15 pounds for leak repair). Additionally, EPA notes that the leak repair rules under the CAA and this final rule were promulgated under two separate statutory authorities, and that the Agency did not propose to reopen the requirements under the CAA as part of this rulemaking. Thus, the Agency is not merging the requirements in the way the commenter suggest in this action. However, as previously stated we have evaluated how to make the leak repair provisions under the CAA and AIM Act streamlined and understandable. EPA disagrees that this final rule will cause confusion for owners and operators. As stated previously, this final rule is largely aligned with the leak repair requirements under CAA section 608.

g. Recordkeeping and Reporting

EPA is requiring recordkeeping requirements for refrigerant-containing appliances with a charge size of 15 pounds or more of a refrigerant containing an HFC or a substitute for an HFC with a GWP above 53 under subsection (h) that are similar to those at 40 CFR 82.157(l). Where EPA is establishing requirements for recordkeeping, the record must be maintained for three years in either paper or electronic format. An owner or operator may contract out the record generation responsibilities but retains ultimate liability for compliance and must be able to access these records electronically or in hard copy from the facility where the appliance is located. All recordkeeping requirements can be found in 40 CFR 84.106(l). These records are the primary means for the facility to demonstrate compliance with the leak repair requirements, and EPA will review them when evaluating compliance. EPA will access these records in various ways, including, but not limited to, on-site review of the records or requesting them via an information request. In general, EPA is establishing the following recordkeeping requirements for owners and operators under subsection (h):

- Maintain records documenting the full charge of appliances;
- Maintain records, such as invoices or other documentation showing when refrigerant is added or removed from an appliance, when a leak inspection is performed, when a verification test is conducted, and when service or maintenance is performed;
- Maintain retrofit and/or retirement plans;
- Maintain retrofit and/or extension requests submitted to EPA;
- If a system is mothballed to suspend a deadline, maintain records documenting when the system was mothballed and when it was brought back on-line (*i.e.*, when refrigerant was added back into the appliance or isolated component of the appliance);
- Maintain records of purged and destroyed refrigerant if excluding such refrigerant from the leak rate;
- Maintain records to demonstrate a seasonal variance; and
- Maintain copies of any reports submitted to EPA under the reporting requirements in this action.

EPA is also requiring reporting and recordkeeping for refrigerant-containing appliances with a charge size of 15 pounds or more of a refrigerant containing an HFC or a substitute for an HFC with a GWP above 53 under subsection (h) that are similar to those

at 40 CFR 82.157(m). The reporting requirements include notifications to EPA that include specified information when:

- The owner or operator is seeking an extension to complete repairs;
- The owner or operator is seeking an extension to complete a retrofit or retirement plan;
- The owner or operator is seeking relief from the obligation to retrofit or retire an appliance;
- An appliance leaks 125 percent or more of the full charge in a calendar year;
- The owner or operator is excluding purged refrigerants that are destroyed from annual leak rate calculations for the first time.

Additional detail on these recordkeeping requirements is available at 40 CFR 84.106(l). The recordkeeping and reporting requirements in this action for ALD systems are described in section IV.D.2 of this preamble.

As discussed in the proposal, the recordkeeping and reporting requirements support compliance with the leak repair provisions under the final rule for applicable refrigerant-containing appliances that contain HFCs or certain substitutes for HFCs as a refrigerant. For example, the requirements will control recordkeeping and reporting practices, processes, or activities for servicing and repair that involves HFCs or a substitute for an HFC. As discussed in section II.B of this preamble, EPA's authority to require recordkeeping and reporting under the AIM Act is also supported by section 114 of the CAA, which applies to the AIM Act and rules promulgated under it as provided in subsection (k)(1)(C) of the AIM Act. The recordkeeping and requirements related to the leak repair requirements under this rulemaking are applicable to the full range of appliances that are subject to the leak repair provisions, including those containing at least 15 pounds of refrigerant with limited exemptions, as described in section IV.C.2.b of this preamble for certain appliances. The recordkeeping and reporting requirements provide critical information about whether required actions were taken and are part of the suite of compliance tools included in this rule. Compliance with the overall leak repair requirements is intended to minimize the release of refrigerants, and the Agency considers these recordkeeping and reporting requirements necessary to readily assess compliance. Records that demonstrate noncompliance or are incomplete may be used for enforcement purposes. The requirements are informed in part by

EPA's consideration of its experience implementing similar regulations under CAA section 608 at 40 CFR 82.157 and the recordkeeping and reporting requirements that have been used to ensure compliance with those provisions.

Furthermore, EPA notes that there are existing recordkeeping requirements at 40 CFR 82.156(a)(3) for technicians evacuating refrigerant from appliances with a full charge of more than 5 and less than 50 pounds of refrigerant for purposes of disposal of that appliance. These records are used to assess technicians' compliance with the disposal requirements for appliances between 5 to 50 pounds under 40 CFR part 82, subpart F and are not related to the owner/operator's compliance with the leak repair requirements. Additionally, EPA notes that the bulk of the appliances covered by the recordkeeping requirements at 40 CFR 82.156(a)(3) are residential air conditioning appliances, which are exempt from the leak repair provisions in this action. EPA did not reopen any of the provisions in 40 CFR part 82 through this notice-and-comment rulemaking, and thus the Agency did not propose any changes to the referenced recordkeeping requirements. The Agency does not view these recordkeeping requirements as being in conflict with the leak repair requirements in this final rule, nor does the Agency view them as redundant.

Comment: A commenter requested clarification on the effective date of leak repair requirements as it relates to recordkeeping, considering the leak rate calculation methodologies would require existing records in order to determine the leak rate. The commenter stated that some facilities with appliances with a charge size greater than 50 pounds may not have records because of the lack of existing leak repair requirements. The commenter requests clarity on what owners or operators should do if records are unavailable to determine the leak rate and determine if repairs are required.

Response: EPA acknowledges the commenter's concerns about accurately calculating the leak rate of appliances without previously available records. As discussed in section IV.C.3.a of this preamble, because no records are required for addition of refrigerants to an appliance prior to January 1, 2026, owners or operators may calculate leak rates for appliances containing an HFC or HFC substitute with a GWP greater than 53 as though there were no additions prior to that date. For example, if an owner or operator is using the annualizing method for the

first addition of refrigerant in calendar year 2026, the second term would be 365/365 (or “1”). For subsequent additions the second term would be 365 divided by the shorter of the number of days since refrigerant was last added or 365. Alternatively, if an owner or operator is using the rolling average method for the first addition of refrigerant in calendar year 2026, the numerator would be the pounds of refrigerant added since the shorter of January 1, 2026, or the last successful follow-up verification test, if one was conducted in 2026. For subsequent additions the numerator is the pounds of refrigerant added since the shorter of 365 days or the last successful follow-up verification test.

Comment: One commenter requested the Agency clearly state in the regulatory text how and where required information is submitted electronically so the regulated community knows where and how to transmit the required information.

Response: EPA is creating a web-based platform for owners or operators to submit requests for extensions, chronic leak reports, and other reportable materials to the Agency. The Agency intends to provide additional information and guidance on reporting at <https://www.epa.gov/climate-hfcs-reduction/managing-use-and-reuse-hfcs-and-substitutes>.

Comment: One commenter suggested that recordkeeping and reporting requirements should not apply to residences, families, and landlords unless a threshold of several owned units is surpassed.

Response: As previously discussed in section IV.C.2 of this preamble, EPA is exempting appliances in the residential and light commercial air conditioning and heat pump subsector from the leak repair provisions of the final rule and those appliances are not subject to recordkeeping and reporting. EPA did not propose and is not finalizing any recordkeeping and reporting requirements for homeowners or landlords using air conditioning appliances in this subsector.

D. How is EPA establishing requirements for the installation of automatic leak detection systems?

EPA is finalizing aspects of the proposed ALD requirements, with modifications after consideration of the comments and information received on the proposed rule. EPA is finalizing that ALD systems must be installed and used for new and certain existing refrigerant-containing appliances in the IPR and commercial refrigeration subsectors with a charge size of 1,500 pounds or

more. This provision applies to those refrigerant-containing appliances in the IPR or commercial refrigeration subsector that contain an HFC or a substitute for an HFC with a GWP greater than 53. In the proposal, new refrigerant-containing appliances installed after 60 days of the publication of the final rule in the **Federal Register** were required to install and use an ALD within 30 days of appliance installation. EPA proposed that existing refrigerant-containing appliances installed before 60 days after the date of publication of the final rule in the **Federal Register** were required to install and use an ALD system by one year after the date of publication of the final rule in the **Federal Register**. EPA is finalizing that beginning January 1, 2026, new refrigerant-containing appliances with a full charge of 1,500-pounds or greater in the IPR and commercial refrigeration subsectors are required to install an ALD system as a part of the overall appliance installation, either during the installation of the new appliance or within 30 days from when the new appliance is installed. Generally depending on the type of ALD system, it may be more practicable to install an ALD system during the appliance installation. The compliance date for the installation and use of ALD systems is over one year later than proposed to provide additional time for new appliance owners to procure and install ALD systems because additional time may be needed to secure a contractor or technician to install the ALD system, or there may be unforeseen delays in acquiring an ALD system. For existing IPR and commercial refrigeration appliances installed on or after January 1, 2017, and before January 1, 2026, EPA is requiring that ALD systems be installed and used by January 1, 2027. The change to the compliance date and applicability for existing IPR and commercial refrigeration appliances with a full charge of 1,500 pounds or greater was informed by commenters and further considerations by EPA to ease potential supply issues and facilitate compliance with this provision. For these appliances, the compliance date has been extended by one year (*i.e.*, to January 1, 2027) to allow additional time for existing appliances to comply with the provision, and the applicability of appliances affected by this provision has been altered to ensure that a proper supply of ALD systems is available to owners and operators. Further discussion of this change can be found later in this section.

As discussed in the proposal, ALD systems serve the purposes described in subsection (h)(1) to control any practice, process, or activity regarding servicing, repair, or installation of such appliances, that involves a regulated substance or a substitute for a regulated substance. When an ALD system detects a leak in a refrigerant-containing appliance covered by this rule, an owner or operator of the appliance is required to either perform practices, processes, and/or activities to determine whether service or repair of the appliance is necessary (*i.e.*, calculating a leak rate and assessing it compared to the applicable leak rate for the type of appliance) or, alternatively, preemptively repair the leak (*i.e.*, before adding refrigerant and calculating the leak rate). The Agency is explicitly encouraging preemptive repair of a leak as a compliance option to avoid the need to add refrigerant to an appliance with a known leak (which would otherwise generally be necessary to calculate the leak rate and determine if the applicable leak rate is exceeded). If the preemptive repair is being used as a compliance option, it must occur within 30 days (or 120 days where an industrial process shutdown is necessary) of the alert. Taken together, these requirements are expected to facilitate prompt repair of leaks, which further helps minimize releases of regulated substances from equipment and maximize the amounts of regulated substances remaining in the equipment for eventual recovery and reclamation.

In the case of preemptive repair, this compliance option provides the opportunity to repair an appliance that is known to be leaking prior to the addition of refrigerant. When refrigerant is added to an appliance that underwent preemptive repair, a leak rate calculation is still required after the addition of refrigerant. Owners or operators choosing to preemptively repair identified leaks per 40 CFR 84.108(h)(2) are not required to conduct an initial or follow-up verification test at the time of leak repair, unless the calculated leak rate performed after refrigerant is added is above the applicable leak rate. If the refrigerant-containing appliance is found to be leaking above the applicable leak rate threshold after preemptive repair the full suite of leak repair requirements (*e.g.*, initial and follow-up verification tests) will still apply. EPA clarifies that owners or operators using the rolling average method must continue to use the date of the last successful follow-up verification test or 365 days, whichever is shorter, to calculate the leak rate. If

multiple preemptive repairs (and associated refrigerant additions) are conducted within a time frame since the shorter of the last successful follow-up verification test or 365 days, the cumulative pounds of refrigerant added since the last successful follow-up verification test, or 365 days should be used to calculate the leak rate. For example, over a period of six months an owner or operator's ALD alerts them of a leak three times. The owner or operator, each time the ALD alarm alerts them, preemptively repairs a refrigerant-containing appliance and calculates the leak rate using the rolling average method. For the first refrigerant addition, the owner or operator uses the number of pounds added since the shorter of 365 days or the last successful follow-up verification test. For subsequent leaks detected by an ALD system, the owner or operator would use the cumulative amount of refrigerant added since the shorter of 365 days or the last successful follow-up verification test. If the cumulative amount of refrigerant added causes the refrigerant-containing appliance to exceed its applicable leak rate, then the owner or operator must follow through with the full suite of leak repair requirements.

The preemptive repair actions can be considered in determining whether the suite of leak repair requirements triggered by the exceedance of the applicable leak threshold have been satisfied, but the owner or operator of the appliance would still need to ensure that the leaks had been repaired according to the definition of repair and that the other requirements in 40 CFR 84.106 (e.g., initial and follow-up verification tests, leak inspections (where applicable) and related recordkeeping) had been met. The timing of the leak repair requirements is the same as described in section IV.C.3.b of this preamble. If an owner or operator finds that the leak rate for a refrigerant-containing appliance is above the applicable leak rate threshold, the owner or operator must conduct an initial verification test in the 30-day timeframe for preemptive repair. A follow-up verification test must be conducted within 10 days of the successful initial verification tests, and leak inspections for portions of the refrigerant-containing appliance not monitored by an ALD system would begin after the date of a successful follow-up verification test.

As previously discussed in section IV.C.3.d of this preamble, EPA considers the leak inspections that are being codified at 40 CFR 84.106(g) and the requirements related to ALD systems

that are being codified at 40 CFR 84.108 to be separate. However, in certain circumstances the use of ALD systems that meet certain requirements under the 40 CFR 84.108 is a compliance option that may be used in lieu of quarterly or annual leak inspections. Further, the regulations under CAA section 608 include provisions where an owner or operator of a covered appliance with ODS refrigerants may choose to use an ALD system in place of performing regular leak inspections as part of the leak repair provisions at 40 CFR 82.157. Nothing in this final rule changes the requirements related to ALD systems under CAA section 608 for equipment containing only ODS refrigerants. In other words, an owner or operator of an appliance that uses ODS-containing refrigerants will continue to be required to meet any and all requirements under 40 CFR 82.157 for that appliance, including if they choose to use an ALD system to comply with requirements under 40 CFR 82.157.

EPA understands that for reasons other than this rule, ALD systems are already in use to a certain extent. For example, some owners or operators may already use ALD systems to serve as an early warning system for detecting and repairing leaks. Some owners or operators may choose to install ALD systems from an economic perspective as early detection and repair of leaks can avoid costs of replacing the released refrigerant and operating equipment at suboptimal levels and/or the loss of perishable products due to failure to maintain required cooling. Further, the Agency is aware of safety standards that apply when using certain HFCs and/or substitutes for HFCs that have been classified as lower flammability. Lower flammability refrigerants in this context are those that are classified by ASHRAE as A2L refrigerants.⁷⁶ UL Standard 60335–2–40 currently requires the use of leak detectors for electrical heat pumps, air conditioners and dehumidifiers containing A2L

⁷⁶ ASHRAE Standard 34–2022 assigns a safety group classification for each refrigerant which consists of two alphanumeric characters (e.g., A2 or B1). The capital letter indicates the toxicity class ("A" for lower toxicity) and the numeral denotes the flammability. ASHRAE recognizes three classifications and one subclass for refrigerant flammability. The three main flammability classifications are Class 1, for refrigerants that do not propagate a flame when tested as per the ASHRAE 34 standard, "Designation and Safety Classification of Refrigerants;" Class 2, for refrigerants of lower flammability; and Class 3, for highly flammable refrigerants, such as the hydrocarbon refrigerants. ASHRAE recently updated the safety classification matrix to include a new flammability subclass 2L, for flammability Class 2 refrigerants that burn very slowly.

refrigerants.^{77 78} Under that standard, leak detectors that detect pressure loss are required in cases where the prescribed A2L charge limit is exceeded (which is typically around four pounds for permanently installed applications). That standard also prescribes that refrigerant leak detectors be installed at the factory for applicable appliances and have factory-established set points for detection to avoid potential buildup of concentrations of flammable refrigerants.

Comment: EPA received overall support for the proposed ALD provision. One commenter stated that they strongly support any measures that will strengthen leak management practices. The commenter indicated that the greater stringency under the proposal, as compared to a similar leak repair provision in CAA section 608 and the requirements for ALD systems, will help detect leaks early and thereby mitigate environmental and financial risks associated with high-volume refrigerant leakage. The commenter also stated the ALD requirements will strengthen the State refrigerant management program requirements in California and Washington. Another commenter similarly expressed support for the provision stating that ALD systems leverage technology to mitigate leakage and strengthen refrigerant management programs. Two commenters supported EPA's efforts to implement leak detection and repair requirements through the AIM Act. One of the commenters shared that their refrigerant managers have found ALD systems useful for reducing fugitive refrigerant emissions and maximizing equipment performance and energy efficiency. Another commenter in support emphasized their shared goal to reduce leakage of HFCs and measurably reduce GHG emissions in the United States. Two commenters expressed support for the use of ALD systems for commercial refrigeration and IPR appliances with a charge size of 1,500 pounds or more of HFC-containing appliances. One of the commenters asked that EPA examine any comments from manufacturers of equipment and ALD systems to ensure compliance timelines can be met without delaying the installation of new equipment or

⁷⁷ UL. 2019. "Understanding UL 60335–2–40 Refrigerant Detector Requirements." <https://www.ul.com/insights/updated-requirements-refrigerant-detection-systems>.

⁷⁸ UL 60335–2–40, 2019. Household And Similar Electrical Appliances—Safety—Part 2–40: Particular Requirements for Electrical Heat Pumps, Air-Conditioners and Dehumidifiers. Third Edition. November 1, 2019.

implementation of ALD systems on existing equipment.

Several commenters in support of the ALD requirements discussed how the provision would provide additional benefits and/or support existing efforts for refrigerant management. One commenter stated that ALD systems align with their commitment to environmental stewardship while maintaining the highest standards of service quality. Another commenter in support of the leak repair and ALD requirements stated the provisions would minimize releases from equipment and significantly reduce costs for businesses. The commenter provided information that estimated each supermarket in the United States leaks roughly 875 pounds of HFCs per year at a rate of two parts per million (ppm) to 182 ppm, and all supermarkets in the United States leak emissions equivalent to burning 49 billion pounds of coal. As discussed in section IV.C.3, several commenters supported the ALD provisions as the provisions further apply a LRM approach to HFC management.

Conversely, one commenter stated the proposed ALD requirements are not consistent with part 82 ODS requirements, where ALD systems are a compliance option, and should be amended to align with those requirements. As further discussed in section IV.C.3.f of this preamble, another commenter asserted that the AIM Act does not confer limitless authority to EPA to impose the expansive and unnecessarily burdensome leak detection and repair requirements set forth in the proposed rule.

Response: EPA is finalizing required use of ALD systems for a specific set of IPR and commercial refrigeration appliances with a charge size of 1,500 pounds or more. The Agency acknowledges comments in support of the ALD provision and agrees with commenters on the environmental benefits, reduction of financial risks, and fugitive emissions associated with ALD requirements. EPA also agrees with commenters that the ALD provision will strengthen refrigerant management programs in States that require ALD. EPA acknowledges the analysis of the amount of emissions avoided by the ALD provision. The Agency also agrees with one commenter's statement that this provision expands on requirements that previously applied to HFCs under CAA section 608 and will provide additional benefits from reconsidering

the requirements under the AIM Act.⁷⁹ EPA acknowledges these comments and other comments in support of the provision.

The Agency acknowledges comments in support of the use of ALD in IPR and commercial refrigeration with a full charge of 1,500 pounds or greater. The applicability and charge size threshold of the provisions are discussed in further depth later in section IV.D.1. The Agency did review comments from ALD system manufacturers, per the commenter's suggestion, and has responded accordingly throughout section IV.D.

The Agency disagrees with one commenter's suggestion that the Agency realign the ALD provision with 40 CFR part 82, subpart F and leave the utilization of ALD systems solely as a compliance option. The rules in 40 CFR part 82, subpart F are based on CAA section 608 which is based on a different statutory provision. While EPA concluded that it is appropriate to align many aspects of the leak repair requirements in this rule with those under CAA section 608, for certain requirements, such as this one, the conclusion to finalize a provision that is different from the requirement under CAA section 608 is also appropriate. In the time since EPA finalized that requirement in 2016, ALD systems of many types, direct and indirect, are now more widely available and the Agency has developed a better understanding of how these various kinds of ALD systems could be used to achieve the purposes of subsection (h). As discussed previously in this section, the Agency is aware of widespread use of ALD systems used to comply with safety standards. The same or similar ALD systems can be utilized for the purposes of leak detection to support the ALD requirements. Moreover, ALD systems have been used by those seeking to monitor their systems for various reasons besides compliance with regulations ranging from meeting

⁷⁹ The commenter also indicated that the requirements that applied to certain substitute refrigerants under CAA section 608 were "vacated." While actions under CAA section 608 are outside the scope of this rulemaking, the Agency notes for purposes of clarity and to avoid confusion that as discussed in greater detail in section III.C.1., EPA issued a rule in 2020 under section 608 which rescinded the 2016 extension of the leak repair requirements to appliances using HFCs and other non-exempt substitute refrigerants (85 FR 14150, March 11, 2020). Thus, it was a rulemaking by EPA that resulted in the leak repair requirements in 40 CFR 82.157 no longer applying to appliances that use substitute refrigerants. While petitions for judicial review were filed on the 2020 rule, the case is currently in abeyance and the court has not issued any final decision nor has it vacated those requirements.

environmental stewardship goals to reducing costs of refrigerant by detecting and subsequently repairing leaks. EPA views leaky refrigerant-containing appliances with high charges as appliances where the utilization of ALD systems is particularly valuable, given that it may take some time for an owner or operator to become aware of a leak through other methods and given the amount of refrigerant that could leak from the system while a leak is undetected. The requirements in the final rule for commercial refrigeration and IPR appliances with a charge size of 1,500 pounds or greater to install and use ALD systems will help owners or operators identify leaks in such equipment earlier so that they can take corrective action to limit the release of refrigerant from the leak. Detection of leaks in equipment is a critical step in minimizing the release of HFCs from that equipment. Thus, requiring use of ALD in systems with charges of this magnitude is one way that the regulations work to achieve the purpose identified in subsection (h)(1) of minimizing releases of HFCs from equipment. Because the HFCs that remain in the equipment can later be recovered and reclaimed, this requirement also helps serve the purpose of maximizing reclamation, also identified in subsection (h)(1).

EPA addresses the comments on legal authority in section IV.C.3.f of this preamble.

Comment: Several commenters opposed the compliance dates for new appliances. One commenter expressed concerns that the 30-day timeline for installation would be unfeasible due to current inventories, supply chain constraints, and labor shortages. The commenter suggested allowing at least a one-year compliance period for systems installed within one year of publication of the final rule. Another commenter echoed the need for an additional year after publication of the final rule and stated that installation projects are often planned months to years in advance. Both commenters stated that additional time would allow for the preparation of operating procedures and training of personnel to operate and maintain equipment. One commenter stated the proposal's compliance dates were unclear and inadequate given the anticipated demand created by the rule's provisions.

Response: EPA is finalizing a compliance date of January 1, 2026, for new IPR and commercial refrigeration systems with a full charge of 1,500 pounds or greater. In the proposal, the compliance date for new appliances was tied to the final rule's publication in the

Federal Register and would have required the installation of an ALD system within 30 days of appliance installation. In the final rule the requirement for newly installed equipment will begin January 1, 2026, though EPA is retaining the requirement to install and use ALD systems within 30 days of appliance installation. The additional year should address some commenters' concerns with procurement, planning, and training of personnel. The new compliance date also allows owners or operators who may be in the process of planning an appliance installation project additional time to comply with the ALD requirements. Furthermore, the compliance dates for both new and existing systems are more clearly defined which provides owners or operators additional clarity for when they will need to install and use an ALD system.

The Agency is finalizing that an ALD system must be installed and used by January 1, 2027, if the existing refrigerant-containing appliance was installed on or after January 1, 2017, and before January 1, 2026. EPA narrowed the refrigerant-containing appliances subject to this provision to those that were installed approximately 10 years ago or less because appliances in the two categories covered in the final rule (*i.e.*, commercial refrigeration and IPR), have very long useful lifetimes. The final rule's applicability cutoff date for existing systems is set to January 1, 2017, because the Agency considers existing appliances installed within that timeframe to still have a majority of their useful life to operate. For example, IPR systems generally have a useful life of 20–25 years. Thus, an IPR system installed on January 1, 2017, might have an additional 10–15 years of life before the appliance would need to be replaced. Commercial refrigeration appliances at charge sizes at 1,500 pounds or greater have a similar useful life of about 18 years. EPA recognizes that the provision in the final rule does not have the same breadth of emissions benefits as the provision in the proposed rule, but the Agency estimates that a significant portion of existing appliances are covered by the final rule's provisions. While the Agency proposed to include all existing appliances in these categories, in this final rule, the Agency has determined to include a subset of appliances (*i.e.*, those installed since January 1, 2017) rather than all appliances and to include two of three categories of refrigerant-containing appliances (*i.e.*, IPR and commercial refrigeration) thus

narrowing the number of affected appliances. Limiting the number of affected refrigerant-containing appliances should also ease concerns pertaining to the supply of ALD systems as only approximately 44 percent of existing appliances would be subject to the ALD installation and use requirements compared to the proposal.

Comment: Various commenters shared concerns about the compliance date for existing IPR and commercial refrigeration appliances and the supply of ALD systems. One commenter claimed that the complexity of integrating new ALD systems into an existing facility's processes necessitates more than a year to develop and construct an ALD project. The commenter stated that the compliance date would result in a single, peak-demand year; thus, EPA should allow for a three-year compliance window for existing appliances. The commenter also claimed that EPA has no statutory obligation to require compliance within a shorter time period. Another commenter echoed similar concerns on technician and supply chain shortages regarding supermarket systems, stating that it would be impractical for industry to comply on time under the proposal and that compliance costs will likely be significantly higher than what EPA projects due to demand for ALD systems. The commenter stated that supermarket refrigeration systems can have 30 to 50 cases, each with an evaporator, and a large number of components which would require sensors adding to the amount of time to implement an ALD system. The commenter also stated that “off-the-shelf” ALD systems may require significant modification and thus require more time to implement. For these reasons the commenter requested the compliance date for new systems be no earlier than January 1, 2029. Another commenter suggested the compliance date for existing systems be at least two years after publication to ensure owners and operators have the needed lead time to design, procure, install, and validate ALD systems for their operations. The commenter stated that EPA may be underestimating demand in its ALD analysis and that increased demand could drive up the costs of ALD systems and slow down delivery and installation time if existing ALD manufacturers do not have the capacity to meet demand. Another commenter recommended EPA consider an exemption for commercial system operators from the proposed ALD requirements if they can prove they would transition to an ultra-low-GWP refrigerant before January 1, 2027.

Response: The Agency is finalizing a compliance timeline for existing systems later than proposed with the caveat that not all existing IPR and commercial refrigeration appliances are subject to the final rule's ALD provisions. The final rule exempts any appliance installed before January 1, 2017, from being required to install an ALD system. EPA estimates that approximately 56 percent of total existing appliances would be excluded from the ALD provision as proposed. Additionally, EPA estimates that around 25,000 existing refrigerant-containing appliances would be subject to the ALD requirements in the final rule, which is significantly lower than the number of refrigerant-containing appliances subject to the ALD provision in the proposal. Owners or operators with existing refrigerant-containing appliances subject to this provision will have over two years to install an ALD system. This change will reduce the immediate demand of ALD systems and provide additional lead time for owners or operators to procure, design, and install ALD systems for their operations. The Agency notes that commenters did not provide sufficient evidence on how the state of the ALD or technician market would affect an owner or operator's ability to install an ALD system. However, as stated previously, the changes to the compliance date and applicability should ease concerns related to market shortages. Furthermore, the additional time for existing refrigerant-containing appliances subject to the ALD requirements will reduce costs associated with the demand for ALD systems, as one commenter stated. Further discussion on the costs and benefits of the ALD provision can be found in section IV.B.2.

Regarding one commenter's statements on the implementation of ALD systems in supermarkets, the Agency disagrees that additional time beyond January 1, 2027, will be necessary. EPA understands that supermarket systems may be custom built or have additional complexities; however existing ALD systems can be applied to such systems even if they are considered to be “off-the-shelf” as the commenter describes. The commenter also did not provide specific information on how existing ALD systems would be inadequate in providing leak monitoring for their supermarket systems or why existing ALD systems would require significant modifications in order to be implemented. The Agency also disagrees that additional time would be

needed because multiple cases and components would need to have sensors, as the Agency is not prescribing the type of ALD system used by an owner or operator. To clarify, EPA is requiring an owner or operator to use either a direct or indirect ALD system to comply with the ALD requirements in this final rule. It is up to the owner or operator's discretion to decide which type of ALD system, that meets the standards described in 40 CFR 84.108, best suits their refrigerant-containing appliance. Although the Agency disagrees that either type of ALD system will be difficult to install, if the commenter finds direct ALD systems as too onerous to implement, they have the option to install an indirect ALD system to comply with the provision. Additionally, CARB's refrigerant management program has required the use of ALD for refrigeration systems above 2,000 pounds since 2011. Certain supermarket systems are captured by this regulation and have been required to use ALD for over a decade. As previously stated, EPA views the implementation of ALD for certain appliances with large charge sizes as important to serve the purposes described in subsection (h) to minimize the release of regulated substances. For these reasons, EPA disagrees with the commenter's suggested compliance date of January 1, 2029.

With respect to the comment requesting a three-year compliance timeframe for existing operations and further stating that EPA has no statutory obligation to require compliance within a shorter time frame, EPA responds that it recognizes that the AIM Act does not expressly establish a specific timeframe for when regulated entities need to comply with regulations under subsection (h)(1) of the AIM Act, leaving EPA discretion to determine what time period is appropriate in the context of the specific regulations promulgated. Congress identified three purposes for regulations under subsection (h)(1): maximizing reclamation, minimizing releases of HFCs from equipment, and ensuring the safety of technicians and consumers. Congress's use of the terms such as "maximize" and "minimize" in this context indicate that it intended for the regulations authorized under subsection (h)(1) to have a substantive and meaningful effect, taking into account the other statutory considerations such as whether the controls are appropriate. Because the compliance date could affect the amount of HFC emissions that occur from equipment or the amount of HFCs available for reclamation, these terms

inform EPA's consideration when it is determining whether to establish a later compliance date for regulations under subsection (h)(1), and if so, what compliance date is appropriate. Thus, in establishing the compliance date for the requirements to use and install ALD systems under the final rule, EPA's objective is to allow sufficient time—but not more time than is needed—to facilitate compliance and achieve the regulatory objectives. For example, if EPA were to establish an unnecessarily long compliance date for installation and operation of ALD systems, that could result in emissions for HFCs from equipment that could have been prevented through an earlier compliance date. By the same token, establishing a compliance date that does not provide sufficient time for compliance could also have a deleterious effect on the regulations' ability to achieve these purposes if the result is that entities fail to properly comply.

The Agency acknowledges one commenter's suggestion to provide a narrow exemption for owners or operators who could prove they would transition to a lower-GWP refrigerant-containing appliance. The Agency responds that it is not finalizing the exemption that the commenter describes because owners or operators who transition to a lower-GWP refrigerant are not necessarily exempt from the ALD and broader leak repair requirements in this final rule. The overarching applicability for refrigerant-containing appliances subject to these requirements in the final rule is whether or not the refrigerant-containing appliance uses an HFC or substitute for an HFC with a GWP greater than 53. For example, an owner or operator at the end of a refrigerant-containing appliance's useful life may transition to a lower-GWP refrigerant that contains an HFC or substitute with a GWP greater than 53 and would thus still be required to install and use an ALD system. In some cases, an owner or operator will transition to a refrigerant that does not contain an HFC or does not have a GWP greater than 53 (e.g., R-477) and is not required to install an ALD system.

Comment: The Agency also received general comments regarding the compliance dates for the final rule's ALD provisions. One commenter, acknowledging the need for proper leak detection, expressed concern that the proposal's timelines were too aggressive and that many of the requirements and leak detection methods needed further clarification. Another commenter who generally supported the ALD provision opposed any compliance date less than

three years from publication of the final rule, on grounds that it will take manufacturers and appliance owners considerable time to plan, procure, and install ALD systems. One commenter proposed that EPA could consider making the compliance date earlier. Another commenter asserted that technicians would need to be trained and re-certified to handle HFCs and work with ALD equipment. They claim ALD systems were not broadly used for any of the ODS-substitutes when the 40 CFR part 82 rules for HFC management under the CAA were in effect. The commenter requested EPA finalize a compliance date at least 180 days after publication of the final rule.

Another commenter claimed the proposed rule's compliance dates were impractical for large aviation and defense manufacturers. The commenter stated that manufacturing military, aerospace, and space end-use products is often subject to significant oversight or control by other Federal entities such as the U.S. Department of Defense and the FAA, which can include scrutiny of manufacturing processes. Further, the commenter claimed that some refrigerant-containing appliances used for IPR are uniquely designed and may not be compatible with "off-the-shelf ALD" systems; thus, engineering design modifications or re-engineering could be necessary to ensure functionality of both the IPR equipment and the ALD system. The commenter requested EPA extend the compliance deadlines until 2027 for these reasons and also stated that the extension would be consistent with EPA's extension of the IPR transition date in the 2023 Technology Transitions final rule.

Response: The Agency is finalizing a new compliance date for new and existing refrigerant-containing appliances subject to the ALD provisions. New IPR and commercial refrigeration appliances that contain an HFC or HFC substitute with a GWP greater than 53 are required to install and use an ALD system starting January 1, 2026. EPA expects that the installation of an ALD system will be a part of the overall refrigerant-containing appliance installation; however, owners or operators have 30 days after the installation of a refrigerant-containing appliance to install and use an ALD system. For existing refrigerant-containing appliances installed on or after January 1, 2017, owners or operators are required to install and use an ALD system by January 1, 2027. The changes to the compliance date should address commenter's concerns and requests for additional time (e.g., 180 days, two years). The Agency has also

provided more information on the leak detection requirements in this section and additional clarity on direct and indirect ALD systems in section IV.D.1, as requested by one commenter. EPA disagrees that the compliance timeline should be extended to at least three years after the final rule's publication. Both new and existing IPR and commercial refrigeration appliances have been given additional time to comply with the ALD requirements which will allow owners or operators the necessary time to plan, procure, and install an ALD system. Further, the applicability for existing IPR and commercial refrigeration appliances has been changed to ensure the supply of ALD systems is available and further facilitate compliance with the requirements. Existing IPR and commercial refrigeration appliances have over two years to install an ALD system. Furthermore, the Agency is not merging the overall compliance dates for the ALD requirements because new IPR and commercial refrigeration appliances will be able to readily integrate ALD systems. As previously stated, EPA views the ALD requirements for certain appliances with large charge sizes as important to serve the purposes described in subsection (h) to minimize the release of regulated substances. For these reasons, EPA finds the compliance dates in this final rule to be appropriate and disagree with the commenter's request for three years to comply with these requirements.

EPA acknowledges one commenter's proposition that the Agency could hasten the compliance date for existing equipment. However, EPA is not finalizing an earlier compliance date. The Agency does not agree that an earlier date can be met by all regulated entities for many of the reasons stated throughout this section and offered by other commenters. However, a regulated entity could choose to install an ALD system ahead of the compliance date, and there may be a variety of benefits to the regulated entity in doing so, including reduced refrigerant emissions and associated costs.

The Agency responds to one commenter's points that ALD systems were not broadly used for any of the ODS-substitutes when the part 82, subpart F rules for HFC management were in effect. The State of California has mandated the use of ALD for HFC-containing appliances with a charge size above 2,000 pounds since 2011. The commenter's insinuation that ALD use has historically been minimal is not accurate. Moreover, ALD systems have been used for those seeking to monitor their systems for various reasons besides

compliance with regulations ranging from meeting environmental stewardship goals to reducing costs of refrigerant by detecting and subsequently repairing leaks. EPA also disagrees with the commenter's assertion that technicians need training and re-certification to handle ALD systems. To the extent that this comment relates to technician certification requirements under CAA section 608, the Agency did not reopen CAA section 608 regulations through this action under subsection (h) of the AIM Act, including the technician certification requirements. Accordingly, the Agency is not addressing comments related to requirements under CAA section 608 in this final rule, as they are beyond the scope of this rulemaking and require no further response. For purposes of public information, the Agency notes that it periodically updates its test bank of questions to become a certified technician under CAA section 608 to reflect regulatory and market changes. The Agency took advanced comments on technician certification. The information the Agency received may be used to inform a future rulemaking. The Agency notes that CAA section 608 technician certification is not intended to replace all technician education and training and anticipates that the same would be true for any future AIM Act certification program. The Agency understands that employers may provide additional onsite training and that industry organizations provide information on regulatory updates and market changes.

EPA recognizes that other Federal agencies have various roles and responsibilities defined by different statutes. The Agency disagrees, however, that the ALD provisions being finalized in this action will spur significant oversight and scrutiny, as one commenter asserted. The final rule requires a specific portion of IPR and commercial refrigeration appliances (*i.e.*, with charge sizes of 1,500 pounds or more) to install and use ALD systems. These appliances may be used by the military (*e.g.*, commissary) or at airports, for example, but these uses are not functionally different from the uses of other appliances in these same subsectors at other locations.⁸⁰ The Agency's longstanding CAA section 608 regulations already includes leak repair requirements for the same equipment. The Agency acknowledges that subsection (h)(3) of the AIM Act

provides that EPA "may coordinate" with certain other EPA regulations that involve "the same or a similar practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment" or reclaiming, and EPA has coordinated many aspects of this final rule. The commenter also asserted that moving the compliance date to 2027 would align the ALD requirements in the final rule with the IPR transition in the 2023 Technology Transitions Rule. EPA has extended the compliance date to January 1, 2027, for existing refrigerant-containing appliances but clarifies that the decision was not based on an alignment with the 2023 Technology Transitions Rule. The Agency finds such an alignment in this instance to be unfounded. The 2023 Technology Transitions Rule covers new equipment and setting GWP limits. This provision under subsection (h)(1) is focused on the management of HFCs and in this case in refrigerant-containing appliances.

1. Automatic Leak Detection Requirements

In the final rule, refrigerant-containing appliances in the commercial refrigeration and IPR subsectors with a charge size of 1,500 pounds or more with a refrigerant that contains an HFC or a substitute for an HFC that has a GWP above 53 are required to use ALD systems. The refrigerants covered are the same as for the leak repair provisions, but the full charge size cutoff for using ALD systems (*i.e.*, 1,500 pounds) is greater than that of the other leak repair provisions in this rulemaking (*i.e.*, 15 pounds). EPA acknowledges that using ALD systems for refrigerant-containing appliances that have lower refrigerant charge sizes (*i.e.*, below 1,500 pounds) may be an option an owner or operator could take so they are alerted to leaks sooner. Additionally, owners or operators may choose to install and use ALD systems in lieu of quarterly and annual leak inspections as previously discussed in section IV.C.3.d. As discussed in the proposal, EPA considered several potential options of the threshold for requiring ALD systems (*e.g.*, 15 pounds, 50 pounds, 500 pounds) and other thresholds used internationally and by certain States (*i.e.*, California and Washington). However, EPA is not requiring use of ALD systems for refrigerant-containing appliances with less than 1,500 pounds. As discussed later in this section, EPA also considered the supply of ALD systems when determining the applicability of appliances because adequate supply of

⁸⁰ The Agency has provided exceptions for military equipment used in deployable and expeditionary applications, as well as space vehicles.

ALD systems is required to facilitate compliance with this provision. Larger refrigeration appliances have potential to leak greater amounts of refrigerant, such that owners or operators use of an ALD system to quickly detect leaks further supports the statutory purposes in subsection (h) of minimizing releases of HFCs from equipment and maximize the amount of HFC that is available for reclaiming. Moreover, EPA understands that owners or operators of appliances with larger charge sizes (*i.e.*, at or above 1,500 pounds) may be more likely to have in place refrigerant management plans, routine equipment inspections, or other formal or even informal mechanisms aimed at reducing refrigerant losses for which ALD will provide additional support.

Comment: The Agency received many comments in support of the charge size threshold. One commenter expressed support for the proposed threshold given the cost burden associated with the installation of some ALD systems. Another commenter expressed support for the charge size threshold and stated that the requirements will help reduce emissions from large appliances at greater risk of leaks. One commenter in support of the provision stated that ALD systems are widely available and quickly becoming best practice for leak reduction, even for smaller systems.

Conversely, one commenter stated that EPA should change the charge size threshold to 2,000 pounds or more and asserted that the proposed ALD installation requirements would be unduly burdensome for retailers with large refrigeration systems, particularly in the retail food sector. The commenter stated that significant costs would be imposed because of equipment costs and technician fees. One commenter suggested the Agency lower the ALD charge size threshold to 100 pounds per refrigerant circuit. Alternatively, the commenter suggested the ALD provision may be better suited if it was based on annual leak rates instead of charge size. For example, if an owner or operator had equipment designed to contain more than 250 pounds of refrigerant that had leaked more than 20 percent for two years, ALD would be required to be installed within six months. This would target problematic systems and avoid unnecessary added cost for non-leaky systems. Another commenter felt the inclusion of ALD for systems at or above 1,500 pounds was superfluous because the flammability of certain refrigerants below a GWP of 150 at high charge sizes would already necessitate ALD to comply with building safety codes. The commenter suggested that EPA defer to State and local building codes and make

adjustments to determine if the requirement is necessary.

Another commenter provided a case study of a leak survey on a university campus analyzing appliances with a charge size at or below 50 pounds. The commenter maintained that small-to-medium-sized appliances contributed an unexpectedly large portion of their refrigerant emissions and that without a lower ALD charge size threshold, facility managers would likely not allocate sufficient resources to reducing leaks from smaller equipment. The commenter stated that ALD systems are commercially available for medium-sized cooling appliances that have a charge size much lower than 1,500 pounds.

Response: The Agency is finalizing the ALD charge size threshold of 1,500 pounds for IPR and commercial refrigeration appliances that contain an HFC or HFC substitute above a GWP of 53. The 1,500-pounds threshold applies to a large group of commercial refrigeration and IPR appliances that have a high potential to leak large amounts of refrigerant. EPA considered various options in the proposal and informed by the comments finds the 1,500-pound charge size threshold to be appropriate. The Agency acknowledges numerous comments in support of the provision.

The Agency disagrees with the comment that the ALD charge size threshold will be overly burdensome for supermarket refrigeration systems. Supermarket systems will uniquely benefit from the inclusion of ALD as a large majority of supermarkets utilize commercial refrigeration appliances with a charge size at or above 1,500 pounds and that, as this commenter noted and is discussed in section IV.C.3.b, have a high average leak rate of 25 percent.⁸¹ Early identification and repair of leaks may save owners and operators money on the costs of refrigerant, which would have otherwise been lost until an owner or operator noticed a decline in performance and added refrigerant. Early detection of refrigerant leaks may also lead to some other savings that are not accounted for in the analysis presented in the Economic Impact and Benefits TSD, such as prolonged life of equipment and reduced spoilage of food or other temperature-sensitive items contained in or processed by refrigerant-containing appliances. EPA notes that the commenter did not provide adequate

data to suggest that the retail food industry would be significantly burdened by the provision. EPA recognizes that there are compliance costs and benefits associated with the ALD provision, including from detecting and repairing leaks early. EPA also acknowledges that supermarkets are moving to smaller charge sizes. By including only appliances installed on or after January 1, 2017, the Agency is finalizing an approach that excludes refrigerant-containing appliances that are closer to said appliance's EOL, providing owners or operators additional flexibility. EPA also disagrees with one commenter's suggestion to require ALD based on high annual leak rates. The commenter claims that this would accurately target leak-prone appliances and reduce the burden on non-leaky equipment. EPA disagrees that this approach would function better than the final rule's inclusion of IPR and commercial refrigeration appliances with a charge size at or above 1,500 pounds. The commenter's approach is an interesting alternative that would use a triggering event to denote which appliances are to be subject to the requirements. However, as mentioned in the response to comments on the supermarket sector, the referenced 25 percent average leak rate would mean on average the supermarket sector typically would exceed the triggering event suggested by this commenter. While a triggering event could be considered in the future, in particular if EPA were to consider subsectors with lower typical charge sizes, in this instance EPA did not receive sufficient information to support this approach.

The Agency also disagrees with one commenter's assertion that the inclusion of ALD is unnecessary due to the State and local building codes requiring ALD for flammable refrigerants. If there are State and local requirements to install ALD systems that will detect refrigerant emissions, these requirements are complementary to EPA's intent. However, these State or local requirements do not supplant the Agency's requirements or their intent. Many appliances not using a flammable refrigerant will be affected by the final rule's ALD provisions, but the requirements are applicable to all refrigerants, not just the flammable refrigerants. Furthermore, the Agency has previously acknowledged that UL Standards for A2L refrigerants requires the use of leak detection elsewhere in this section. The standards related to A2L refrigerants and State and local building codes do not nullify the authority of EPA to regulate the use of

⁸¹ See comment ID EPA-HQ-OAR-2022-0606-0138 in the docket for this rulemaking, available at <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0606-0138>.

ALD systems to minimize the release of regulated substances.

With regard to the commenter that advocated for the use of ALD of medium-sized appliances because of their findings of substantial leaks from small and medium-sized appliances on a university campus, the Agency recognizes that smaller systems under 1,500 pounds may still be prone to leaks and thus the Agency is also finalizing the separate leak repair requirements for refrigerant-containing appliances with 15 pounds or more of refrigerant. EPA agrees with the two commenters who stated that ALD systems are commercially available for medium-sized appliances and are becoming the best practice for refrigerant management. While EPA is not finalizing a lower threshold at this time, EPA may consider a lower charge size threshold in a future notice-and-comment rulemaking. The Agency encourages consideration of using ALD systems by the owners and operators of refrigerant-containing appliances with charge sizes of less than 1,500 pounds of refrigerant.

Comment: EPA received several comments regarding the applicability of the proposed ALD provision. Two commenters suggested adding comfort cooling. One of the commenters specifically asked the Agency to consider including all new and existing RACHP appliances, IPR, commercial refrigeration, and comfort cooling systems with charge sizes at or above 200 pounds. The commenter stated that 200 pounds was a point of inflection for proposed GWP limits under the 2023 Technology Transitions Rule and would promote an enhanced approach over European Union standards, expediting emissions reductions in the heating, ventilation, air conditioning, and refrigeration (HVACR) industry. The commenter also expressed concerns that the 1,500-pound threshold may incentivize design modifications aimed at installing appliances that are exempt from the ALD requirements. They further asserted that owners or operators may install multiple smaller appliances with lower charge sizes. Another commenter similarly claimed that the rule's charge size threshold and applicability of appliances would exempt a high percentage of commercial facilities from the ALD requirements and undermine the intent of the rule. The commenter suggested that EPA could consider the total cumulative mass of refrigerant being used by commercial refrigeration and IPR appliances at a facility location, rather than the mass of refrigerant being used by individual appliances. Alternatively,

the commenter suggested EPA could lower the charge size threshold to 1,000 pounds per facility and lower the threshold to 500 pounds of refrigerant in an individual appliance.

Response: EPA is finalizing as proposed that the ALD requirements only apply to IPR and commercial refrigeration appliances with a charge size of 1,500 pounds or more. EPA considered and is not establishing requiring ALD systems for all refrigerant-containing appliances above a certain charge size. Instead, after considering the opportunities to reduce leaks and thus minimize emissions, EPA decided to limit this requirement to commercial refrigeration and IPR appliances. EPA is not establishing requirements for using ALD systems for appliances used for comfort cooling. The Agency understands that refrigerant-containing appliances used for comfort cooling typically do not leak to the same degree as appliances in the commercial refrigeration and IPR subsectors. Medium (charge size of 200 to 2,000 pounds of refrigerant) and large (charge size 2,000 pounds or greater of refrigerant) comfort cooling appliances average annual leak rates of around 10 percent, while medium and large commercial refrigeration and IPR appliances have average leak rates that are around two to three times greater.⁸² This is consistent with EPA's requirements for leak inspections, such that appliances used for comfort cooling would not have more frequent required leak inspections as a part of the leak repair provisions (see section IV.C.3.d). EPA previously acknowledged in the 2016 CAA section 608 Rule (81 FR 82272, November 16, 2016) that larger commercial refrigeration and IPR appliances tend to have larger annual average leak rates than comfort cooling appliances. Further, larger commercial refrigeration and IPR appliances would have a greater amount of refrigerant lost compared to comfort cooling appliances even if the leak rates were the same since these larger appliances typically have significantly larger refrigerant charge sizes. Thus, the primary benefit of early leak detection from an ALD system would not be as useful for appliances solely used for comfort cooling. However, if an appliance has a dual function (e.g., IPR and comfort cooling), an ALD system would be required. For example, if the refrigerant coming off the evaporator in an industrial process were cool enough, it could be directed towards co-located

offices or break rooms to provide air conditioning, before being routed back to the compressor(s). Such a system would provide both IPR and comfort cooling, and for purposes of this rule, an ALD system would be required.

Similarly, EPA disagrees with one commenter's suggestion to include all RACHP refrigerant-containing appliances with a charge size above 200 pounds. As discussed previously in this section, the Agency has changed the applicability of existing IPR and commercial refrigeration appliances to ensure the supply of ALD systems can meet the demand created by this final rule's requirements. Lowering the charge size threshold to 200 pounds (or any other threshold below 1,500 pounds) may create additional market disruptions and hamper the uptake of ALD systems for larger IPR and commercial refrigeration appliances, which this rule is specifically capturing, and thus diminish the potential emissions reductions for larger refrigerant-containing appliances. While the Agency encourages the use of ALD systems at any charge size, EPA does not intend to require such installation in this rulemaking. The Agency may reconsider the applicability of certain refrigerant-containing appliances at a specific charge size in a future notice-and-comment rulemaking.

EPA responds to the commenter's scenario that owners or operators may circumvent the final rule's ALD provision by installing multiple smaller appliances. The Agency acknowledges it is possible that refrigerant-containing appliances that previously used 1,500 or more pounds of refrigerant could be designed to use 1,450 or less pounds of refrigerant. While EPA maintains its authority to take action if an entity violates this final rule's provisions, redesigning refrigerant-containing appliances to use less refrigerant does not violate the rule's requirements; it is instead a means to avoid becoming subject to the current requirements for the installation and use of ALD systems. Furthermore, using less refrigerant will also result in minimizing emissions, so if an owner or operator is able to install or redesign a refrigerant-containing appliance to use less refrigerant that will serve the purposes described in subsection (h)(1) to minimize the release of refrigerants from equipment. The Agency disagrees with the request to consider the total cumulative mass of refrigerants at a facility location, as suggested by the commenter, as such an approach may further complicate the ALD provision and implicate systems that are below the 1,500-pound charge size threshold. As previously stated, the

⁸² Average annual leak rates by appliance type and charge size are provided in the Economic Impact and Benefits TSD.

Agency is concerned with ensuring that the supply of ALD systems can meet the demand for ALD systems. The Agency did not propose and is not finalizing the charge size threshold to operate in the manner suggested by the commenter.

As a consideration in setting the threshold, EPA accounted for the extent to which ALD systems may already be in use and the types of equipment to which they are marketed. For example, many larger refrigeration appliances (e.g., a charge size of 1,500 to 2,000 pounds or more) may already use ALD systems per certain State requirements or to reduce negative economic impacts associated with replacing leaking refrigerant. EPA also considered the availability of ALD systems for refrigeration appliances in the United States. In the TSD titled *American Innovation and Manufacturing Act of 2020—Subsection (h): Automatic Leak Detection Systems* in the docket for this rulemaking, EPA assessed the market presence and number of manufacturers of ALD systems that sell to the U.S. market. EPA notes that most manufacturers make direct ALD systems, while indirect ALD systems are newer technologies on the market.⁸³ Since ALD systems have generally only been required for larger refrigeration appliances per certain State requirements, or are likely used in refrigeration appliances with larger charge sizes to avoid potential economic burden associated with replacing refrigerant that has leaked, EPA anticipates that the current market presence of ALD system manufacturing is generally aligned to demand for ALD systems for larger IPR and commercial refrigeration appliances. The threshold and the change in compliance dates and applicability for this provision, accounts for the potential increase in demand for ALD systems, where manufacturers of such systems might not be prepared for increased demand if EPA were to finalize a lower charge size, opening the requirement for ALD systems to a larger inventory of refrigeration appliances. Taking into account existing and pending State requirements, the 2023 Technology Transitions Rule, and a likely degree of voluntary adoption of ALD systems, EPA estimates that the requirement will impact approximately 25,000 appliances between 2025 and 2027, and an average of 150 refrigerant-containing appliances per year in subsequent years. The Agency has

provided these updated estimates, which differ from those in the proposal (i.e., 50,000 appliances over the year 2025 and 6,500 for subsequent years) because EPA has adjusted the applicability of existing appliances as discussed in section IV.D and in consideration that the 2023 Technology Transitions Rule has been promulgated. The updated estimates also account for new IPR and commercial refrigeration appliances transitioning to refrigerants that do not contain an HFC or substitute for an HFC with a GWP greater than 53. In response to the 2023 Technology Transitions Rule, EPA anticipates that many IPR and commercial refrigeration appliances will transition to alternatives with a GWP less than or equal to 53 and thus those refrigerant-containing appliances will not be subject to the ALD requirements described in this section. EPA has identified 17 manufacturers of ALD systems in the United States. There are 14 manufacturers making direct ALD systems and four manufacturers making indirect ALD systems (one manufacturer was identified as making both types of ALD systems). The majority of installed systems are likely direct ALD systems. EPA estimates that one of the largest manufacturers of direct ALD in the United States makes between 6,500 and 7,000 direct ALD systems per year. For additional information and details on the estimated emissions reductions and costs related to ALD systems, see the Economic Impact and Benefits TSD available in the docket for this action.

Comment: The Agency received several comments concerned with the supply of ALD systems. A few commenters stated there would be serious challenges to obtaining enough ALD systems within the proposal's compliance timeline. Commenters cited inadequate lead times to procure ALD systems and supply chain issues. One commenter claimed that they have been notified by manufacturers and suppliers of the need for extended lead times when ordering new equipment as all parts of the supply chain are facing challenges, such as manufacturing, delivery, and installation. Another commenter stated there are existing methods and technologies for leak detection in outdoor areas that would serve as suitable alternatives to an ALD system, considering the challenges of the proposal's timeline. One commenter claimed that the manufacturing capacity for both direct and indirect ALD systems would likely make industry unable to meet the demand during the one year allotted for existing systems under the proposal. They requested that

EPA conduct a more thorough analysis of the capabilities and capacities of ALD system manufacturers to meet the one-year peak demand caused by the proposal. The commenter also requested that EPA consider the feasibility and cost of its proposal based on that information before finalizing.

One commenter, an ALD manufacturer requested that EPA extend the compliance timeline for the installation of ALD to two years based on their understanding of the ALD market and manufacturers' ability to meet demand. The commenter stated that in point detection systems, each point can be considered as an individual system, which is likely why EPA projects a need for 50,000 systems within the first year. However, the commenter claimed, in an aspirated low-level detection setup, a facility may have 16 zones with multiple sampling points in each zone all incorporated into one system. For this reason, the commenter expected market demand for low-level aspirated systems (which the commenter suggested will serve as primary direct detection technology used to meet AIM Act requirements) to be approximately 3,100 units annually. The commenter claims that they are the only ALD manufacturer with existing production volume levels demonstrating the capability of meeting demand of this magnitude.

Lastly, one commenter stated that indirect ALD systems, which they manufacture, can be deployed across thousands of sites more quickly and cost-effectively than solutions that require onsite hardware and site visits, in addition to providing industry more flexibility. The commenter also explained that the largest bottleneck for the implementation of indirect ALD systems are corporate IT security processes, which can take weeks to months. Once the IT approvals are completed, the installation of indirect ALD is prompt. The commenter is confident that they, and other ALD manufacturers identified by EPA, have the ability to meet the large surge in ALD system deployments that would be required under the proposed rule.

Response: In the final rule, EPA has extended the compliance date of new applicable refrigerant-containing appliances to January 1, 2026, has changed the applicability of existing IPR and commercial refrigeration appliances to those installed on or after January 1, 2027, and has extended the compliance date to 2027. For new refrigerant-containing appliances subject to this provision, the Agency has provided an additional year to install an ALD system. Existing refrigerant-containing

⁸³ EPA describes each type (i.e., direct and indirect) of ALD system later in this section and in detail in the TSD titled *American Innovation and Manufacturing Act of 2020—Subsection (h): Automatic Leak Detection Systems* available in the docket for this final rule.

appliances subject to this provision have more than two years to install an ALD system. With these changes the Agency estimates that approximately 25,000 refrigerant-containing appliances will be required to install and use an ALD system between 2025 and 2027, which will greatly reduce the demand for such systems, limit potential supply chain issues, and further limit demand-related costs increases. EPA has provided owners or operators with additional time to plan, procure, and install an ALD system that meets the requirements described in 40 CFR 84.108, even when considering lead times that may be associated with ordering ALD systems. Additionally, as reflected in comments from ALD manufacturers, the supply of ALD systems is adequate to meet the demand for ALD systems caused by this final rule's provision. The Agency has also provided additional time, as one of the manufacturers requested, to ensure the ALD suppliers can manufacture and supply ALD systems to owners and operators subject to the ALD installation and use requirements. The additional time will also provide owners or operators time to work through corporate IT processes so they can quickly implement indirect ALD systems. For these reasons, the Agency disagrees with one commenter's perspective that ALD manufacturers would not be able to meet the demand for ALD systems. EPA with additional consideration, informed by comments finds the supply of ALD systems to be adequate to meet the compliance dates established in this final rule.

The Agency disagrees with one commenter's claim that there are existing methods and technologies for detecting leaks in outdoor areas which are suitable alternatives to ALD. The commenter did not provide any additional information on what these methods or technologies would include, nor did they specify how such technologies would continuously monitor refrigerant-containing appliances. The Agency is aware that direct ALD systems cannot detect refrigerant outdoors; however, the final rule specifically requires the use of direct ALD systems to monitor leak-prone components within an enclosed space. Furthermore, leak inspections following a successful follow-up verification test are required for all portions of an appliance not monitored by a direct ALD system. Additionally, indirect ALD systems are capable of monitoring the entire refrigerant-containing appliance. For these reasons, EPA disagrees with the commenter's

views that there are available techniques or technology that can supplant the need for ALD systems.

Direct refrigerant leak detection systems are fixed hardware that continuously monitor the concentration of refrigerants in the air. Continuous monitoring of a refrigerant-containing appliance can also include direct ALD systems, which directly monitor said appliance through cycling. For direct ALD systems, it is essential that gas sensors be located at all leak-prone components of a refrigeration system; otherwise, some leaks may go undetected. The benefits of direct ALD systems include being able to pinpoint the location and severity of a leak. Direct ALD systems are commissioned to send an "alarm" to maintenance and/or operations staff if the programmed leak level threshold is exceeded. EPA is not establishing a definition of direct ALD systems in this rulemaking and clarifies that any direct ALD system which meets the criteria described in 40 CFR 84.108(f)(1)(2)(3) (e.g., accurately detects a concentration of 10 ppm of vapor) is acceptable to use. Some types of acceptable direct ALD systems include but are not limited to:

- Point gas detection systems;
- Aspirated (or pumped) detection systems.

EPA is requiring owners or operators using direct ALD systems to comply with the provisions to detect and repair refrigerant leaks in appliances. Leak detection sensors must be capable of accurately detecting a concentration level of 10 ppm of the vapor of the specified refrigerant and must alert an owner/operator if refrigerant concentrations exceed 100 ppm. As discussed in the proposal, the technical feasibility of the 100 ppm threshold is well established. This has been the threshold used by CARB and is also the standard in provisions at 40 CFR 82.157(g)(4)(i) for ALD systems that are used as a compliance option in lieu of quarterly or annual leak inspections, as part of the leak repair requirements under CAA section 608. If a leak is detected above the 100 ppm threshold, the owner or operator is required to either perform a leak rate calculation to determine if the leak rate threshold has been exceeded, or alternatively they may preemptively repair the leak before adding refrigerant and calculating the leak rate. In order to calculate the leak rate, EPA refers the reader to section IV.C.3.a of this preamble. EPA is requiring that a leak rate calculation must be performed within 30 days (or 120 days where an industrial process shutdown is necessary) of the alarm where a direct ALD system is used for

required equipment. If the calculated leak rate is above the applicable leak rate, as discussed in section IV.C.3.a of this preamble, all of the leak repair requirements in this action (including the repair requirements, inspections, verification tests, and recordkeeping and reporting) will apply.

Alternatively, if the owner or operator chooses to preemptively repair the detected leak, a leak rate calculation must be performed after the preemptive repair; however, the leak rate calculation must still be performed within 30 days (or 120 days where an industrial process shutdown is necessary) of the alarm where a direct ALD system is used for applicable appliances, and accordingly the preemptive repair will also need to occur in that time frame. If the leak rate calculation (performed after the addition of refrigerant pursuant to the follow-up verification test) conducted after the preemptive repair reveals that the appliance had leaked above the applicable leak threshold, the suite of leak repair requirements would apply. The preemptive repair actions can be considered in determining whether the suite of leak repair requirements triggered by the exceedance of the applicable leak threshold have been satisfied, but the owner or operator of the appliance must still ensure that the leaks are repaired according to the definition of repair and that the other requirements in 40 CFR 84.106 (e.g., initial and follow-up verification tests, leak inspections (where applicable), and related recordkeeping) had been met. By allowing a leak detected by an ALD system to be preemptively repaired before the addition of refrigerant and calculation of the leak rate, EPA anticipates this will avoid requiring owners and operators to add refrigerant to a system with a known leak, thereby saving the cost of refrigerant that might subsequently leak prior to the repair, as well as prevent unnecessary emissions of refrigerant. Additionally, preemptive repair of leaks allows owners or operators to have a "head start" on repairing leaks if it is later found that the applicable leak rate threshold has been exceeded when the leak rate calculation is performed.

Comment: EPA received several comments on direct ALD systems. One commenter expressed concern with the proposed language, "for direct ALD systems, it is essential that gas sensors are located at all leak-prone components of a refrigeration system." The commenter views this framing as providing too much flexibility that could lead to unintended outcomes (i.e., ineffective implementation of ALD that

does not lower refrigerant leak rates as desired). The commenter claimed that in California, many facilities mount single-point (passive diffusion) gas detectors on the wall of the mechanical room to comply with CARB regulations. The commenter stated that this method is technically compliant with ALD requirements but is only partially effective at detecting leaks in the mechanical room (due to its distance from most refrigeration components in the mechanical room), and it is completely ineffective at detecting leaks in other parts of the facility outside of the mechanical room. The commenter recommended adding clarifying language to ensure that gas sensors are located within six feet of all leak-prone components of a refrigeration system. The commenter also recommended defining “leak-prone components of a refrigeration system” as “all components of a refrigeration system that contain liquid or gas except for straight runs of piping, inclusive of compressors, evaporators, valves, condensers, headers, receivers, oil separators, oil traps, accumulators, other pressure vessels, etc.”

Another commenter provided information on the applications of different types of direct ALD systems in the HVACR industry. The commenter stated that point detectors serve a primary purpose of enabling compliance with operational safety guidelines for personnel. The commenter asserted that the devices are typically wall-mounted within an occupied space, and sometimes cannot detect a leak due to dilution and air exchange in the greater space which can cause the room to remain below the 500–900 ppm alarm level set for personnel safety. For these reasons, the commenter stated that these detection systems are used for occupant safety and not as a targeted solution for emissions reduction. The commenter also claimed that the proposed rule could be read to preclude aspirated detection systems (e.g., requiring “continuous” monitoring and placement of the “sensor”). Therefore, the commenter proposed modifying the language to replace “continuously monitor” with “actively monitoring.” Alternatively, the commenter proposed that “continuously monitor” could be defined to include devices that actively or directly monitor via cycling. The commenter stated that without one of these edits, the proposed rule would not allow for low-level leak detection equipment that is designed to identify leaks for environmental purposes and requires an established cycle time to sample multiple points, rather than

“continuously monitor” one specific point. The commenter also suggested that EPA remove “condenser” from its examples of what components a direct ALD system should monitor.

Response: EPA acknowledges commenters’ concerns with the implementation of direct ALD systems. EPA disagrees that the description of ALD in the preamble provides too much flexibility to owners or operators which will result in ineffective leak detection. The Agency clarifies that direct ALD sensors must be placed on or near leak-prone components (e.g., compressor, evaporator, condenser) or along points of the entire refrigerant circuit if it is entirely enclosed within a building or structure. EPA is not specifying a set distance for gas sensors as the commenter suggests but strongly encourages owners or operators to install gas sensors as close to components as possible. EPA agrees that a single, wall-mounted point detection system in a mechanical room is ineffective at detecting leaks. The Agency reiterates that direct ALD gas sensors will need to be placed on or near leak-prone components so that an appliance is adequately monitored for leaks. EPA is not prescribing a set number of sensors because the refrigerant-containing appliances subject to these requirements are varied in design; however, the Agency clarifies that multiple gas sensors may be required to meet the standards for direct ALD systems. The Agency is not finalizing the commenter’s proposed definition of “leak-prone components of a refrigeration system” because the Agency has already finalized a definition for component: “as it relates to a refrigerant-containing appliance, means a part of the refrigerant circuit within an appliance including, but not limited to, compressors, condensers, evaporators, receivers, and all of its connections and subassemblies.” The leak-prone components where gas sensors are to be placed for direct ALD systems fall under that definition. The Agency agrees that direct ALD systems are not effective for portions of an appliance that are outside of an enclosed space; however, for portions that are located within an enclosed space that have a high chance for leakage EPA finds it appropriate to use direct ALD systems. When a leak is detected and a refrigerant-containing appliance is found to be above the applicable leak rate, an owner or operator is required to inspect all portions of a refrigerant-containing appliance not monitored by an ALD system as discussed in section IV.C.3.d.

In response to one commenter’s request to modify the description of direct ALD systems in the rule, EPA has provided additional detail on what types of direct ALD systems are acceptable to use. As discussed in this preamble, the Agency is not establishing a definition of direct ALD systems in this rule; however, EPA clarifies that any direct ALD systems that meet the criteria described in 40 CFR 84.108(f)(1)(2)(3) are acceptable to use for the purposes of leak detection. This includes the use of point detection systems, aspirated detection systems, or any other existing or future direct ALD technologies that can accurately detect a concentration level of 10 ppm of vapor of the specific refrigerant(s) used in an appliance, alerts the owner or operator of when a refrigerant concentration of 100 ppm is reached, and is able to have sensors or intakes that continuously monitor the refrigerant concentrations in air in proximity to leak-prone components. EPA is not changing the term “continuously monitoring” however the Agency further clarifies that the term does not preclude the use of direct ALD systems that actively or directly monitor an appliance via zonal cycling. EPA views direct ALD systems that actively monitor portions of a refrigerant-containing appliance as falling under the term “continuously monitor.” EPA disagrees with the commenter’s claims that point detection systems cannot adequately provide leak detection monitoring for the purposes of leak reduction. While it is true that point detection systems are utilized to comply with occupational safety standards, point detection systems that meet the standards of the final rule are also able to provide adequate leak detection and monitoring for a refrigerant-containing appliance. EPA reiterates that a single, wall-mounted point detection sensor would not provide adequate coverage for an appliance; thus, multiple sensors are needed to cover leak-prone components on an appliance. EPA is also not preventing the use of any direct ALD system that meets the rule’s standards because the Agency does not want to further limit the supply of direct ALD systems for owners or operators. The Agency’s standards for direct ALD serve the purpose of minimizing the release of refrigerants from appliances while also providing enough flexibility in direct ALD technologies so that owners or operators are able to comply with the rule’s ALD provision within the provision’s compliance timeframe.

Comment: The Agency received numerous comments on the alarm

threshold for direct ALD systems. The majority of commenters requested EPA that reconsider the proposed 100 ppm threshold and finalize at a lower threshold, either 50 ppm or 10 ppm. One commenter suggested using a <10 ppm threshold to achieve full emissions reduction potential. The commenter cited their report on refrigerant leaks at major supermarket stores demonstrating that many commercial refrigeration leaks are under 10 ppm. Of all the leaks the commenter detected across dozens of stores, less than 5 percent were at a concentration greater than 100 ppm, however, 29 percent ranged from 10-to-100 ppm on the sales floor. The remaining 67 percent of leaks were found to have concentrations less than 10 ppm. Thus, the commenter advocated that EPA use an alarm threshold lower than 10 ppm because small concentrations of refrigerant can be indicative of large leaks within an appliance. Another commenter recommended the alarm threshold be lowered to 10 ppm because of improvements in sensor technology. Finally, one commenter stated the 100 ppm threshold may need to be lowered if EPA is seeking ALD from flanges in a central location. The commenter further suggested that EPA consult with CARB or others to verify the efficacy of the 100 ppm threshold.

One commenter recommended an alarm threshold of 50 ppm for direct ALD systems while maintaining an accurate detection down to 10 ppm of the vapor of the specified refrigerant because small leaks under 100 ppm can result in substantial or complete loss of a refrigeration system over time. The commenter stated that aspirated ALD systems can detect refrigerant vapor at a resolution of 1 ppm and are capable of alerting an owner or operator at an alarm threshold of 10 or 25 ppm. However, the commenter suggested that a 50 ppm alarm threshold would be more appropriate because small leaks could be more readily detected and reduce nuisance alarms that may happen more frequently at lower alarm thresholds. The commenter clarified that nuisance alarms are not the result of noise rather they occur because the aspirated ALD systems can detect leaks that would have been otherwise unknown to an owner or operator prior to installation of the ALD system. The commenter also recommended that EPA not grandfather in any direct ALD systems with alarm levels above 50 ppm as existing direct ALD systems set to 100 ppm are solely meeting safety requirements and are not equipped to minimize release of refrigerant.

Another commenter claimed that long-term ppm limits may not be the best approach to regulate ALD systems because ppm metrics are specific to the sensor and do not directly correlate with the ability to detect a leak rate over a given time. The commenter also stated that they are aware of only one sensor on the market that can detect to a 10 ppm resolution. The commenter provided several examples of existing direct ALD systems and provided suggested specific levels of detection that are appropriate for the type of direct ALD system. For aspirated systems, the commenter suggested a threshold of 10 ppm would be appropriate. For single-zone diffusion (point detection) systems, the commenter suggested a threshold of 200 ppm would be more appropriate. Finally, for appliance-level sensors, primarily used to comply with UL 60335–2–89 for the use of flammable refrigerants, the commenter suggested a minimum threshold of 500 ppm.

Response: EPA is finalizing the alarm threshold for direct ALD systems as proposed. The Agency finds the alarm threshold appropriate to detect leaks from refrigerant-containing appliances faster while preventing false alarms that may occur at lower ppm thresholds. EPA also finds it appropriate to remain consistent with existing alarm criteria under the CAA and State refrigerant management programs. EPA disagrees with one commenter requesting that the Agency not grandfather in existing ALD systems with alarm thresholds above 50 ppm. While a portion of ALD systems currently in use were installed to meet safety standards many other ALD systems were installed by owners or operators for the purposes of leak detection. The Agency is not requiring owners or operators with existing ALD systems that meet the standards in 40 CFR 84.108(f)(1)(2)(3) to install new ALD systems. Owners or operators with existing ALD systems will need to ensure their current ALD systems meet the rule's standards and are providing adequate monitoring of leak-prone components of a refrigerant-containing appliance. Additionally, the Agency does not want to deny existing ALD systems that meet the standards of this rule because doing so could exacerbate potential ALD supply issues and reduce overall compliance with the provision.

EPA acknowledges the information one commenter provided on leaks detected at supermarkets and agrees that small amounts of refrigerant detected can be indicative of larger leaks within a refrigerant-containing appliance. However, EPA does not find the 100 ppm threshold to be incongruous with

the discovery of large leaks and the timely repair of refrigerant-containing appliances that are leaking above the applicable leak rate threshold. EPA reiterates that this rule is not requiring the repair of all leaks, rather, this rule is requiring that leaks be repaired to the extent that a refrigerant-containing appliance is leaking below the applicable leak rate threshold. In the context of the appliances subject to this provision the leak repair provisions would begin once the leak rate has exceeded 30 percent for IPR and 20 percent for commercial refrigeration appliances. Setting the threshold to <10 ppm, 25 ppm, 50 ppm, or any other threshold below 100 would in fact alert an owner or operator to the presence of more leaks. However, these discovered leaks would most likely not cause the refrigerant-containing appliance to exceed its applicable leak rate threshold. For example, if EPA were to set the alarm threshold at 10 ppm a pinhole leak on a component near a sensor may alert an owner or operator to a relatively small leak. The ALD provision of this final rule is intended to find larger leaks faster in refrigerant-containing appliances that can emit large amounts of refrigerant from one leak event. When a larger leak is detected by an ALD system, the owner or operator has 30 days to conduct a leak rate calculation or attempt to preemptively repair the leak. Since EPA is not requiring the repair of all leaks, setting the alarm criteria below 100 ppm could create a situation where an alarm is continually alerting an owner or operator of a leak that has been found not to be causing the refrigerant-containing appliance to leak above the applicable threshold. Nuisance or false alarms from ALD systems may decrease compliance with the leak repair provisions of the final rule because owners or operators may begin to ignore alerts for the ALD system. Thus, the 100 ppm alarm threshold reduces the risk of false alarms while ensuring that larger leaks from refrigerant-containing appliances are detected and alert owners or operators to take further action.

Regarding one comment asserting that ppm may not be the best approach to regulate ALD systems because ppm does not correlate to the ability to detect a leak rate, EPA clarifies that the purpose of the ALD provision is to detect leaks sooner, not calculate the leak rate of a refrigerant-containing appliance. As previously discussed in section IV.C.3.a, the final rule's leak rate calculation methodologies are the only appropriate way to calculate a refrigerant-containing

appliance's leak rate. The comment is correct that ppm values of a refrigerant cannot denote how much refrigerant has leaked from a refrigerant-containing appliance; however, it does alert an owner or operator to the presence and potential severity of a leak that must be addressed if the refrigerant-containing appliance is leaking above the applicable leak rate. EPA also disagrees with the commenter's suggestion to base ppm thresholds on the type of direct ALD system, as this may add additional complexity and confusion to the ALD requirements and may diminish compliance with the provision. The Agency reiterates that direct ALD systems that meet the standards in 40 CFR 84.108(f)(1)(2)(3) are acceptable to use. If a direct ALD system cannot meet those standards, then it is not appropriate to use for this rule's ALD requirements.

Comment: The Agency also received comments in opposition to lowering the alarm thresholds for ALD systems. One commenter did not support lowering the alarm thresholds below what EPA proposed because lower thresholds could result in more frequent alarms, potentially leading to operational disruptions and false alarms. Another commenter claimed the proposed conditions of use for ALD systems are arbitrary and capricious because they will cause numerous false alarms. The commenter stated the proposed 100 ppm alarm rate for direct ALD systems and the 50 pound or 10 percent loss of charge for indirect ALD systems are based on ALD system manufacturer recommendations, and not an actual correlation with leak rates. The commenter asserted that it is unreasonable for EPA to adopt regulatory trigger rates, unless EPA has studied a correlation of the alarm levels with a statistical leak rate or probability of leaks. In the commenter's members' experience with ALD systems neither of the alarm thresholds are indicative of leaks. They recommend the Agency not mandate any alarm threshold below 100 ppm and not require mandatory inspection unless alarms recur over a several-day period if the provision is finalized as proposed. One commenter stated the Agency should allow for flexibility requests for unforeseen circumstances. The commenter claimed that EPA would be inundated with nuisance reporting every time an ALD triggers. The commenter suggested that EPA should consider limiting alerts to above a CO₂eq limit if they proceed with the requirement.

Response: The Agency is finalizing the 100 ppm alarm threshold as proposed. EPA disagrees with the

comments asserting that the alarm criteria are entirely based on manufacturer specifications, will lead to numerous false alarms, and is unreasonable or arbitrary and capricious. If EPA were to base the alarm criteria of this final rule solely on manufacturer's specification, the final threshold would be much lower. For example, one ALD manufacturer submitted public comments on the proposed rule requesting that the Agency reduce the alarm threshold based on their sensor specifications being capable of detecting refrigerant vapor well below 100 ppm. EPA is finalizing the 100 ppm threshold based on several considerations. For instance, the Agency considered the use of 100 ppm as one of the criteria for a direct ALD system that is used in lieu of quarterly or annual leak inspections under EPA's regulations under section 608 of the CAA, at 40 CFR 82.157(g)(4)(i). The alarm threshold of 100 ppm for ALD systems is also consistent with some States' refrigerant management programs and consideration of information from ANSI/ASHRAE Standard 15–2022 Safety Standards for Refrigeration Systems, among other factors. Based on consideration of this information, as well as comments on the proposed rule, EPA concludes that this threshold is technically feasible and should be familiar to some stakeholders from their experience under other regulatory programs, thus facilitating implementation of these requirements. Further, if the alarm threshold is set too high, the system may miss some leaks that should be addressed and thus would fail to serve its intended purpose. EPA understands that a 100 ppm threshold will minimize the risk of false alarms. However, to the extent that commenters are concerned about false alarms, under the final rule, they may elect to perform a leak rate calculation in response to an alarm, and if that calculation indicates that the equipment is not leaking above the applicable leak rate threshold, no further action will be required.

The Agency also disagrees with the commenter's position that establishing a regulatory trigger rate for the ALD equipment would need to be based on a statistical evaluation of leak rates or the probability of leaks. The Agency clarifies that the ALD requirements serve the purpose of detecting leaks within a refrigerant-containing appliance earlier but are not intended to substitute for the calculation or evaluation of a refrigerant-containing appliance's leak rate. The alarm criteria

for direct ALD systems are a specification for such systems to alert owners or operators to a potential leak and are not used to determine a refrigerant-containing appliance's leak rate or the actual severity of a leak, only the presence of a leak. EPA finds the 100 ppm alarm threshold appropriate to serve the purpose of alerting the owner or operator of a leak that may potentially cause a refrigerant-containing appliance to leak above the applicable leak rate threshold. The Agency has provided information in section IV.C.3.a on the leak rate calculation methodologies and when leak rate calculations must be completed. As noted previously, requiring use of ALD systems is consistent with the authority under in subsection (h)(1) to promulgate regulations to control, where appropriate, any practice, process, or activity regarding servicing, repair, or installation of such appliances, which involves a regulated substance or substitute for a regulated substance. When an ALD system provides an alarm in a refrigerant-containing appliance covered by this provision, the owner/operator must perform practices, processes, and/or activities to determine whether the equipment is leaking above the applicable leak-rate threshold and whether service or repair of the refrigerant-containing appliance is needed. The ALD requirements help to minimize releases of regulated substances from equipment and maximize the amounts of refrigerants remaining in equipment for eventual recovery and reclamation.

EPA disagrees with the commenter's experience that the final rule's alarm thresholds are not indicative of leaks and disagrees that ALD system alarms should not be addressed until alarms recur over a period of several days. The final rule allots 30 days (120 in the event of an industrial process shutdown) to calculate the leak rate or attempt to preemptively repair a refrigerant-containing appliance. The leak repair provisions of this final rule apply once the owner or operator has determined the leak rate has exceeded the applicable leak rate threshold. EPA clarifies that the 30-day timeframe for calculating the leak rate begins once the owner or operator has received an alarm from their ALD system. This should provide ample time for an owner or operator to address an alert from an ALD system. The Agency is not claiming that false alarms will never happen; however, as previously mentioned the alarm threshold for ALD systems has been set to mitigate the risk

of false alarms and operational disruptions. If an owner or operator is continually having issues with false alarms from their ALD system, they may consider performing additional calibration or audits to ensure the ALD system is functioning properly.

For similar reasons, EPA disagrees with a separate commenter asserting that more time or flexibility would be needed to address ALD system alerts due to unforeseen circumstances. The commenter incorrectly stated that the owners or operators would need to report alarms from ALD systems to the Agency. EPA clarifies that owners or operators are required to keep records of each date that an ALD alarm is triggered (see 40 CFR 84.108(i)) and are not required to report each ALD system alert to EPA. Additionally, the Agency disagrees with the commenter's suggestion to base the alarm criteria on the exceedance of a CO₂eq thresholds. As previously stated, EPA is finalizing the alarm criteria for ALD systems to help detect leaks early, so that if there are leaks that exceed the leak rate threshold, they can be addressed in a timely fashion. A CO₂eq threshold would not further this purpose. Further, EPA is unaware of any ALD system that can provide accurate alarms based on a CO₂eq threshold as direct systems are detecting the presence of refrigerant vapor in the air and indirect systems are detecting volumes of refrigerant lost via data metrics. The final rule sets an appropriate threshold for owners and operators to address detected leaks in a timely manner and reduce the emissions of refrigerant from refrigerant-containing appliances.

Comment: The Agency received a few comments regarding the preemptive repair provision in the final rule. One commenter stated that setting a requirement for direct ALD systems to alarm at 100 ppm but allowing no action to be taken if the leak rate thresholds are not exceeded, does not further the objective of minimizing release of refrigerant. The commenter also stated that the ALD system will continue to alert an owner or operator of the leak if left unrepaired. The commenter suggested de-coupling the requirement of a leak rate calculation before fixing a leak identified by an ALD system and asserted the rule may be confusing for industry and interpreted as undermining the need for ALD. The commenter further claimed that the best route for leak mitigation is to find and fix all leaks over the applicable threshold and that preemptive repair should be the only recommended solution for leak resolution because the addition of refrigerant to a leaking

appliance will result in the loss of the added refrigerant. The commenter asserted that the leak rate calculation can occur after the repair of the leaking appliance.

Another commenter requested clarification on whether an owner or operator needs to calculate a leak rate after preemptive repair is conducted. The commenter stated that the rule appears to offer two compliance options when an ALD system detects a leak; calculate a leak rate and assess whether the appliance is leaking above the applicable leak rate threshold or preemptively repair the leak. The commenter asserted that the requirement of a leak rate calculation seems to be in conflict with EPA's rationale for preemptive repair discussed in the preamble: "to avoid the need to add refrigerant to an appliance with a known leak (which would otherwise generally be necessary to calculate the leak rate and determine if the applicable leak rate is exceeded)." The commenter further claimed that the requirement to conduct a leak rate calculation will cause owners or operators to incur additional costs to add refrigerant to a fully functional system for the sole purpose of a leak rate calculation. As currently written, the commenter stated that the provision may be economically burdensome and could add to system downtime. Thus, the commenter suggested the Agency clarify the regulatory text to not require a leak rate calculation if an appliance is preemptively repaired.

Response: EPA acknowledges one commenter's recommendation that the leak rate calculation be decoupled from the final rule's preemptive repair provision for leaks detected by an ALD system and clarifies that these are separate requirements. EPA does not view the leak rate calculation and ALD requirements as incongruous nor does the Agency find that having both requirements will cause confusion as the commenter suggested. Rather, where both apply, they are separate parts of an overall approach to addressing leaks from refrigerant-containing appliances. The required installation and use of ALD systems for IPR and commercial refrigeration at or above 1,500 pounds and the option to preemptively repair a leak in a refrigerant-containing appliance is not intended to replace the need to calculate the leak rate and to repair leaks so a refrigerant-containing appliance is below the applicable leak rate threshold. As noted previously, EPA is not requiring the repair of all leaks; however, the Agency encourages owners or operators to preemptively repair leaks detected by an ALD system.

The determination of a leak rate for a leaking refrigerant-containing appliance is vital to ascertain if a refrigerant-containing appliance must be repaired. EPA is providing some flexibility to owners or operators who have been alerted of a leak to either preemptively repair the refrigerant-containing appliance or calculate the leak rate of said appliance to determine if the owner or operator must proceed with the leak repair process. The commenter asserted that preemptive repair should be the only recommended solution for leak resolution; however, if a refrigerant-containing appliance is found to have been leaking above the applicable leak rate threshold after the completion of a preemptive repair, the owner or operator of the refrigerant-containing appliance would still be required to follow through with the rest of the leak repair process (e.g., verification tests, leak inspections, etc.). Furthermore, the Agency reiterates that the final rule is not requiring the repair of all leaks; rather, this final rule requires that leaks be repaired to the extent that they bring the refrigerant-containing appliance below the applicable leak rate threshold. There may be some scenarios where an owner or operator may decide to calculate the leak rate as soon as possible to determine the severity of a leak and determine if further action is needed. Additionally, records of leak alerts from an ALD system that do not push the refrigerant-containing appliance above the leak rate threshold at the time of the alarm will inform an owner operator if their refrigerant-containing appliance is having issues with smaller leaks (e.g., pinhole leaks).

Regarding one commenter's questions on the requirement of a leak rate calculation after the preemptive repair of a refrigerant-containing appliance, the Agency notes that the option to preemptively repair a refrigerant-containing appliance does not remove the necessity to conduct a leak rate calculation. As previously discussed, the option to preemptively repair a refrigerant-containing appliance and the calculation of a refrigerant-containing appliance's leak rate are separate parts of an overall approach to addressing leaks from refrigerant-containing appliances. The commenter is correct that the Agency is providing two compliance pathways when a leak is detected by an ALD system; however, EPA clarifies that its rationale for the preemptive repair provision is intended to reduce the emissions of refrigerant from an appliance that is known to be leaking. EPA encourages owners and operators to preemptively repair a

refrigerant-containing appliance for this reason but is not requiring an owner or operator to do so. In both compliance scenarios the owner or operator will need to conduct a leak rate calculation to determine if the refrigerant-containing appliance was leaking above the applicable leak rate which requires the owner or operator to conduct the rest of the leak repair process, even if the leak(s) were preemptively repaired. Preemptive repair gives owners or operators a “head start” to the leak repair process and is not a replacement for the leak rate calculation of the refrigerant-containing appliance. The Agency disagrees with the framing of the commenter’s claims on additional economic or operational burden to owners and operators associated with the calculation of the leak rate after preemptive repair. A refrigerant-containing appliance may be considered “fully functional” after preemptive repair, but a leak rate calculation is still required in order to determine if the appliance at the time of the ALD system alarm was leaking above the applicable threshold. If the refrigerant-containing appliance was leaking above the threshold, it is required that the preemptive repair be verified and inspected per the leak repair provisions of this final rule to ensure the repair holds. EPA reiterates that the preemptive repair of an appliance is not a substitute for the calculation of a leak rate. Additionally, similar costs would be incurred if the owner or operator decided to not preemptively repair a refrigerant-containing appliance and just calculated the leak rate of said appliance. If that appliance was then found to be leaking above the applicable leak rate the full suite of the leak repair provision would apply. Thus, the Agency disagrees with the commenter’s suggestion to remove the leak rate calculation if a refrigerant-containing appliance is preemptively repaired.

EPA is requiring owners or operators using an indirect ALD system to comply with the provisions to detect and repair leaks in appliances. The indirect ALD system must be calibrated to provide an alarm when the system has provided measurements that indicate that 50 pounds of refrigerant or 10 percent of the full charge of refrigerant, whichever is less, has leaked. EPA acknowledges that commercial refrigeration and IPR appliances would exceed the alarm threshold if 50 pounds of refrigerant had leaked from an appliance. Therefore, owners and operators subject to the ALD installation and use requirements in this final rule that are using indirect ALD systems would be alerted when a leak

surpassed 50 pounds of refrigerant. EPA understands that owners and operators not subject to the ALD installation and use requirements that are utilizing an indirect ALD system would receive an alert at 10 percent of full charge lost depending on the charge size of their refrigerant-containing appliance. For example, an appliance with a charge size of 200 pounds would alarm when 20 pounds of refrigerant is lost because the appliance has leaked 10 percent of its full charge. Once that alarm threshold has been surpassed, EPA is requiring the owner or operator to perform a leak rate calculation, or alternatively they may preemptively repair the leak before adding refrigerant and calculating the leak rate. The same requirements, as described elsewhere in this section, where an owner or operator chooses to perform preemptive leak repair when using a direct ALD system apply in the scenario where preemptive leak repair is performed when using an indirect ALD system. Similarly, EPA is requiring that a leak rate calculation be performed within 30 days (or 120 days where an industrial process shutdown is necessary) of the alarm where an indirect ALD system is used for refrigerant-containing appliances subject to this provision. If the calculated leak rate is above the applicable leak trigger rate (as discussed in section IV.C.3.a of this preamble), all of the leak repair requirements in this action (including the repair requirements, inspections, verification tests and recordkeeping and reporting) would then apply.

As described in the proposal, indirect ALD systems rely on data analytics to detect leaks rather than the direct detection of refrigerant gas. Indirect ALD systems monitor the operation of a refrigerant-based system to infer whether a leak is present. This method is typically conducted using existing sensors and hardware that are already located on site, and it relies on algorithms to evaluate existing conditions, such as liquid levels, temperatures, and ambient conditions to indicate whether a leak is occurring. EPA understands that indirect systems can be calibrated to provide an alarm when a specified predicted refrigerant leak rate has occurred. The Agency is not establishing a definition of indirect ALD systems in this rulemaking and clarifies that any indirect ALD system that meets the criteria described in 40 CFR 84.108(g) is acceptable to use. Additionally, EPA is requiring that indirect ALD systems monitor at least two “measurements” to determine whether a refrigerant-containing

appliance is leaking above the final rule’s alarm criteria. Some examples of appropriate measurements include but are not limited to temperature, liquid levels, pressure, and flow rate. Multiple measurements are required to ensure that an indirect ALD system is operating as intended and providing owners or operators with accurate data on the condition of their refrigerant-containing appliance.

The Agency clarifies that a 10 percent loss of full charge does not directly correspond to the leak rate threshold of 20 percent for commercial refrigeration and 30 percent for IPR. The 10 percent of total charge lost when an indirect ALD system alarms may equate to less than or greater than an annualized leak rate of 20 or 30 percent depending on the timeframe over which the leak occurred (see section IV.C.3.a for more information on calculating the annualized leak rate). In any event, this difference is reasonable because the primary purpose of the ALD system is to allow the owner or operator to obtain knowledge of the leak earlier (e.g., before operations are impacted) and to facilitate earlier repair, whether through preemptive repair before the leak rate threshold is exceeded or through required repairs after the leak rate threshold is exceeded. The technical feasibility of the “50 pounds of refrigerant or 10 percent of the full charge, whichever is less” standard is well established. This has been the threshold used by both CARB and is also the standard in provisions at 40 CFR 82.157(g)(4)(ii) for ALD systems that are used in lieu of quarterly or annual leak inspections, as part of the leak repair requirements under CAA section 608.

Comment: The Agency received mixed comments on the inclusion of indirect ALD in the proposal. One commenter supported the inclusion of indirect ALD systems in the proposed rule. Another commenter asserted that EPA should not allow indirect ALD systems as an alternative to direct ALD systems because indirect ALD systems are newer technologies that are unproven to satisfy the objectives of this rule. The commenter suggested that the final rule could include indirect detection as a helpful supplement to direct detection systems but should not replace or be permitted as an alternative to direct ALD. The commenter also stated that no indirect detection system currently complies with safety standards for occupied spaces and that an additional layer of direct ALD is required to comply with ASHRAE and other guidance that governs personnel safety. If indirect ALD systems are going

to be considered as an alternative or substitute of direct detection, the commenter asserted that more prescriptive requirements need to be determined to equate the action levels with direct ALD systems and that EPA must provide clearer description of indirect systems.

Similarly, another commenter recommended that EPA require indirect ALD systems to use multiple data points to determine whether a leak is present. The commenter stated that many ALD systems registered under their refrigerant management program are indirect ALD systems that only use room temperature to determine whether a leak is present or not; however, newer indirect ALD systems generally use multiple data points working in tandem, such as temperature, pressure, liquid levels, etc., to help identify potential leaks. The commenter further stated that indirect ALD systems utilizing only a single data point (e.g., temperature) are reactive to conditions that have occurred after a potential leak as opposed to indicating a leak when it first occurs, thus indirect ALD systems using multiple data points are more accurate at identifying and repairing leaks.

Response: EPA acknowledges comments in support of the final rule's indirect ALD requirements. As described in 40 CFR 84.108(g) indirect ALD systems must alarm when "measurements" indicate a loss of 50 pounds of refrigerant or 10 percent of full charge, whichever is less. EPA clarifies that it intends indirect ALD systems to use multiple parameters in order to make determinations of refrigerant loss. EPA agrees that a single parameter being measured by an indirect ALD system may not be sufficient to accurately detect leaks and may be subject to external forces that may result in a false alarm or no alarm at all. Thus, the Agency is clarifying that at least two measurements be used by an indirect ALD system to determine if an appliance has leaked above the alarm threshold. Some measurements include but are not limited to temperature, pressure, and flow rate. This clarification of indirect ALD systems using multiple parameters to accurately determine the presence and severity of a leak above the alarm threshold should ease commenters' concerns on the viability of indirect ALD systems.

EPA disagrees with one commenter's assertion that indirect ALD systems are not an alternative to direct ALD systems. The Agency agrees that indirect ALD can be used in tandem with direct ALD for additional benefits. However, EPA finds any indirect ALD

system that meets the standards outlined in 40 CFR 84.108(g) as acceptable to use because the indirect ALD systems are capable of alerting owners or operators of leaks just as direct systems can. The Agency disagrees with the framing of the commenters statement that indirect ALD systems are not able to comply with ASHRAE standards for personnel safety. In the context of this final rule, the ALD requirements are designed to alert owners or operators of a leak earlier so that repairs of leaks above the applicable threshold can be made faster and thus, minimize the release of refrigerants from refrigerant-containing appliances. The Agency did not propose and is not finalizing that ALD be used to ensure technician safety. As previously discussed in the preamble of this section, EPA is aware of ASHRAE safety standards for A2L refrigerants and UL Standard 60335 2-40 requirements for the use of leak detectors for certain appliances.

Additionally, EPA finds that there are strengths and weaknesses of both leak detection technologies. For example, direct ALD can accurately detect the location of leaks if positioned well on or near an appliance; however, direct ALD cannot function well outdoors where ambient conditions can diminish the presence of refrigerant. Indirect ALD can monitor an entire appliance, including portions of an appliance that may be located behind walls or outdoors, and use metrics to determine whether a leak has occurred. As the commenter stated, one issue with indirect ALD is its inability to definitively detect the precise location of a leak. EPA is not prescribing which ALD system owners or operators must use; instead, the Agency is requiring the use of an ALD system that meets the standards of this rulemaking and detect leaks early to minimize the release of refrigerants from equipment. Further, EPA understands that one type of ALD may suit the needs of an owner or operator better than the other. Allowing flexible options for ALD will facilitate compliance with this provision and ensure there is an adequate supply of ALD systems for owners or operators. If EPA were to limit the use of ALD to one system over the other, owners or operators may have difficulty installing ALD systems within the timeframe required by the final rule.

Comment: The Agency received a few comments concerning the alarm threshold for indirect ALD systems. One commenter stated that indirect ALD systems have the capability to detect a leak with as little as one percent of full charge lost when data is reliable and

available. However, to minimize the risk of false alarms at lower percentages (e.g., $\leq$ five percent), the commenter recommends that EPA finalize the proposed alarm criteria for indirect ALD systems. The commenter stated that the proposed alarm criteria would allow their manufactured systems to send leak alarm notifications with high confidence and reduce the risk of false positives, which degrade customer confidence in leak alarm notifications.

Alternatively, one commenter stated that they were unaware of any standard or industry accepted procedure to verify the indirect ALD system is operating in a manner to detect 50 pounds or 10 percent of full charge. The commenter asserted that it was unclear how this requirement would be consistently applied and enforced, and that the Agency should better define the process of verification. Another commenter asserted that the alarm criteria for indirect systems are not equivalent to the alarm criteria for direct systems. The commenter claimed that indirect systems are not equipped to quantify the severity of the leak or pinpoint its precise location because indirect systems rely on data analytics and have not been developed for the purpose of retaining refrigerant in an appliance.

Response: EPA is finalizing the alarm criteria for indirect ALD systems as proposed. EPA acknowledges comments in support of the provision. EPA disagrees that there are no standards or industry accepted procedures to ensure indirect ALD systems are properly verified and calibrated to perform the function of leak detection. The alarm criteria for indirect ALD systems have been utilized by CARB since 2011. The alarm criteria under CARB's refrigerant management program for both direct and indirect ALD systems were based on ANSI/ASHRAE Standard 15-2001, Safety Standards for Refrigeration Systems. These alarm criteria were adopted by EPA in the 2016 Section 608 Rule for owners or operators who sought to implement ALD as a compliance option in lieu of quarterly or annual leak inspections. For these reasons, EPA finds it appropriate to adopt the same alarm criteria in this final rule.

Additionally, the Agency clarifies that an owner or operator would need to follow the manufacturer's specifications for an indirect ALD system to ensure it is properly calibrated to the appliance and that it is monitoring and performing the function of alerting an owner or operator when a leak is detected above the lesser of 50 pounds or 10 percent of full charge. The final rule requires that indirect ALD systems be audited and calibrated annually and requires records

to be kept detailing these annual audits and calibrations. Regarding the commenter's question to how this provision would be enforced, EPA notes that the recordkeeping for ALD systems in 40 CFR 84.108(i) would be used to determine if an owner or operator has been non-compliant and whether further enforcement action is necessary.

EPA also disagrees that the alarm criteria for indirect and direct ALD systems are not equivalent because indirect and direct ALD systems are using different parameters to determine the existence of a leak; thus, the alarm criteria for both technologies will never be one-to-one. EPA clarifies that direct ALD cannot determine the severity of a leak based on ppm detection alone either, as the detection of ppm vapor of a refrigerant is not exactly correlative with how much refrigerant has leaked from an appliance. The only way to confirm the severity of a leak is via a leak rate calculation, which is required within 30 days of an alarm for both direct and indirect systems. As discussed previously, direct and indirect ALD systems have strengths and weaknesses; however, indirect ALD systems, inability to determine the exact location of a leak does not preclude the technology from serving the purpose of alerting an owner or operator of a leak. Additionally, in the context of the appliances that are subject to the ALD requirements in the final rule (*i.e.*, IPR and commercial appliances with a charge size of 1,500 pounds or more), 50 pounds of refrigerant loss is a relatively small proportion of the appliance's full charge. Direct ALD systems that alarm at 100 ppm of detected refrigerant concentrations may have leaked a comparable amount of refrigerant before alerting an owner or operator.

2. Recordkeeping and Reporting

EPA is finalizing, as proposed, specific reporting and recordkeeping requirements for ALD systems in this action. Where ALD systems are required, EPA is requiring that owners or operators maintain records regarding the annual calibration or audit of the system. EPA is also requiring that records be maintained each time an ALD system triggers an alert, whether that be based on the applicable ppm threshold for a direct ALD system or the indicated loss of refrigerant measured in an indirect ALD system. When an ALD system alerts the owner or operator of a leak, EPA is requiring that the owner or operator maintain a record of the date of the ALD system alert and the location of the leak. EPA is also establishing recordkeeping requirements in the case where an owner or operator chooses to

use an ALD system, where not required, as a compliance option in lieu of periodic inspections for an appliance that has exceeded an applicable leak rate. The recordkeeping requirements related to when a leak rate calculation must be conducted are described in section IV.C.3.g of this action. As discussed in section II.B, EPA's authority to require recordkeeping and reporting under the AIM Act is also supported by section 114 of the CAA, which applies to the AIM Act and rules promulgated under it as provided in subsection (k)(1)(C) of the AIM Act.

EPA is requiring that these records related to ALD systems, where required, be maintained for three years. Where ALD systems are being voluntarily used (*i.e.*, appliances with a full charge below 1,500 pounds or using a substitute for HFCs with a GWP of 53 or below), no recordkeeping is required. However, if an appliance using an ALD system is found to be leaking above the applicable leak rate and the owner or operator chooses to use the ALD system in lieu of periodic inspections, they are required to follow all requirements associated with this compliance option, including annual audits or calibration and all necessary recordkeeping requirements. The recordkeeping requirements in this action do not change any recordkeeping requirements where an owner or operator chooses to use an ALD system per 40 CFR 82.157(g)(4) for appliances containing ODS refrigerants.

Comment: EPA received a few comments on the reporting and recordkeeping requirements for its ALD provisions. One commenter supported the reduced recordkeeping requirements for facilities that opt into ALD in lieu of quarterly or annual inspections. The same commenter was supportive of recordkeeping requirements that demonstrate facility owners are performing the necessary calibration and maintenance of ALD systems. However, the commenter stated that the prescriptive installation and calibration may work against manufacturer specifications, which should be followed to achieve optimal results. Another commenter supported EPA's proposed approach of not requiring ALD system alerts to be reported to the Agency and would oppose including any such reporting requirement in the final rule. If the Agency has the need to review these records, the commenter said they can always be requested from a facility rather than imposing an additional administrative burden on owners or operators and on EPA by requiring a report of every ALD alert. Lastly, one commenter reinforced the

need for digital recordkeeping and recommended that digital records directly tied to the detection system be encouraged where possible.

Response: EPA is finalizing recordkeeping requirements for ALD systems as proposed. EPA acknowledges one commenter's request that ALD alerts not be reported to the Agency. Records of ALD alerts are required, but EPA did not propose and is not finalizing that ALD alarms be reported to the Agency. The Agency agrees with one commenter's emphasis on digital recordkeeping and agrees that, where appropriate, digital recordkeeping is appropriate for filing the information required under this provision. EPA clarifies that recordkeeping in a paper format is still acceptable as long as records are kept in the manner defined in 40 CFR 84.108(i). The Agency disagrees with one commenter's claim that annual calibration of ALD systems may go against manufacturers specifications. EPA is unaware of any manufacturer specifications that would make annual calibration and verification that an ALD system is functioning properly impossible or non-optimal. While owners or operators should rely on manufacturer specifications as it relates to the installation and operation of equipment, the Agency does not view the annual calibration and audits of ALD systems as out of sync with manufacturer specifications. ALD installations and their subsequent use should largely align with manufacturer specifications, but owners or operators must ensure that all leak-prone components are monitored by an ALD system.

E. How is EPA establishing requirements for recovered and reclaimed HFCs?

EPA is finalizing requirements for recovered and reclaimed HFCs with modifications after consideration of the comments and information received on the proposed rule. EPA is requiring reclaimed refrigerants that contain HFCs to contain no more than 15 percent, by weight, virgin HFCs. The reclamation standard will apply as of January 1, 2026, and the provision includes certain recordkeeping, labeling, and certification requirements. EPA is also finalizing requirements for the servicing and/or repair of refrigerant-containing equipment to be done with reclaimed HFCs in the supermarket systems, refrigerated transport, and automatic commercial ice makers subsectors. EPA also proposed to require reclaimed HFCs in the servicing and/or repair of refrigerant-containing equipment in the stand-alone refrigeration subsector, but is not finalizing that requirement in this

action. EPA is delaying the compliance date for these finalized requirements by one year from January 1, 2028, to January 1, 2029. EPA is also establishing a discrete reporting requirement, as described in section IV.E.2. Lastly, at this time, EPA is not finalizing requirements for the initial fill of refrigerant-containing equipment to be done with reclaimed HFCs.

As described in the proposed rule, subsection (h) provides EPA authority to, where appropriate, establish regulations to control such practices, processes, or activities that are intended to increase reclamation of HFCs, as well as substitutes for HFCs, that are used as refrigerants. EPA understands this delegation of authority to give the Agency flexibility to promulgate regulations that could include those that are designed to increase market demand for reclaimed HFCs with a goal of increasing the amount of HFCs that are reclaimed, which would further serve the purpose of maximizing the reclamation of regulated substances. Accordingly, EPA is establishing requirements for what constitutes reclaimed HFCs and for the servicing and/or repair of certain refrigerant-containing equipment to be done with reclaimed HFCs. In this rulemaking, EPA is not establishing requirements for reclaimed HFC substitutes; however, the Agency interprets the authority under subsection (h) to include establishing such regulations. Consistent with the proposal, EPA determined it would be prudent to focus the requirements finalized in this action on HFCs, given that the HFC consumption and production phasedown will create scarcity for virgin HFCs and such demand can partly be addressed by increased use of reclaimed HFCs where possible.

EPA published a Notice of Data Availability (NODA) on October 17, 2022 (87 FR 62843), to alert stakeholders of information regarding the U.S. HFC reclamation market, available through a draft report, *Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices*.⁸⁴ EPA solicited stakeholder feedback and held a public stakeholder meeting shortly after the NODA was published on November 9,

2022.⁸⁵ EPA received comments⁸⁶ from various entities in response to the published NODA and from the stakeholder meeting, including comments from reclaimers, industry organizations, environmental non-government organizations, OEMs, and a private citizen. EPA held an additional public stakeholder meeting on March 16, 2023, and a webinar through EPA's GreenChill Partnership Program on April 12, 2023, and heard many similar comments to those received on the NODA.⁸⁷⁸⁸ Interested parties may view the draft report, the materials for the public meetings, and the comments the Agency received in response to the NODA in the docket for this action.

EPA is providing a final version of the report, titled *Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices*, that is also available in the docket of this action. EPA has incorporated information provided from commenters to this rulemaking (as further discussed and responded to in sections IV.E.1 and IV.E.2), including oral comments provided at the public hearing on November 2, 2023.

1. Reclamation Standard

EPA is finalizing, as proposed, that HFC refrigerant sold as reclaimed can contain no more than 15 percent virgin HFC refrigerant, by weight. EPA is clarifying in this final rule and in the regulatory text at 40 CFR 84.112(a) that this requirement begins on January 1, 2026, as intended to match the compliance date of the relevant labeling and recordkeeping requirements described in this section. This applies only to the HFC portion of reclaimed refrigerants, in the case of refrigerant blends with HFCs and a non-HFC component (e.g., an HFC/HFO blend). EPA is also prohibiting, as proposed, the sale, distribution, or transfer to a new owner, or the offer for sale, distribution, or transfer to a new owner, of any

regulated substance used as a refrigerant in stationary refrigerant-containing equipment (*i.e.*, not an MVAC or an MVAC-like appliance)⁸⁹ consisting in whole or in part of recovered regulated substances. This prohibition does not apply where the recovered regulated substances are reclaimed by an EPA-certified reclaimer (as described in 40 CFR 82.164) and have been reclaimed consistent with the definition of reclaim in 40 CFR 84.3 (including to the required purity standard and with the appropriate verification),⁹⁰ or if the recovered regulated substance is being sold, distributed, or transferred to a new owner, or offered for sale, distribution, or transfer to a new owner solely for the purposes of being reclaimed or destroyed. Further, for clarity, EPA notes that recovered refrigerant that is used by the same owner is regulated under 40 CFR 82.154(d). This rulemaking does not alter those requirements and does not prevent an equipment owner or operator from using refrigerant recovered from a piece of equipment they own to be used in that same piece of equipment or another piece of equipment they own.

EPA is also establishing labeling and recordkeeping requirements, as proposed, and prohibiting the sale, identification, or reporting of refrigerant as being reclaimed if the HFC component of the resulting refrigerant contains more than 15 percent, by weight, of virgin HFC. EPA proposed and is requiring that certified reclaimers affix this label to reclaimed HFCs being sold or distributed or offered for sale or distribution beginning January 1, 2026. The label is required to include the specifications as described in the regulatory text at 40 CFR 84.112(d). Additionally, EPA proposed and is requiring that certified reclaimers create and maintain a record related to the reclaimed HFCs filled in containers. EPA is requiring such records be generated beginning January 1, 2026, be maintained by reclaimers for three years, and include the following information:

- The name, address, contact person, email address, and phone number of the certified reclaimer;
- The date the container was filled with reclaimed HFC(s);
- The amount and name of the HFC(s) in the container;

⁸⁹ EPA further discusses MVAC servicing and recovered and reprocessed HFC refrigerants in section IV.I.

⁹⁰ EPA has made a few modifications to the regulatory text as finalized at section 84.104(a) to ensure consistency with the definition of reclaim in 40 CFR 84.3, in accordance with the intent for this provision.

⁸⁴ Draft Report—Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices, October 2022. Available at: https://www.epa.gov/system/files/documents/2022-10/Draft_HFC-Reclamation-Report_10-13-22%20sxf%20v3.pdf.

⁸⁵ Stakeholder meeting for input on an upcoming regulatory action under subsection (h) of the AIM Act, November 2022. Available at: https://www.epa.gov/system/files/documents/2022-11/AIM%20Act%20Stakeholder%20Meeting_HFC%20Management_11-9-2022.pdf.

⁸⁶ Comments submitted to response of NODA published on October 17, 2022 (87 FR 62843) are available in the docket for this rulemaking at <https://www.regulations.gov>.

⁸⁷ Stakeholder meeting on HFC reclamation under the AIM Act, March 2023. Available at: https://www.epa.gov/system/files/documents/2023-04/HFC%20Management_Reclaimer%20Stakeholder%20Mtg_Final%203-15-23.pdf.

⁸⁸ Webinar—Subsection (h) Under the American Innovation and Manufacturing Act, April 2023. Available at: <https://www.epa.gov/greenchill/webinar-subsection-h-under-american-innovation-and-manufacturing-act>.

- Certification that the contents of the container are from a batch where the amount of virgin HFCs does not exceed 15 percent, by weight, of the total HFCs;

- The unique serial number of the container(s) filled from the batch;
- Identification of the batch of reclaimed HFCs used to fill the container(s); and
- The percentage, by weight, of virgin HFC(s) in the batch used to fill the container(s).

Consistent with the proposal, EPA is not requiring that each individual container or cylinder be rationed out to meet the allowable limit of 15 percent, by weight, of virgin HFCs. Rather, EPA is requiring, at the batch level, that the reclaimed HFCs not exceed 15 percent, by weight, of virgin HFCs. As discussed in section IV.A.2, EPA proposed a definition of “virgin regulated substances” that would have included the heels removed from containers. However, EPA is finalizing a modification of that definition to mean “any regulated substance that has not had any bona fide use in equipment” but omitting the portion of the proposed definition that would have included heels. As a part of implementing this provision, EPA is also establishing that HFCs that are removed from the heels of containers do not contribute towards the limit of 15 percent, by weight, of virgin HFCs. EPA recognizes the value in the removed heels and, while the heels may be regulated substances that have not had bona fide use in refrigerant-containing equipment, EPA understands from comments on the proposed rule that some reclaimers may still reprocess removed heels to ensure the material will meet the applicable purity standards. EPA understands that, in the distribution chain, heels may be recovered into a common recovery cylinder along with refrigerant that has been recovered after a bona fide use in equipment.

EPA is finalizing these requirements to implement the statutory requirement in subsection (h)(2)(B) of the AIM Act, which provides that any regulated substance used as a refrigerant that is recovered shall be reclaimed before being sold or transferred to a new owner, except where the recovered regulated substance is sold or transferred to a new owner solely for the purposes of being reclaimed or destroyed. This will be particularly relevant to the refrigerant-containing equipment for which EPA is establishing requirements the servicing and/or repair be done with reclaimed HFCs, as described in section IV.E.2. These provisions are also intended to support the implementation of the

statutory provision for stationary refrigerant-containing equipment in the context of other requirements established in this rulemaking, including by outlining more specific requirements for the reclamation that would need to occur before sale or any of the other listed activities for such regulated substances, as well as incorporating the statutory exception for situations where such recovered regulated substances are sold or transferred solely for the purposes of being reclaimed or destroyed. EPA further discusses its approach for recovered regulated substances used as refrigerants in MVAC equipment in section IV.I.

EPA is finalizing a standard for the amount of virgin HFC refrigerant that can be included in any reclaimed refrigerant containing HFCs to support consistent implementation of the requirements for the servicing and/or repair of certain equipment with reclaimed HFCs in addition to establishing consistency on the amount of virgin HFCs in reclaimed refrigerant when that refrigerant is sold, identified, or reported as reclaimed for use in the installation, servicing, and/or repair of refrigerant-containing equipment. These requirements are being established as part of implementing subsection (h)(1) of the AIM Act, as these provisions control practices, processes, or activities regarding the installation, servicing, or repair of equipment and involve a regulated substance or the reclaiming of a regulated substance used as a refrigerant. As the HFC phasedown progresses, the overall quantity of virgin HFCs available, including to facilitate reclamation through blending or rebalancing, will decrease. In addition, the Agency considers that limiting the extent to which the purity standard for reclamation is achieved through combining with virgin refrigerant (besides what the Agency understands to be the necessary rebalancing, particularly of certain blends) in this rulemaking supports the purpose of maximizing reclamation, and additionally bolsters the available supply of reclaimed HFCs in the market.

Comment: Several commenters supported the 15 percent limit, by weight, on virgin refrigerant in reclaimed material. One commenter deferred to EPA regarding the amount of virgin material necessary to meet purity standards. Another commenter stated that it would be counterproductive to allow the use of more than 15 percent of virgin material given the proposed rule’s rationale to boost the U.S. reclamation industry. Another commenter stated that the 15 percent

threshold allows sufficient flexibility to reclaim refrigerants and further stated that higher virgin-to-reclaimed content ratios could constitute “greenwashing” thereby deceiving consumers on the environmental benefit of using a reclaimed refrigerant. One commenter, although generally supportive of the 15 percent virgin content limit, questioned whether the 15 percent limit applied to single-component refrigerants where blending is not necessary. Likewise, another commenter expressed support for the proposed limit of no more than 15 percent newly produced HFCs in multi-component refrigerant blends to qualify as a reclaimed blend, but also recommended that EPA require single component refrigerants to use 100 percent reclaimed material. One commenter supported the proposed 15 percent virgin HFC limit, claiming it is reasonable and “ensures the continued existence of smaller reclaimers who must sometimes bulk up reclaimed gases to meet AHRI 700 purity standards.” The commenter further recommended ramping down the acceptable proportion of virgin gas over time to incentivize better reclamation technology.

Several commenters supported a lower limit on the virgin content in reclaimed refrigerant. One of the commenters suggested the use of a virgin content limit for reclaimed material but encouraged EPA to tighten the requirement to send a clear message to the industry to invest in advanced reclamation technologies. The commenter noted that the 15 percent limit used by CARB was based on a term-limited program for a single State, while EPA’s proposed use requirements for reclaimed HFCs will apply nationally and are not term limited; thus, the requirements would send clear signals for investment in advanced reclamation technology. Another commenter similarly supported a maximum HFC virgin content in reclaimed HFCs, noting the importance of preventing large quantities of virgin HFCs from being blended with smaller reclaimed HFC quantities and considered reclaimed (which would not create a sustainable supply of reclaimed materials as the supply of virgin HFCs continues to decrease, and would disincentivize investment in fractional distillation capacity), and encouraged EPA to further tighten this requirement because the 15 percent limit was established in the California context. The commenter further stated that a stronger limit may be feasible on a nationwide basis while also supporting the smaller reclaimers in continuing to

expand and develop their capacity for advanced reclamation of HFCs. Another commenter expressed concern that setting an allowance (e.g., 15 percent) for inclusion of newly produced refrigerant to be incorporated into reclaimed refrigerant is not a credible structure and will result in greenwashing claims, arguing that only recovered refrigerant should be considered reclaimed. The commenter further claimed that setting such a limit for newly produced refrigerant could thwart the goal to maximize reclamation and narrow uses away from clever solutions like a “service gas” with an increasing percentage of reclaimed refrigerant as more reclaimed refrigerant becomes available over time.

Another commenter stated that they supported the definition of reclaimed refrigerant as containing no more than 15 percent virgin material but would also support a lower or much lower limit because only a few larger reclaimers who were also importers, blenders, and distributors received substantial HFC allowances. The commenter further stated that many reclaimers received small or no allowances, and that allowances provided to reclaimers are being reduced as reclamation expectations are being raised. The commenter concluded that that most reclaimers would not be able to access 15 percent virgin material for a blend even if they wanted or needed to. The commenter further noted they did not support the concept that reclaimed refrigerant could be any percentage and treated as a blended component in a larger lot of refrigerants, arguing that this concept is not reflective of how reclaimed refrigerant is produced today and opens the door to non-reclaimers to find creative solutions to dilute the value of reclaimed refrigerant.

Response: EPA acknowledges these commenters’ support and requests for potentially tightening the limit for virgin HFCs in reclaimed HFC refrigerant. The Agency understands that a portion of virgin HFCs is often necessary for rebalancing particular refrigerant multi-component blends, and, in contrast, EPA understands that single-component HFCs that are reclaimed would not require additional high-purity (e.g., virgin) HFCs for the purposes of rebalancing. EPA also understands that different reclaimers deploy different practices (e.g., not all reclaimers use fractional distillation), and may see different needs for using the maximum allowable percentage of 15 percent, by weight virgin HFCs. For example, some reclaimers may have capabilities and technologies to reclaim

particular multi-component blends from difficult-to-separate mixed recovered refrigerants and may not need to use the full 15 percent limit, by weight, of virgin HFCs. Other reclaimers may have limited access to these technologies and might routinely meet the maximum allowable amount of virgin HFCs in reclaimed HFC refrigerants they process and sell. With these considerations, the Agency views the 15 percent limit, by weight, on virgin HFCs as appropriate and disagrees that it is appropriate at this time to establish a lower limit on virgin HFCs or that reclaimed HFC refrigerants may only constitute recovered materials. However, the Agency notes that it may revisit this requirement in the future, for example by evaluating whether a reclamation standard with a higher or lower percentage, by weight, for the maximum amount of virgin HFCs is appropriate at that time.

Further, the Agency does not agree with the need to and is not establishing different standards for different reclaimers based on technology used to achieve the required purity standards for reclaimed refrigerants. EPA is establishing a single reclamation standard to ensure that reclaimed HFC refrigerants sold or marketed contain a consistent amount of virgin HFCs (i.e., no more than 15 percent, by weight). Establishing a varying standard might produce unintended effects for reclaimed HFC refrigerants placed on the market such that reclaimed HFCs of varying amounts of virgin content may be valued differently by purchasers. The reclamation standard of 15 percent virgin HFCs, by weight, allows for some virgin HFCs to be used to rebalance HFC blends, if needed. Further, this consistent standard will also avoid scenarios where HFC refrigerants are sold or marketed as reclaimed but may consist of only a small amount of recovered and reclaimed material and the balance being virgin HFCs. Such a case could lead to confusion for refrigerant purchasers, including those in subsectors subject to the requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs. This final rule, as described in this section, also includes provisions for recordkeeping and labeling based on this standard, which are intended to support identification of those HFC refrigerants that meet the reclamation standard, including by those purchasing reclaimed HFC refrigerant, by those servicing and/or repairing refrigerant-containing equipment, and by EPA. Moreover, for these reasons, EPA

concludes that establishing a consistent limit of 15 percent, by weight, of virgin HFCs in reclaimed HFC refrigerant is appropriate, in consideration of the purpose identified in subsection (h)(1) the AIM Act to maximize reclamation.

EPA acknowledges that the program established by CARB was term-limited, with applicability only for a single State. The Agency agrees that applying a reclamation standard on a broader scope (i.e., nationally) may provide signals to spur additional reclamation and advancements in technology. However, unlike the CARB program, EPA is not applying the reclamation standard to only a single refrigerant blend in this rulemaking, noting that the standard applies to the HFC portion of refrigerants that contain HFCs (whether neat or in a blend), nor is the Agency establishing a term-limited program for the reclamation standard. As noted earlier in this response, the reclamation standard established in this rule is based on consideration of the purpose identified in subsection (h)(1) to maximize reclamation. Thus, the Agency is not tightening the standard, at this time, for reasons described earlier in this response and since the reclamation standard in this final rule applies more broadly than that of the CARB program.

EPA acknowledges concerns related to “greenwashing” and improperly claiming benefits associated with reclaimed refrigerants. The Agency’s view is that the established limit of 15 percent, by weight, for virgin HFCs in reclaimed HFC refrigerants is appropriate at this time, as explained earlier in this response. EPA considers the required label and other requirements established in this rule as one means of countering false claims of benefits related to refrigerants that contain a higher proportion than permitted of virgin HFCs. To the extent that one of the commenters claims that allowing any virgin HFCs in reclaimed refrigerant would lead to greenwashing claims, EPA disagrees. The requirements established in this rule provided clarity about the extent to which reclaimed refrigerant can contain virgin HFCs and are designed to ensure that all reclaimed refrigerant meets the same minimum standards. The Agency will monitor the marketing of refrigerants and may consider revising or adding to these requirements in the future if warranted.

EPA acknowledges that some, but not all, reclaimers are allowance holders. EPA does not view a lack of allowances as a barrier to reclamation. To the extent that reclaimers use high-purity refrigerants in their reclamation process

(e.g., for rebalancing blends), even if they do not have allowances, they could purchase virgin HFCs in the domestic market or other high purity (e.g., previously reclaimed) refrigerant, which may or may not go through some degree of reprocessing, until the final product meets the purity specifications to be considered reclaimed. Further, reclaimers may obtain allowances through transfers from existing allowance holders, and the transferred allowances can then be used to import HFCs. EPA is unclear as to how non-reclaimers would dilute the reclamation market based on the comment; however, EPA responds to concerns with the potential for a non-reclaimer to market refrigerant as reclaimed by noting that the requirements finalized in this action, including the labeling and recordkeeping requirements, apply to any refrigerant that is sold as reclaimed.

Comment: One commenter supported the 15 percent virgin allowance for reclamation but sought clarification on the calculation of this value. The commenter was unclear how the calculation for reclaimed refrigerant would be performed, especially when the reclaimed material includes non-HFC refrigerants. The commenter was uncertain whether the non-HFC substances would be included in the weight of the reclaimed refrigerant batch and recommended not including non-HFC components towards the minimum 85 percent by weight of reclaimed HFCs. The commenter additionally suggested a tolerance limit for the measurement or calculation of the 15 percent or 85 percent.

Response: Consistent with the proposal, EPA is clarifying that in the case of reclamation of a refrigerant blend that contains an HFC and a non-HFC component (e.g., an HFO) that is being reclaimed, the 15 percent limit for virgin materials only applies to the HFC component of the blend. When calculating the amount of virgin HFCs that will be allowed, the 15 percent limit, by weight, applies to the weight of the HFC component(s), not the total weight of the reclaimed refrigerant.⁹¹ EPA further clarifies that the 15 percent limit on virgin HFCs does not apply per HFC where a reclaimed refrigerant blend contains more than one HFC component. Rather, the 15 percent limit on virgin HFCs should be calculated as 15 percent of the weight of the total HFC

components in the blend.⁹² EPA notes that subsection (h)(1) of the AIM Act provides authority to promulgate regulations to control, where appropriate, practices, processes, or activities related to the servicing, repair, disposal, or installation of equipment that involves the reclaiming of a substitute for a regulated substance used as a refrigerant. EPA interprets this provision to provide it authority that includes establishing requirements for how practices, processes, or activities related to the servicing, repair, disposal, or installation of equipment are conducted, including requiring those practices, processes, or activities be done with reclaimed HFCs or reclaimed HFC substitutes. However, at this time, the Agency is not establishing a requirement for the non-HFC component of a blend to be reclaimed and thus is not establishing a standard limiting the amount of virgin material for reclaimed substitutes for HFCs. While EPA acknowledges that there is some degree of random and systematic error associated with measurement devices, EPA is not implementing a tolerance range for this provision at this time and does not agree that one is necessary. It is EPA's view that the institution of a 15 percent limit, by weight, on virgin HFCs allows reclaimers a range of compliance options, as they can use any amount of virgin HFCs between 0 and 15 percent, by weight, and still meet the standard. Implementing a tolerance range in addition to the range that is already inherent in the standard would lessen the standard's effectiveness in serving the purposes identified in subsection (h), including maximizing reclamation.

Comment: One commenter supported the 15 percent, by weight, virgin allowance for reclamation but proposed basing the reclaimed content on CO₂ equivalency values to allow the market under the Allowances and Technology Transitions programs to better move to low-GWP refrigerants in a cost-effective and environmentally positive manner. The commenter recommended allowing the destruction or repurposing of one refrigerant to be credited with a carbon

allowance and to allow an equivalent quantity of another refrigerant to be placed on the market as reclaimed, minus a 10 percent offset for a net reduction in CO₂ equivalents, to create a new market outlet for high-GWP substances and ensure that leaks are minimized. The commenter provided examples where a smaller mass of high-GWP substances could be reclaimed and a larger mass of low-GWP substances placed on the market as reclaimed material by relying on the substances' CO₂ equivalents.

The commenter stated that HFC-32 and HFC-152a use in blends is vital to the survivability of the industry as it phases down HFCs under the Allocation rulemakings and goes through the transition required by the 2023 Technology Transitions Rule. The commenter stated that if EPA adopts a strict weight (mass) basis, industry will face an extreme burden sourcing HFC-32 and HFC-152a. The commenter noted that all formulations of viable heat pump solutions are based on some content of HFC-32, and that the vast majority of HFC-32 in the current marketplace is in the form of R-410A. The commenter stated that it is correct to assume that material will be used to service that market and HFC-32 will not become available for use in R-454B service or in commercial refrigeration service/initial fill. Further, the commenter mentioned that the fact that HFC-32 and HFC-125 make an azeotrope at a composition not too far from R-410A makes the separation of HFC-32 from HFC-125 non-trivial to recover the HFC-32 via distillation. The commenter stated that the viable solution is to slightly reconstitute and return "certified reclaimed material" to the market for service of existing equipment aging out of the marketplace.

Response: EPA did not propose and is not establishing an offset or GWP-based program as the commenter suggests. The Agency recognizes that the 2023 Technology Transitions Rule uses GWP thresholds and that the Agency issues allowances based on exchange values. However, for the purposes of establishing an ER&R program, and more specifically for establishing provisions for the upper limit on virgin HFCs used in reclaimed HFCs, the Agency does not agree with the asserted need for an offset or GWP-based approach. In establishing this and other requirements related to reclaimed refrigerants in this rulemaking, the Agency seeks to require actions that would help meet the purposes described in subsection (h)(1) of the AIM Act, including maximizing the reclamation of HFCs. Thus, the destruction or

⁹¹ As an illustrative example, if a refrigerant blend is composed of 50 percent HFC and 50 percent non-HFC and one is seeking to reclaim 100 pounds of this refrigerant, the 15 percent limit on virgin HFCs would apply only to the weight of the HFC portion, or 7.5 pounds (i.e., 15 percent of 50 pounds).

⁹² As an additional illustrative example, suppose 100 pounds of a refrigerant to be reclaimed contains 20 percent of HFC A, 30 percent of HFC B, and 50 percent of a non-HFC component. The 15 percent limit on virgin HFCs would apply only to the weight of the sum of the HFC components. In this example, the total weight of HFCs is 50 pounds and the allowable weight of virgin HFCs would be 7.5 pounds (i.e., 15 percent of 50 pounds). The limit on virgin HFCs may be made up of a combination of weights of virgin HFC A and HFC B that total 7.5 pounds (e.g., 7.5 pounds of virgin HFC A and zero pounds of virgin HFC B; 3.5 pounds of virgin HFC A and 4 pounds of virgin HFC B; etc.).

repurposing without reclaiming of any HFCs, including high-GWP HFCs that can be properly reclaimed, would be counter to this goal. Further, other provisions of the AIM Act prescribe a phasedown, and not a phaseout for regulated substances. Even after the phasedown reaches its final step, virgin HFCs will continue to be produced and consumed. Any destruction-based program to provide offsets or credits would need to fully assess and address additionality.⁹³ While such programs and considerations are beyond the scope of this rulemaking, EPA is uncertain whether additionality could be addressed in these types of programs. The Agency also does not agree with a GWP-weighting approach for virgin HFCs allowed in reclaimed HFCs. The Agency proposed and is finalizing a requirement that is based on percentage, by weight. The Agency understands that for servicing equipment, it is important to maintain adequate supply of the same refrigerants used in that equipment when it was initially charged. So, unlike the 2023 Technology Transitions Rule facilitating transition to next-generation technologies through sector-based restrictions on HFCs, this rule concerns the goals of maximizing reclamation and minimizing releases from equipment. Availability of refrigerants of all types, increasingly from reclamation, is central to meeting the goals of this rule, and an approach that applies to all HFCs would continue to promote reclamation. An approach that is GWP-based may have a counter effect of promoting only reclamation of certain higher-GWP HFC refrigerants. Further, such a GWP-weighted approach would likely require additional compliance measures such as labeling or recordkeeping and reporting to ensure a specified overall CO₂ equivalency is met.

The Agency recognizes the use of HFC-32 and HFC-152a neat and in blends. The Agency further understands that as the market evolves, the sourcing of HFCs to be reclaimed may require separating HFCs and then using those separated HFCs in new blends. EPA is aware that a number of reclaimers have invested in and currently operate advanced reclamation technologies to effectively reclaim refrigerants, including separating and reclaiming HFC-32 from R-410A. For additional discussion on supply of reclaimed HFCs, please refer to comments and responses in section IV.E.2.

Comment: Another commenter, as part of their suggestion that EPA replace the reclaim mandates for initial fill and servicing with a requirement that refrigerant supplied for servicing include a specified percentage of reclaimed material on a CO₂e basis, proposed that this requirement should be met on a net basis, allowing for certified reclaimed refrigerant to be blended with virgin refrigerant in any ratio so long as the final ratio of material placed into the market in every reporting year meets the ratio as determined by the Administrator. The commenter asserted that this flexible requirement would allow a supplier to provide 100 percent virgin R-410A, but 100 percent reclaimed R-404A, HFC-134a, or other refrigerant types, so long as the net CO₂e is met.

Response: The Agency does not agree with the commenters suggestion to base the 15 percent on an annual basis. The reclamation standard established in this final rule is such that reclaimed refrigerants are available for the servicing and/or repair of refrigerant-containing equipment in certain subsectors, and it is not applied at the supplier level. Reclaimers must meet the reclamation standard of no more than 15 percent virgin HFCs, by weight, on a batch basis and certify that the reclaimed refrigerant does not exceed the limit. Basing the reclamation standard on an annual basis may create scenarios in which materials exceeding the reclamation standard of no more than 15 percent virgin HFCs, by weight, is sold or marketed as reclaimed material. This would be counter effective to the goal of maximizing reclamation and could potentially put those servicing and/or repairing refrigerant-containing equipment in the covered subsectors in non-compliance. The Agency further discusses elsewhere in this section that it is applying the requirement on a batch basis.

Comment: EPA received many comments that opposed the 15 percent, by weight, limit for virgin HFCs in reclaimed HFC refrigerants. Two commenters stated the requirement should be removed. One such commenter opposed any cap on virgin HFC refrigerants and specifically opposed the 15 percent blanket cap which they stated was arbitrary and capricious. The commenter claimed that similar provisions at a State level (*i.e.*, CARB regulations) were established after industry input for R-410A, EPA did not solicit detailed technical input before the 15 percent proposal, and CARB's 15 percent limit cannot be assumed to correlate for other multicomponent HFC blends. The

commenter claimed that the limit could cause certain equipment to be prematurely obsolete if it uses HFCs for which the 15 percent limit is unworkable, and that EPA did not consider technical factors in tandem with the HFC phasedown. The commenter stated that EPA must demonstrate that the limit is uniformly technically achievable based on limitations of reclaimers and across the spectrum of HFC blends currently in the market and will result in increased reclamation beyond regulatory and market factors already identified by EPA to meet its mandate under subsection (h). The commenter claimed that small reclaimers cannot separate mixed or out-of-ratio refrigerants, resulting in the destruction of many refrigerants. The commenter stated that greater reclamation could be realized if small reclaimers could use virgin refrigerant at their discretion to meet purity standards while not yielding more reclaimed refrigerant than they received. The commenter disagreed that a virgin HFC limit was necessary given the decreasing pool of virgin HFC.

Another commenter claimed that the 15 percent virgin material limit for reclaimed material effectively removed blending as an option for creating certified refrigerants from mixed HFCs. The commenter stated that fractional distillation is not realistic for small businesses due to its cost and time required, and that new technologies to address mixed HFCs are still nascent. The commenter contended that reclaimers receive many mixed HFCs and that the 15 percent limit would remove any benefit of blending.

One commenter stated that the 15 percent, by weight, virgin HFC requirement would require an unattainable amount of material in 2028. The commenter provided an example using R-410A, based the consumption of HFC-32 as provided on EPA's HFC Data Hub⁹⁴ and certain assumptions, including that consumption corresponds to demand and usage and the 50% of HFC-32 consumption is used to produce virgin R-410A. The commenter estimated that only four percent of the total demand for R-410A could have been met in 2022 based on the 15 percent virgin requirement. The commenter also stated that, frequently, a small amount of reclaimed mixed refrigerant is added to virgin refrigerant to blend out mixed gas, not the other way around. Using a very high reclaim to virgin ratio as the standard for reclaimed gas will reduce

⁹³ Additionality is the criterion used to demonstrate that the activity or project generating offsets or credits would not have happened anyway (*e.g.*, if it were required by regulation).

⁹⁴ HFC Data Hub, available: <https://www.epa.gov/climate-hfcs-reduction/hfc-data-hub>.

reclaimer's ability to process more mixed gas into salable product.

Response: EPA acknowledges these comments related to the limit on virgin HFCs in reclaimed HFC refrigerants. The Agency concludes that such a limit is necessary for helping to achieve the purpose identified in subsection (h) of the AIM Act to maximize the reclamation of HFCs because without such a limit, refrigerant could be marketed as reclaimed even if it contained minimal recovered HFCs. Reclaim and reclamation are defined in subsection (b)(9) of the AIM Act to mean the reprocessing of a recovered HFC to a particular purity standard and the verification of the purity of that HFC using at a minimum a specified analytical methodology. Establishing a limit on virgin HFCs helps to ensure that reclaimed HFCs effectively make use of recovered HFCs and also helps promote more recovery of used HFCs from equipment that can then be reclaimed. This is an important part of maximizing reclamation of HFCs because those recovered HFCs are a key component of reclaimed refrigerants. Accordingly, EPA disagrees with the assertion that greater reclamation would result from an approach that allows reclaimers to use as much virgin HFC as they wished in producing reclaimed HFCs.

EPA also disagrees that a decreasing pool of virgin HFCs would cause the reclamation standard to be unnecessary. Although the phasedown mandated by the AIM Act will lead to transition to alternatives as well as likely increased use of reclaimed HFCs, that is not equal to fulfilling Congress's direction in subsection (h) of the AIM Act, namely maximizing the reclamation of HFCs that the requirements in this final rule are designed to achieve. Further, the provisions finalized in this rule provide consistency for what is considered reclaimed HFCs, and the accompanying labeling provisions provide transparency for those purchasing reclaimed HFCs. For example, it would not provide assurances to those who service, repair, or install refrigerant-containing equipment that HFC refrigerants sold or marketed as reclaimed meet consistent standards, including with respect to the virgin content. Further, EPA explains in this response how the reclamation standard supports the purposes under subsection (h), notably, maximizing the reclamation of HFCs. Reclaimed HFCs currently are used in equipment and will continue to be a significant source of HFCs to support equipment that use HFCs, including in particular, the servicing and/or repair of existing

equipment so that these pieces of equipment can reach their full useful life. However, EPA does not expect that such use on a voluntary basis would maximize the reclamation of HFCs, as Congress instructed. For example, EPA's multi-decade experience with regulations under CAA section 608 where there are no similar requirements for reclaimed ODS or ODS substitutes provides insight related to reclamation. Reclamation trends of ODS has been fairly steady, only driven by market demand, with no requirements for a limit of virgin material or requirements for servicing or repairing equipment with reclaimed ODS. In earlier years of reported HFC reclamation (*i.e.*, 2017–2021), a similar steady trend can be observed. While there was no statutory direction to maximize reclamation of ODS under CAA section 608, as there is under subsection(h) of the AIM Act, the flat trend of ODS reclamation could represent that increasing trend could have been observed with additional regulatory drivers. As EPA discusses in other responses in IV.E.2, reclamation of HFCs has more recently (*i.e.*, in 2022 and 2023) seen an increasing trend. As noted at the start of this paragraph, while the phasedown of HFCs under the AIM Act may have an effect on the increasing trend, notably during years near a phasedown step, EPA has determined that that alone is not enough to maximize reclamation, as the Agency was instructed to do by Congress. The provisions in this rule are necessary to ensure this trend continues and reclamation of HFCs is maximized. Further, as EPA has noted, the production and consumption of HFCs are being phased down, not phased out. As such, there will still likely be demand for HFCs after the phasedown concludes, and reclaimed HFCs will play an important part of meeting that demand. Thus, EPA concludes that it is appropriate to establish reclamation requirements in this rule.

EPA does not agree with the comments asserting that the Agency must demonstrate that the limit is uniformly technically achievable for current reclaimers and across the spectrum of HFC blends in the market and will result in increased reclamation beyond regulatory and market factors to meet its mandate under subsection (h). From information provided in comments to the NODA and based on EPA's understanding, HFC reclamation can be complex and require advanced separation technologies. EPA understands that reclaimers have access to varying degrees of these technologies for the reclamation of HFC refrigerants.

Based on information provided to the Agency in comments to the NODA, in public meetings, and in comments for this rulemaking, EPA is aware that reclaimers are currently using technologies that can meet the provisions of this rulemaking. The statutory text of subsection (h) does not include requirements for uniform technical achievability, and EPA interprets the references in subsection (h)(1) to maximizing reclamation to include authority to establish provisions that require reclaimers to go beyond their current practices to achieve that goal, when such requirements are otherwise consistent with the direction in subsection (h)(1). EPA also interprets subsection (h)(1) as authorizing regulations that help ensure that the reclamation that may be anticipated based on other regulatory or market factors, such as a decreasing pool of virgin HFCs, actually occurs and meets a uniform standard. In EPA's view, such regulations can be part of the overall effort to maximize reclamation, consistent with subsection (h)(1).

The Agency disagrees with the commenter stating that the reclamation standard would lead to certain types of equipment becoming prematurely obsolete. Reclaimed refrigerant is required to meet applicable purity standards, which must also be verified by specified analytic methodology. Further, under the Allocation Framework Rule, virgin refrigerant is required to meet the same purity standards. Thus, reclaimed refrigerants would serve the same function in refrigerant-containing equipment as virgin refrigerant. As such, EPA disagrees the reclamation standard would be unworkable and cause premature obsolescence for equipment as it relates to using reclaimed refrigerants meeting the reclamation standard. Related to the availability of reclaimed refrigerants for the servicing and/or repair of certain refrigerant-containing equipment, EPA discusses supply and estimated demand in section IV.E.2. Further, EPA is not finalizing, at this time, either the proposed requirement for servicing and/or repair with reclaimed HFCs in a fourth subsector or the proposed requirement for the initial fill of refrigerant-containing equipment to be done with reclaimed HFCs (see comment responses in section IV.E.2 for additional discussion).

EPA also disagrees that the reclamation standard placing a limit on the amount of virgin HFCs would cause additional destruction by small reclaimers. While some small reclaimers may choose to destroy recovered

material they receive, others may identify the value in the recovered material and send it to a larger reclaimer with more sophisticated technology to separate the components. EPA understands that this is a current practice and, ultimately, the fate of the recovered materials in this scenario may be a business decision by the small reclaimers.

Further, establishing such a standard helps to ensure that reclaimed HFCs are a consistent product on the market. The Agency understands that reclaimers have varying types of reclamation technology; however, the Agency does not agree that reclamation primarily by blending is an effective method to achieve the purposes identified in subsection (h) and in particular maximizing reclamation. As noted by some comments, such a practice can result in refrigerants that contain relatively small amounts of reclaimed material being sold or marketed as reclaimed. Moreover, the Agency is not precluding the practice of blending itself, such that the 15 percent limit, by weight, of virgin HFCs is not exceeded. Highly pure reclaimed HFCs and up to 15 percent virgin HFCs can be used for such purposes. The definition of reclaim/reclamation in subsection (b)(9) of the AIM Act states that reclamation involves the “reprocessing of a recovered regulated substance.” Consistent with this definition, recovered regulated substances must undergo some degree of reprocessing to be reclaimed, and the Agency does not view achieving the required purity standards by solely blending with virgin HFCs to constitute reprocessing the recovered materials. Thus, blending with virgin HFCs would be a practice performed together with other measures to reprocess recovered HFCs to achieve the required purity standards. Furthermore, placing a limit on the maximum allowable virgin HFCs in reclaimed HFCs ensures a consistent understanding among the regulated community of what reclaimed HFCs are.

EPA acknowledges that it referenced the Refrigerant Recovery, Reclaim, and Reuse Requirements (CARB Program) or R4 Program while proposing a limit on virgin HFCs in reclaimed HFCs, as well as other applicable information. As the commenters state, the limit on virgin HFCs established by CARB for California were developed after consultation with industry. EPA proposed, requested comment on, and is finalizing a broader program that was informed, in part, by the experience in California. EPA recognizes that the R4 Program in California was more limited in scope to focus on reclaimed R-410A,

and that industry input on the State program was largely focused on this. The Agency is finalizing the requirement for a limit on virgin HFCs for all reclaimed refrigerants that contain HFCs. This requirement is being established to drive and promote reclamation as consistent with the purpose in subsection (h)(1) of maximizing of reclamation of HFCs. In response to the comment that EPA did not solicit technical input before the 15 percent proposal, EPA notes that the Agency solicited comment on establishing different percentages for a limit on virgin HFCs (e.g., if a lower percentage could be used). Commenters had the opportunity to provide technical information during the public comment period for this rulemaking, many commenters did so, and EPA has considered those comments in finalizing this requirement.

EPA disagrees with the comment stating that the 15 percent limit would require an unattainable amount of material in 2028 and disagrees with the commenter’s provided assessment for the estimated amount of reclaimed R-410A at four percent relative to the commenter’s estimated demand in 2022. EPA understands that the commenter made certain assumptions for the demand of R-410A based on the consumption of HFC-32; however, the Agency states that the term “consumption” is a specifically defined term under the AIM Act and the Allocation Framework Rule that captures production plus imports minus exports. Thus, the commenter’s assumption consumption corresponds to domestic demand and usage does not appear to account for exports. However, it is not clear how that might affect the analysis, given the commenter also acknowledged that HFC-32 may be used in other applications assumed that demand of R-410A was based on half of the total consumption of HFC-32. Furthermore, EPA does not find this analysis relevant to the provisions in this final rule, as the analysis is based on comparing reclamation totals to estimated demand of R-410A in 2022. EPA is finalizing requirements for the servicing and/or repair of refrigerant-containing equipment to be done with reclaimed HFCs in the supermarket systems, refrigerated transport, and automatic commercial ice makers subsectors beginning on January 1, 2029. In a comment response in section IV.E.2, EPA discusses estimated demand of reclaimed HFCs for servicing and/or repair of refrigerant-containing equipment in these subsectors and provides additional details in the

Economic Impact and Benefits TSD in the docket of this rulemaking. As noted in that comment response, EPA anticipates that the supply of reclaimed HFCs will increase in the coming years and be sufficient to meet the demand associated with the provisions in this rule. EPA estimates the total demand of R-410A for servicing and/or repair of refrigerant-containing equipment at approximately 134,000 pounds (61,000 kg). This is well below the total R-410A reclaimed in 2022, even when considering the reclamation standard to limit the amount of virgin HFCs in reclaimed refrigerants at 15 percent, by weight. As explained in other comment responses in section IV.E.2, EPA anticipates that recovered or reclaimed R-410A can be a useful source for reclaimed HFC-32 and HFC-125 (i.e., the components that make up the blend R-410A).

Comment: Another commenter stated that EPA failed to consider areas where the proposed regulations duplicate existing regulations or less burdensome and costly alternatives, claimed that there are less costly and less burdensome regulatory alternatives for EPA to continue to implement Congressional directives under the AIM Act, and claimed that EPA’s cited objectives in the proposed rule have already been achieved by an aggressive HFC phasedown schedule. The commenter stated that EPA estimates the overall compliance costs of the proposed rule to be well in excess of \$3 billion, and stated that under the Unfunded Mandates Reform Act (UMRA), before promulgating any rule that may result in expenditures, in the aggregate, of \$100 million or more, an agency must “identify and consider a reasonable number of regulatory alternatives and from those alternatives select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.” The commenter further asserted that EPA has not shown that it considered the current market dynamics, let alone any less burdensome and less costly alternatives, before proposing onerous new requirements applicable to reclaimers, and claimed that EPA’s proposed rule goes too far and is not tailored to achieve the goals of subsection (h) in the least costly, most cost-effective, or least burdensome manner, as required under UMRA. The commenter also claimed that EPA has not presented any evidence to show that proposed reporting and recordkeeping requirements will increase opportunities for reclamation beyond what will occur from market dynamics.

The commenter stated that in short, if there is a less burdensome alternative that will accomplish EPA's stated objectives, then the Agency is obligated to consider and adopt it unless another alternative exists that is even less costly or burdensome. The commenter further stated that it was not apparent that the type of scenarios they listed or the associated costs were considered by EPA in developing its cost estimates, and that EPA failed to consider how existing regulations, policies and practices, and alternative approaches to address concerns regarding mischaracterization of reclaimed HFC refrigerants would be more effective, less costly, and less burdensome. The commenter provides one such approach that the Agency should use existing reporting requirements under the AIM Act and clarify that a reclaimer cannot yield more reclaimed refrigerant than the quantity of recovered refrigerant input. The commenter also asserted that the proposed 15 percent limit on virgin HFC refrigerants in reclaimed refrigerants is a sharp departure from past interpretations and will result in significant costs without adequate technical or legal justification, and that many small reclaimers do not have capabilities to separate mixed or out-of-ratio refrigerants, meaning that the 15 percent limit will be difficult or impossible to meet for some small reclaimers. The commenter stated that the result could be that many used refrigerants will be destroyed, which the commenter stated would undermine the AIM Act's directive to maximize reclamation and will also result in significantly greater costs to the regulated community which EPA has not considered. The commenter asserted that the proposed cap will impose unjustified costs and burdens on all reclaimers and their customers that do not appear to have been fully considered by EPA. The commenter claimed that for EPA to meet its legal burden in proposing this rule, it must demonstrate that its proposed limit is uniformly technically achievable; that adoption of this limit will result in increased reclamation beyond the regulatory and market factors EPA has already identified, to meet its mandate under subsection (h); and that EPA must also demonstrate under UMRA that this is the least costly, most cost-effective, and least burdensome option. The commenter further claimed that EPA provided no evidence that container tracking, marking, and certification will serve to maximize reclamation, minimize releases, or protect technicians and consumers beyond

what is accomplished by existing requirements, nor has the Agency demonstrated that its proposed requirements are the least costly and burdensome options. The commenter stated that small business grant programs, which could help, have yet to be established and are subject to appropriations availability.

Response: EPA disagrees with these commenters' assertions as described in this response. EPA extensively considered the legal and technical basis of formulating a reclamation standard provision under subsection (h), as described in the proposed rule and in this final action. As previously stated, EPA consulted with stakeholders before the notice of proposed rulemaking (NPRM), through the opportunities for public comment on the NPRM, and anticipates continuing engagement after the rule is finalized. Notably, in October 2021, EPA released a draft report "Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices," accompanying a NODA (87 FR 62843, October 17, 2022). EPA solicited stakeholder feedback and held a public stakeholder meeting shortly after the NODA was published on November 9, 2022. EPA received 11 comments in response to the NODA as detailed above. EPA does not agree that the 15 percent limit on virgin HFCs is not technically achievable and discusses in the prior response in this section and in section IV.E.2 the technical capabilities of reclaimers and the available technologies that are current in use. EPA also discusses in another response in this section that the Agency disagrees that the reclamation standard would lead to additional destruction by small reclaimers. Further, EPA received comments to the NODA stating the use of these technologies (e.g., fractional distillation) is feasible, and the Agency is aware of reclaimers expanding capacity of these technologies to process increased volumes of reclaimed HFCs. Thus, there are technologies available (e.g., fractional distillation) that can be used and are currently in use to reclaim HFCs while meeting the 15 percent, by weight, limit on virgin HFCs in reclaimed material. With these considerations, EPA determined that a 15 percent limit on virgin material is technically feasible and received comments agreeing with that conclusion. As described in the prior comment response, EPA received multiple comments disagreeing with the reclamation standard of no more than 15 percent virgin HFCs, by weight, and the

Agency discusses these comments in that response.

EPA considered alternatives to the reclamation standard, including soliciting comment in the NPRM on a lower limit and on not requiring a limit at all. After considering these alternatives and the comments on the reclamation standard, EPA concludes that the 15 percent limit is a technically appropriate way to ensure a consistent understanding among the regulated community of reclaimed material. Further, from both a technical and a legal perspective, the Agency concludes that the reclamation standard is an important part of ensuring that the reclaimed HFCs that are used to comply with the requirements for servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs are in fact chiefly constituted of reclaimed material, thus helping to ensure that these requirements serve the intended objective of maximizing reclamation, consistent with the purposes identified in subsection (h)(1). To the extent the comment suggests that EPA must provide evidence that the reclaim requirements will substantially increase opportunities for reclamation beyond what would occur from market dynamics or that they be uniformly technically achievable, EPA does not agree that subsection (h) requires such evidence as a prerequisite to regulation, for the reasons discussed in the prior response to comment. In response to the commenters' statement that the 15 percent limit on virgin HFCs differs from past interpretations, EPA notes that this is the first rulemaking under subsection (h) of the AIM Act and as such, there are no past interpretations under this authority by which to compare. Thus, the Agency is addressing questions related to the implementation and interpretation of this provision for this first time in this rulemaking. Further, title VI of the CAA does not contain the same or similar language regarding reclamation as is included in subsection (h) of the AIM Act, and thus past interpretations under the CAA were based on different statutory text and context. In response to the comment regarding reporting and recordkeeping requirements, EPA explains that there are recordkeeping and labeling requirements finalized in this rule to support compliance with the requirements for reclaimed HFCs established in this rule. For example, some of the recordkeeping and labeling requirements help to ensure that refrigerant that is sold or marketed as reclaimed meets the reclamation standard. This in turn helps ensure that

a person servicing and/or repairing refrigerant-containing equipment in certain RACHP subsectors can identify that the reclaimed HFCs meet the reclamation standard, and that they can service and/or repair refrigerant-containing equipment with reclaimed HFCs that meet the reclamation standard. As such, these recordkeeping and labeling requirements support provisions to help to maximize reclamation but are not designed to independently increase opportunities for reclamation.

Further, in response to the comment regarding the duplication of existing regulations, EPA responds that it disagrees that the requirements for labeling and recordkeeping duplicate the existing regulations cited by the commenter. The commenter alludes to regulations under 40 CFR part 84 subpart A, which require certain recordkeeping and reporting for information from reclaimers on the quantities of recovered refrigerant they receive, quantities they reclaim, and the quantity of waste that is disposed of. The regulations in 40 CFR part 84 subpart A also require recordkeeping for results of analyses, by batch, that verify that purity standards for reclaimed HFCs are met, specified contact information from whom they receive recovered material, and the quantity of material, by HFC, that they receive. The recordkeeping and labeling provisions finalized in this rule do not duplicate these requirements because they include different requirements than those included in the subpart A rules and are designed to provide information related to the requirements of this final rule. For example, this final rule establishes recordkeeping and labeling requirements for reclaimers to retain information and provide a label that certifies that the reclaimed HFCs they sell or distribute, or offer for sale or distribution, meet the reclamation standard and contain no more than 15 percent virgin HFCs, by weight.

In response to the alternative approach offered by one of the commenters to address the potential mischaracterization of virgin HFCs sold as reclaimed HFCs, EPA notes that this approach would not fully capture the information needed to support compliance with this rule. This approach would provide EPA with a snapshot to assess the amount of reclaimed HFCs compared to the amount reclaimers receive as recovered HFCs each year. However, as EPA understands, reclaimers may not reclaim all the HFCs they receive in a

single reporting year.⁹⁵ They may reserve recovered HFCs until a time that is more opportune to reclaim the HFCs, based for example, on market considerations or other factors. EPA notes that the commenter is correct that current reporting requirements under 40 CFR part 84 subpart A provides useful data, including inventory reports submitted annually. EPA could use this information to assess reported totals of HFC reclamation as compared to the total HFCs received by reclaimers and the amount of waste reported. The labeling requirements in this rule are designed so that the regulated entities servicing or repairing refrigerant-containing equipment in the covered subsectors can confirm they are doing so with reclaimed HFCs. There may be cases where the person (*i.e.*, a certified technician) servicing a piece of refrigerant-containing equipment in the covered RACHP subsectors is not the same person that is purchasing the reclaimed HFCs that will be required to service that piece of equipment. Thus, the labeling requirements in this rule provide certainty to the technicians that they are in compliance with the reclaim requirements when they service and/or repair refrigerant-containing equipment in the covered subsectors.

With respect to UMRA, the Agency's proposed action complied with the requirements under UMRA that applied at proposal. Because the requirements finalized in this rule are narrower in some respects than those evaluated in the proposal, as well as the estimated impacts of the 2023 Technology Transitions Rule in reducing the amount of projected future stocks of refrigerant-containing appliances using an HFC or HFC substitute with a GWP greater than 53, the estimated compliance costs of the final rule are significantly lower than what the proposed rule's estimated compliance costs were. As noted elsewhere in this preamble, this final 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. Thus, the requirements related to the adoption of the least costly, most cost-effective, or least burdensome alternative that meets the objectives of the rule under UMRA do not apply to this final action. To the extent that the comments on the proposed requirements for recordkeeping and reporting and other comments on EPA not evaluating scenarios and associated

costs estimates are related to the proposed container tracking requirements, EPA responds that those provisions are not being finalized in this rule, and the Agency is not addressing such comments.

Given the importance of the 15 percent cap in helping to achieve the regulatory objective of maximizing reclamation, EPA does not agree that any costs or burdens that may be experienced by reclaimers or customers are unjustified. While only some aspects of EPA's analysis regarding projected impacts of the rule were considered in developing this final rule, EPA notes that its analysis of the impacts of this provision is discussed in the Economic Impact and Benefits TSD. EPA disagrees with the commenter's assertion that the objectives of this rule—which addresses requirements under subsection (h) of the AIM Act—would already be achieved by previously established regulations pertaining to separate statutory requirements of the AIM Act. As noted above, the recordkeeping and reporting requirements under other regulations under the AIM Act would not achieve the same purposes as required in this rulemaking. The requirements under 40 CFR part 84 subpart A cited by the commenter provide information on reclamation totals and provide insight on reclamation trends. They do not provide information for compliance with the reclamation standard, nor would they provide information about reclaimed HFCs to those regulated entities servicing and/or repairing refrigerant-containing equipment. As detailed in the Economic Impact and Benefits TSD, EPA evaluated multiple scenarios regarding incremental impacts of this rule relative to actions that industry may or may not undertake in the baseline. EPA has presented results of the more conservative of these scenarios in this preamble. The Agency has taken into consideration, in this rule, requirements for reclaimed HFCs and expects these regulations will provide market signals that will support increased recovery of HFC refrigerants becoming available for reclamation, and will support reclaimers increasing the amount of reclaimed refrigerants available to meet the increased demand. The Economic Impact and Benefits TSD does not include increased recovery in the base case for this rule based on the assumptions for that scenario; however, EPA did consider an alternate scenario with increased recovery and anticipates that the reclamation provisions could support increased recovery during servicing or disposal where the refrigerant may otherwise have been

⁹⁵ See section IV.H.3 for discussion of speculative accumulation requirements per the RCRA alternative standards.

vented or released. EPA also notes that estimated compliance costs resulting from the final rule are significantly lower than those assessed for the proposed rule, because the requirements finalized in this rule are narrower in some respects than those evaluated in the proposal. EPA reiterates that this rulemaking is designed to serve the purposes identified in subsection (h)(1) of the AIM Act of maximizing reclamation and minimizing the release of regulated substances. While, as noted previously in this preamble, EPA has included estimates of the costs and benefits of this rulemaking in analyses that are available in the docket for this rulemaking, including in the Economic Impact and Benefits TSD, to provide the public with information on the relevant costs and benefits of this action and to comply with Executive Orders, nothing in the AIM Act requires EPA to consider costs or identifies any particular cost-based metric or analytical approach for use in evaluating and establishing regulations to implement subsection (h). The commenter correctly stated that subsection (h) of the AIM Act does include a small business grant program that is subject to appropriation availability. Subsection (h)(5) provides this program for the purchase of new specialized equipment for the recycling, recovery, or reclamation of a substitute for a regulated substance, including the purchase of approved refrigerant recycling equipment for recycling, recovery, or reclamation in the service or repair of MVAC systems. Funds have not been appropriated for this grant program and the establishment of this program is outside the scope of this rulemaking.

Comment: One commenter questioned why contractors seem to de-select reclaimed refrigerants, noting the differences between the AHRI 700 standard and new refrigerants supplied with 99.99 percent purity and precision blending. The commenter suggested EPA consider upgrading the specification to match the current supply of virgin refrigerants.

Response: In response to the commenter's question regarding use of reclaimed refrigerants in the RACHP sector, EPA notes that certain ODS may only be available as reclaimed for use in particular applications with the ODS phaseout. For example, since 2020, only reclaimed HCFC-22 can be used to service appliances in the RACHP sector. The same is true for appliances using CFCs since the 1990s. The Agency is not aware of any concerns from the RACHP servicing industry stemming from these requirements. The Agency considers this example and the broader ODS

reliance on reclaimed ODS as informative in the context of this rulemaking.

EPA acknowledges that both reclaimed and virgin HFCs are required to meet the AHRI 700 purity standard and that even with compliance with the AHRI 700 purity standard, there may be minor differences between reclaimed and virgin refrigerant (such as moisture content). However, these minor differences do not impact the functionality of the reclaimed refrigerants in equipment nor do they suggest marked differences between reclaimed and virgin refrigerants as both are required to reach, at a minimum, AHRI 700 levels of purity. These differences should not impact the equipment that uses these refrigerants. Accordingly, EPA is not making any change to the applicable specifications to match the current supply of virgin refrigerants in this final action.

Comment: One commenter requested that EPA acknowledge the unique challenges of returning diverse blends to ASHRAE specifications without blending a significant amount of virgin content. The commenter cited five- and three-component refrigerant blends that may be challenging to return to their nominal composition, require more than 15 percent virgin refrigerant, or use an HFC that is rarely used and therefore not recovered in sufficient quantities. The commenter provided an example of a newer blend, R-471A, which is a three-component blend that consists of two HFO components and HFC-227ea. The commenter further states that HFC-227ea is rarely used as a refrigerant today, and it would be difficult to produce reclaimed R-471A based on this. The commenter recommended increasing the permissible virgin percent composition to avoid eliminating ASHRAE A1 refrigerants that comply with the 2023 Technology Transitions Rule. Another commenter opposed the 15 percent limit and stated that the standard may be feasible for limited use of the two-component blend, R-410A, as was done in CARB's program. The commenter further stated that the standard could not be used to correlate to three, four, and five component blends that have varying physical properties and would require varying cost-effective technical options to bring the material to appropriate standards.

Another commenter supported EPA's 15 percent virgin content standard for refrigerant blends with fewer than three components but recommended 65 percent reclaimed content and 35 percent virgin HFCs for blends with three or more components to account for

minor additions in certain products and issues with leak fractionation. Two commenters recommended phasing in the virgin refrigerant limit over several years. One of the commenters recommended starting with a 90 percent virgin product in 2028 and progressing to the 15 percent limit. The commenter noted this would enable the market to adjust.

Response: EPA acknowledges these comments on multi-component blends. EPA is not establishing varying percentage limits for virgin HFC refrigerant based on the number of components in a refrigerant blend or a phase in approach by percentage. As explained in prior responses, the Agency is establishing an upper limit for virgin HFCs in reclaimed HFCs of 15 percent by weight. EPA acknowledges the reclamation challenges in working with blends, and in particular with three or more component blends. The Agency notes that there are technologies available to effectively reclaim such blends and reclaimers with the technical capability to do so. Further, EPA notes that many blends with three or more components are currently being reclaimed. The Agency provides an assessment of the anticipated demand of some of these blends related to the requirements in this rule for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in three RACHP subsectors in its *Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices*. Among these blends are R-404A, R-407A, R-407C, and R-452A. With the exception of R-452A (which is composed of two HFCs and an HFO), each of these blends have HFCs as all three components. EPA discusses supply of reclaimed HFCs in comment responses in section IV.E.2, and the Agency further notes that it is likely that components of blends will be reclaimed and reconstituted. For example, R-410A is the most commonly reclaimed HFC blend, and it is expected to be a significant source of its components (HFC-32 and HFC-125) as reclaimed. It is possible that these reclaimed components from R-410A may be used in these three-component blends to meet the estimated demand. In the case of R-452A, EPA notes that the reclamation standard finalized in this rule only applies to the HFC components of the blend and not the HFO portion (which is a substitute for an HFC).

In the case of multi-component blends with more than three components, EPA notes that there is estimated demand, as presented in the *Analysis of the U.S. Hydrofluorocarbon Reclamation Market:*

Stakeholders, Drivers, and Practices, for two such blends: R-448A and R-449A. R-448A is a five-component blend composed of three HFCs and two HFOs, while R-449A is a four-component blend, composed of three HFCs and one HFO. As noted and described in this preamble, the reclamation standard finalized in this rule does not apply to substitutes for HFCs, which in the case of these blends would be the HFO portions. The reclamation standard finalized in this rule only applies to the HFC portions of these blends, and as EPA has noted, could be met by the reclamation of the individual components and reconstituted to a blend. Single-component refrigerants and two-component blends are currently the most commonly reclaimed substances, and they are also the most common in installed equipment. However, per data reported under regulations under section 608 of the CAA, blends with three or more components, including R-448A and R-449A, are also currently being reclaimed. EPA anticipates that with increased significance on reclaimed HFCs as the phasedown progresses and as these three or more component blends continue to be used in equipment, the reclamation of these blends will also increase. Given the availability of such technologies and for reasons explained elsewhere in this preamble and responses to other comments, EPA considers the 15 percent upper limit for virgin HFCs to be technically feasible commensurate with the compliance date.

EPA also considers a 15 percent limit to better serve the purpose identified in subsection (h)(1) of the AIM Act of maximizing reclamation than using a higher percentage would. Further, the compliance date provides time for the reclaimers and the market to adjust. Therefore, EPA is not establishing a phased-in approach. Lastly, EPA acknowledges there are some blends that rely on HFCs that are not as commonly used as refrigerants, including newer blends such as R-471A and certain ASHRAE A1 refrigerant blends that are compliant with certain restrictions under the 2023 Technology Transitions Rule. EPA notes that HFC-227ea is more commonly used in the fire suppression sector and only to a far lesser extent used in refrigerant blends. The Agency notes, however, that HFC-227ea is currently being reclaimed and reported to EPA under the regulations under CAA section 608. Further, EPA clarifies that the provisions finalized in section 84.112(b) state that recovered regulated substances must have had

bona fide use in equipment but does not specify that the recovered substance needed to be used a refrigerant and then recovered. The Agency also states that it is only establishing requirements for the servicing and/or repair of refrigerant-containing equipment to be done with reclaimed HFCs in three RACHP subsectors, that will primarily require reclaimed HFCs and blends that use components that have been common for many years (and in some cases, even decades). As noted in the *Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices*, R-410A, HFC-134a, and R-404A are the most common HFCs/HFC blends in the current stock of installed equipment, by mass. The Agency also reiterates that the limit on virgin materials only covers the HFC portion of a blend and refers to a previous response on calculating the allowable mass of virgin HFCs in a previous response as it relates to blends that contain an HFC and non-HFC component or more than one HFC component.

EPA acknowledges that multi-component blends may have different challenges in relation to their reclamation as compared to the reclamation of single-component refrigerants or two-component blends. However, as stated previously, EPA notes that many multi-component blends are currently being reclaimed, as are the components that make up these blends. As a general matter, the increased introduction and use of multi-component blends over the past five to ten years has meant that manufacturers of equipment and the servicing sector have had to adapt to using these blended refrigerants. As the commenter did not specify which types of varying cost-effective technical options might be considered for the reclamation of multi-component blends, EPA anticipates the commenter may be referring to how reclaimers consider if more sophisticated technologies (e.g. fractional distillation) are needed as compared to blending or rebalancing with virgin material. EPA understands these considerations may vary depending on the technical capabilities of a reclaimer and other market dynamics. Further, as described in section IV.E.2, EPA is finalizing a discrete reporting requirement to evaluate the availability of reclaimed HFCs intended for servicing and/or repair of refrigerant-containing equipment in the covered RACHP subsectors, which will also be useful in assessing the degree by which these multi-component blends are reclaimed.

Comment: One commenter recommended adding “and HFC substitutes” to proposed reclaim requirements to avoid replicating past regulatory gaps that led to environmental consequences and to provide for comprehensive refrigerant management. The commenter stated that the addition of substitutes would avoid disparities and possible misinterpretation. The commenter stated that, if HFC substitutes are not held to the same standard, concerns about mishandling, venting, and ownership will be likely. Another commenter advocated for a mandatory reclamation of all refrigerants in the United States, excluding hydrocarbons. The commenter noted that many HFC substitutes are HFCs themselves and cited the AIM Act’s requirement that EPA maximize reclamation and minimize release of HFCs and their substitutes. The commenter anticipated that transitioning to HCFOs or other chemicals could pose environmental concerns without sufficient life cycle management plans, including limiting releases, and suggested that all refrigerants be collected and transported to an EPA-certified reclaimer.

Response: EPA is clarifying the Agency is defining the term “substitute for a regulated substance” to explicitly establish for purposes of the regulations established in this rulemaking under 40 CFR part 84, subpart C that substitutes for HFCs are substances that are not HFCs. EPA recognizes that in the context of other rulemakings under the AIM Act (e.g., 2023 Technology Transitions Rule), substitutes may be used to refer to a lower-GWP substance that may or may not include HFCs or blends containing HFCs. In this context of this rulemaking, EPA is using a different definition to help distinguish between those requirements that apply to HFCs and those that apply to substitutes for HFCs. EPA is finalizing, as was proposed, to not require limits on the amount of virgin substitutes for HFCs in reclaimed refrigerant, whether neat or in blends. This exception is not a blanket exception from all aspects of this rule or other related regulations. For example, all regulated substances and non-HFC substitutes for HFCs with GWP greater than 53 would be subject to the leak repair requirements established in this rule. Further, EPA notes that HFCs and certain substitutes for HFCs, including HFO and HCFO refrigerants, are not exempt from the venting prohibition under 40 CFR 82.154, and it is illegal to knowingly vent or otherwise release such refrigerants into the environment while

maintaining, servicing, repairing, or disposing of an appliance or IPR. EPA is aware that substitutes for HFCs are increasingly being used in certain RACHP subsectors and are commonly used in refrigerant blends with HFCs. Any refrigerant blend that contains an HFC would be subject to the leak repair requirements in this rulemaking, which are being established consistent with the purposes identified in subsection (h)(1) of the AIM Act, including maximizing reclamation and minimizing the release of regulated substances from equipment. EPA decided to limit the requirements that apply to substitutes for HFCs in this rule to those substitutes for HFCs with GWP above 53 for reasons articulated in this final rule and in the proposal. EPA is applying this cutoff because it is the lowest GWP among regulated substances in the AIM Act. Further, the installed stock of these substitutes for HFCs is not as established as the installed stock of refrigerant-containing equipment with HFCs or refrigerants that contain HFCs. However, the installed stock of these substitutes for HFCs may be important in the future, and EPA may reevaluate this decision in the future and may consider applying other aspects of this program to non-HFC substitutes. As noted in a previous response, EPA interprets subsection (h) to authorize regulations that would apply to substitutes for HFCs.

Comment: One commenter noted that reclaimed refrigerant has never needed to be labeled in the industry and stated that requirements to label reclaimed refrigerant would create an additional “product” despite the reclaimed gas being chemically and functionally identical to virgin. The commenter stated that the greatest benefit to reclaimers is if reclaimed refrigerant is marked as fungible with virgin refrigerant. The commenter stated that labeling reclaimed refrigerant could lead to a perception that reclaimed material is of lesser quality and therefore had to be mandated by a Federal agency. The commenter claimed this could depress reclaimed gas sales contrary to the AIM Act’s direction, and would create confusion about why two different classes of refrigerant exist in the market. Another commenter opposed the recordkeeping and labeling requirements and claimed that there was no clear need to ensure that reclaimed refrigerants are easily recognized by servicers because technicians only need assurance that the material meets appropriate specifications for the particular HFC or HFC blend. The commenter stated that requirements for reclamation occurring

at the batch level further reduced the meaning of the proposed container marking requirements. The commenter stated that compliance with EPA’s proposed mandate was the only reason servicers would need to distinguish between reclaimed and virgin material. The commenter suggested that EPA should instead clarify that for current reclaimer reporting, a reclaimer’s annual total reported reclamation should match the reclaimer’s reported annual total of recovered input minus waste, which could be a less burdensome alternative that the Agency should consider. A third commenter recommended the use of a label or QR code to disclose the amount of bona fide recovered refrigerant in reclaimed material. The commenter advocated detailed data on chain of custody to avoid false claims and illegal trade, with a “credible paper trail throughout its return to service.”

Response: EPA acknowledges that this labeling requirement is new and may vary from current practices. The Agency disagrees that the labeling requirements would designate reclaimed refrigerant as being inferior to virgin refrigerant and disagrees with the commenter’s description of the perceived rationale for a Federal agency mandate. The Agency was clear in the NPRM and in this final rule that reclaimed refrigerant is capable of performing the same functionality of virgin refrigerant in equipment. Both are required to meet the exact same purity standard (*i.e.*, based on AHRI 700). The labeling requirements are being established to support the required uses of reclaimed refrigerants and to indicate that the reclaimed refrigerant contains no more than 15 percent, by weight, virgin HFCs, thus promoting a consistent understanding of what reclaimed refrigerants are. Given the requirements for the servicing and/or repair of certain refrigerant-containing equipment to be done with reclaimed HFCs in this final action, labeling will help regulated entities comply with those obligations. Thus, EPA disagrees with the comment that there is no need for technicians to be able to easily recognize reclaimed refrigerant. As such, the labeling requirement helps to support the purpose identified in subsection (h) of the AIM Act to maximize reclamation.

The Agency further notes that use of similar labels that indicate use of recycled materials is common practice throughout a wide range of industries and products. Many consumers value and seek out recycled materials or products. The requirements that both virgin and reclaimed HFC refrigerants must meet the same standards for purity based on AHRI–700 is relatively new,

and in fact EPA regulations under CAA section 608 only applied the requirement to meet the AHRI–700 purity standard to reclaimed refrigerants.⁹⁶ EPA acknowledges that some applications require higher purity material than AHRI–700 (*e.g.*, metered dose inhalers) and there may be contractual arrangements that limit entities to suppliers of virgin or reclaimed refrigerant only at this time. However, as noted throughout this final rule, as the phasedown of the production and consumption of virgin HFCs continues, demand for reclaimed HFC refrigerant will grow. Thus, the required label will provide pertinent information to purchasers and users of refrigerants and help them to select a refrigerant that meets their needs in particular situations. EPA responds that the commenter’s concern that a new label could signal a new separate “product” seems unfounded given that all reclaimed HFCs will be required to be labeled as such and there is an overall requirement for labeling of HFCs. Further, EPA is aware of at least one reclaimer that specifically markets a line of refrigerants as reclaimed refrigerant.

EPA acknowledges the comments raising chain of custody concerns. EPA is imposing recordkeeping requirements providing the name, address, contact person, and the phone number of the reclaimer certified under 40 CFR 82.164, as well as information about the date the container was filled and the amount of the regulated substance in the container. Batch and substance identification information is included in these requirements along with the percentage, by weight, of the virgin regulated substances. The labeling and certification requirements in this rulemaking help to ensure that purchasers and users of reclaimed refrigerant are receiving and/or using a product that has been verified to be reclaimed to the proper purity, as well as meeting the 15 percent limit on virgin HFCs.

Comment: Many commenters commented on limiting recovered and reclaimed material to substances removed from equipment or systems in the United States. One of the commenters stated that limiting the source of material to the United States would help EPA ensure the quality of material, confirming that only standard-

⁹⁶ EPA finalized a requirement that all HFCs (both virgin and reclaimed) imported, filled in containers domestically, and sold as refrigerants meet the specifications in appendix A to subpart F of part 82—Specifications for Refrigerants, see Allocation Framework Rule at <https://www.federalregister.gov/d/2021-21030/p-679>.

compliant material is utilized, and allow for greater transparency and traceability throughout the reclamation process, facilitating monitoring and enforcement, ensuring the program operates effectively and efficiently. Another commenter stated that illegally traded HFCs will decrease reclamation. One commenter asserted that neither reclaimed nor virgin material should be imported for destruction for carbon credit purposes and that EPA should instead prioritize recovery and reclamation in the U.S. market.

One commenter suggested that geographic limits and quality control are necessary to ensure bona fide use and recovery and ensure compliance with the reclamation standard and maximum virgin content. The commenter claimed that incidents of importing virgin refrigerant sold as counterfeit reclaimed refrigerant have been documented under previous ODS phaseout regimes and that requirements to expend allowances for bulk imports does not ensure compliance with the 15 percent limit. The commenter also stated that importers of pre-charged equipment would not be subject to the same allowance requirements. In contrast, the commenter claimed that requirements to use domestically reclaimed refrigerant will be verifiable and enforceable, particularly with the proposed tracking and labeling requirements which will support a strong domestic market. Another commenter questioned how EPA would monitor that refrigerant was reclaimed with the authorized limit of virgin material and suggested that relying on certifications would be an invitation to abuse, especially for refrigerant reclaimed overseas. Another commenter expressed concern that imported refrigerant could be incorrectly labeled as reclaimed if it came from countries with excess production. Conversely, the commenter stated that more profitable exports of recovered refrigerant could starve domestic servicing needs.

Another commenter stated that, without a geographic limitation for reclaimed or recovered refrigerant sourcing, refrigerant recovered abroad will not reduce U.S. emissions nor create market incentives to improve domestic recovery and verifying recovery or reclamation abroad will be very challenging, potentially indirectly advantaging importers of pre-charged equipment sourcing cheaper or even counterfeit material. The commenter also stated that the United States should not aim to receive reclaimed HFCs from the world because Kigali Amendment ratifiers need to implement their own phasedowns and it would be better to

reuse HFCs within their countries of origin. The commenter also suggested that there is an incentive for cheating given that importing reclaimed HFC-32 requires fewer allowances than HFC-410A. The commenter encouraged setting up trade agreements for import of reclaimed HFCs where a similar HFC phasedown schedule exists.

Another commenter requested that EPA make clear that reclaimed refrigerant must have been recovered from equipment in the United States or that reclaimed material from outside the United States be allowed only if it was legitimately recovered, disclosed upon import, and followed EPA's current process for legacy refrigerants. An additional commenter suggested that EPA establish standards and a certification process to ensure reclaimed refrigerant is authentic and has a known point of origin. Another commenter stated that it is important that importers of pre-charged equipment be required to purchase reclaimed HFCs from EPA-certified reclaimers in the United States, either using reclaimed material to charge equipment in the United States or dry-shipping equipment and charging it in the United States. The commenter suggested requiring the dry shipment of equipment to be charged in the United States, to minimize the transport of reclaimed HFCs across countries.

Response: EPA acknowledges these comments regarding the verifiability of recovered and reclaimed HFCs particularly outside the United States. The Agency is not establishing a requirement that recovered or reclaimed HFCs be sourced only from equipment in the United States in this final rule. The Agency understands the commenters' concerns to ensure that refrigerant that is recovered and sent for reclamation can be confirmed as having a bona fide use in refrigerant-containing equipment, as this rule requires, and that there can be challenges in verifying imported material claiming to be recovered or reclaimed. EPA anticipates that in most cases, recovered material that reclaimers receive would have been sourced from refrigerant-containing equipment within the United States. Under the requirements previously established in separate regulations in 40 CFR part 84, subpart A, import of any bulk HFCs to the United States, whether virgin, reclaimed, or recovered, requires expenditure of the requisite number of allowances and associated reporting and recordkeeping under those regulations. Thus, if one were to import any recovered HFCs to be reclaimed within the United States, allowances must be used. As stated, EPA anticipates reclaimers would likely seek to obtain

recovered materials from within the United States, as they would not require allowances to receive these domestically recovered HFCs. The regulations under 40 CFR part 84, subpart A are designed to provide recordkeeping and reporting requirements for the requirements under subpart A, but the Agency notes that this reported information may also be useful in identifying if practices are occurring that would violate the regulations established in this final rule. Even if commenters are correct about current incentives regarding imports, as the HFC production and consumption phasedown progresses, and the overall quantity of available allowances decreases, importers will need to make decisions about how to expend their allowances, and those incentives may shift.

In response to comments related to requiring geographic limits to ensure that recovered materials had bona fide use in equipment, EPA concludes that such restrictions are not required to ensure the provisions in this rule are being followed. The requirements in this rule are such that the servicing and/or repair of certain refrigerant-containing equipment must be done with reclaimed HFCs, and the reclaimed HFCs must meet the standard of containing no more than 15 percent virgin HFCs, by weight. EPA has established labeling provisions for EPA-certified reclaimers to affix labels on containers they fill with reclaimed HFCs to certify that the standard is being met. As such, any material that is reclaimed by an EPA-certified reclaimer would have a label certifying compliance with the reclamation standard. If one chooses to import reclaimed HFCs and sell, identify, or report market it as being reclaimed for use in the installation, servicing, or repair of refrigerant-containing equipment, they would need to verify that the imported reclaimed HFCs are meeting the reclamation standard to ensure they are in compliance with the requirements finalized in this rule at 84.112(a). Further, under this final rule, those servicing and/or repairing refrigerant-containing equipment in the supermarket systems, refrigerated transport, or automatic commercial ice makers subsectors that contains an HFC must do so with reclaimed refrigerant that meets certain requirements including the reclamation standard. Thus, they would need to confirm that the reclaimed HFC refrigerant they are using for these purposes meets those requirements to ensure they are in compliance with their obligations. Moreover, this final rule establishes

certain requirements for the sale, distribution, or transfer of ownership for certain recovered HFCs, including reclaiming the HFCs prior to such sale, distribution, or transfer, with limited exceptions. Thus, if one chooses to expend allowances and import recovered HFCs, the recovered HFCs must, as applicable be reclaimed before being sold, distributed, or transferred to a new owner. See also subsection (h)(2)(B) (providing that a regulated substance used as a refrigerant that is recovered shall be reclaimed before the regulated substance is sold or transferred to a new owner, except where the recovered regulated substance is sold or transferred to a new owner solely for the purposes of being reclaimed or destroyed). Further, as required by this rule, the EPA-certified reclaimers who fill reclaimed HFCs into containers for sale or distribution will need to ensure the reclaimed HFCs meet the reclamation standard of no more than 15 percent virgin HFCs, by weight, and will need to comply with the applicable labeling and recordkeeping requirements.

In response to the comment stating that refrigerant recovered abroad will not reduce U.S. emissions and may disincentivize domestic recovery, EPA disagrees and states, as noted earlier in this comment response, that allowances are required to import any HFCs. Thus, any HFCs (whether virgin, reclaimed, or recovered) that are imported require the expenditure of allowances that have been allocated and accounted for under other regulations under the AIM Act. If recovered materials are imported, they would have been accounted for under the phasedown and would not contribute to additional emissions. EPA also disagrees that imports of recovered materials could disincentivize domestic recovery of HFCs. Reclaimers do not need to expend allowances to receive HFCs that are recovered domestically, which EPA anticipates being an incentive for reclaimers to primarily seek domestically sourced recovered HFCs as source material for reclamation. EPA acknowledges that whether recovered materials are reclaimed in the United States as opposed to exported may come down to a business decision; however, the requirements in this rule would promote reclaimed HFCs in the servicing and/or repair of certain refrigerant-containing equipment. These requirements would likely, in turn, promote recovery of HFCs to be reclaimed to meet the demand for servicing and/or repairing these equipment as opposed to exporting the recovered materials.

EPA understands that illegal trade of HFCs may decrease demand for refrigerant reclamation, and moreover, is a concern for the successful implementation of the phasedown. Outside of this rulemaking, EPA has already established a multifaceted enforcement approach to deter the illegal import of HFCs. The strong compliance and enforcement system will help preserve the environmental and economic benefits of the HFC phasedown.

With respect to the comments related to other countries' implementation of the Kigali Amendment and the import of virgin or reclaimed material for destruction or carbon credit purposes, the topics are out of scope for this rulemaking, and thus these comments require no further response. For additional clarity, the Agency notes that under 40 CFR 84.25, EPA does allow the import of regulated substances into the United States for destruction, subject to a petition process. However, the provisions included in 40 CFR 84.25 are out of scope for this rulemaking.

EPA also received comment that reclaimed feedstocks sourced from the United States should be treated similarly to imports for transformation, with no time limit for how long they can be stored under 40 CFR 84.25, and that domestic reclaimed feedstocks awaiting blending or fractionation should be treated equivalently to HFCs imported for destruction. As noted above, provisions included under 40 CFR 84.25 are out of scope of this rulemaking, and thus the comment requires no further response. EPA further notes that the commenter appears to be using the term "feedstock" in a way that diverges from the Agency's use of that term. For example, as explained further in the 2024 Allocation Rule, creating a blend is a completely different process from producing HFCs in the first instance, in which feedstock chemicals are entirely consumed as part of a production process. See 88 FR 46836, 46863 (July 20, 2023).

EPA notes that it is not finalizing the proposed requirements for the initial fill of new refrigerant-containing equipment with reclaimed HFCs in this rulemaking, as discussed elsewhere in this section and in section IV.E of this preamble. Thus, to the extent these comments relate to those proposed requirements for initial fill of such equipment, EPA need not respond further to them in this action. EPA is requiring bona fide use for recovered HFCs that are used to meet the requirements established in this rule related to the provisions for reclaimed HFCs. Circumventing those

requirements by importing pre-charged equipment and recovering the refrigerant without bona fide use would be inconsistent with the requirements of this final rule.

2. Requirements for servicing and/or repair of existing equipment in the RACHP sector EPA proposed that the servicing and/or repair of refrigerant-containing appliances in certain subsectors and applications in the RACHP sector where HFCs (whether neat or in a blend) are used would need to be done with reclaimed HFCs starting January 1, 2028. EPA proposed these requirements for refrigerant-containing appliances in the following RACHP subsectors:

- Stand-alone retail food refrigeration;
- Supermarket systems;
- Refrigerated transport; and
- Automatic commercial ice makers.

EPA is finalizing this provision with modifications after consideration of the comments. EPA is requiring that the servicing and/or repair of refrigerant-containing appliances in certain subsectors and applications in the RACHP sector where HFCs (whether neat or in a blend) be done with reclaimed HFCs starting on January 1, 2029, one year later than the proposed date of January 1, 2028. Further, EPA is finalizing the requirement for the servicing and/or repair of refrigerant-containing equipment to be done with reclaimed HFCs for some (but not all) of the subsectors addressed in the proposal. EPA is not finalizing this requirement for stand-alone retail food refrigeration but is establishing the requirement for refrigerant-containing equipment in the supermarket systems, refrigerated transport, and automatic commercial ice maker subsectors.

As noted in section I.B, EPA is not finalizing as part of this action the proposed provisions for container tracking of HFCs that could be used in the servicing, repair, and/or installation of refrigerant-containing or fire suppression equipment. However, EPA is establishing a discrete reporting requirement for reclaimers and refrigerant distributors that supply reclaimed HFCs in the affected RACHP subsectors (*i.e.*, supermarket systems, refrigerated transport, and automatic commercial ice makers). EPA is planning to use these data to monitor progress on the amount of reclaimed HFCs available for use in these subsectors ahead of the compliance date for the requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in the covered RACHP subsectors. EPA is establishing this requirement in

response to, and based on consideration of, comments⁹⁷ seeking assessment and data associated with reclaim use and availability. EPA is establishing a discrete reporting requirement for these entities to provide this information to EPA, so that EPA can further evaluate the availability of reclaimed HFCs intended for servicing and/or repair of equipment in these subsectors. The reporting requirement will require two annual reports (*i.e.*, one report in each of two years) to be submitted to the Agency, which includes information on the reclaimed HFC refrigerants sold or distributed to equipment owners and operators. Each annual report must be submitted by February 14 of the year following the reporting period and include information on the amounts and types of reclaimed HFCs intended for servicing and/or repair of equipment and sold in the covered subsectors over the preceding calendar year. The first report is due on February 14, 2027, and covers activity from January 1, 2026, to December 31, 2026; the second report is due on February 14, 2028, and covers activity from January 1, 2027, to December 31, 2027. The Agency notes that these compliance dates coordinate with the labeling requirements being established in this rulemaking, such that refrigerant distributors would know which containers contain refrigerants with reclaimed HFCs. EPA intends to use this information to further evaluate the ability to comply with the requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in these subsectors as established in this rulemaking. Further, the two-time reporting will allow EPA to assess the one-year trend in availability of reclaimed HFCs for use in the servicing and repair of refrigerant-containing equipment in the covered subsectors. EPA will review this information and may consider proposing changes to the provisions, if warranted.

EPA notes that the reporting requirements here contain certain data elements that are similar to data elements that were originally proposed as a part of the container tracking provisions. As noted, the Agency is not finalizing those provisions in this action; however, the public was aware of EPA's interest in information on these topics through the proposal to include

similar data elements in those other provisions. As commenters noted, and EPA agrees, there is value to collecting such data as it pertains to provisions that are being finalized in this rulemaking; notably, the requirements for servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs. Thus, these reporting requirements are being established as requirements that are separate and distinct from the proposed tracking system requirements, although they include a limited number of data elements that are similar to some included in the proposed tracking system requirements. For example, these reporting requirements are different from the proposed tracking system requirements because they are being established to occur only twice and do not require data elements be reported at an individual container level.

Comment: Several commenters expressed broad support for EPA's proposed requirements for the recovery and reclamation of HFC refrigerant. Some commenters stated, consistent with the preamble to the proposal, that reclamation can bolster the current HFC supply, support a smooth transition to HFC substitutes, minimize disruption of the current capital stock of equipment, avoid supply shortages of virgin refrigerants, and help to finance refrigerant recovery. Two commenters stated that because the proposed use requirements apply only to HFCs and not their substitutes, EPA's approach could encourage certain users to transition away from HFCs altogether into lower-GWP substitutes. One commenter suggested that increasing HFC reclamation benefits the climate, economy, and all users of cooling equipment and supports the availability of refrigerants for increasing demand for refrigerants in heat pumps for building decarbonization. The commenter further agreed that as proposed, the rule will help insulate the industry, and consumers, against price spikes that could affect the servicing of existing systems using HFCs. Another commenter stated that the provisions would send a strong market signal in favor of increased reclamation and lead to a reduction of HFC emissions and venting. Another commenter stated that sufficient reclamation volume may help reduce demand for new, virgin HFC production and consumption, which is more emissive than the reclamation process, and that the implementation of the subsection (h) rule can be a transformative force, particularly in

addressing low rates of HFC reclamation.

One commenter generally supported reclaimed refrigerant mandates to drive recovery and stimulate investment, but requested that the final requirements be sensitive to market conditions in terms of current and projected refrigerant supply, production, and consumption. The commenter stated that they did not support claims that reclaim mandates are not feasible because of insufficient material to meet demand or because market data for a given year takes time to accumulate and analyze. Another commenter supported regulations to increase the use of reclaimed refrigerants in the market, specifically through the incentivization of recovery and/or improvement of EPA's ability to enforce recovery. Another commenter also claimed that reclaimers have made significant progress investing in and installing technology to reclaim complex HFCs including fractional distillation to expand reclamation capacity.

Response: EPA acknowledges these supportive comments. The Agency agrees that the volume of reclaimed HFC refrigerants will grow significantly in the coming years particularly as the production and consumption of virgin HFCs decreases consistent with the phasedown provisions under the AIM Act. EPA anticipates this increased volume will support compliance with the requirements related to reclaimed refrigerants finalized in this action and addresses other comments related to supply of reclaimed HFCs in more detail in another response in this section. However, as described earlier in this section, EPA is establishing a discrete reporting requirement for data on the availability of reclaimed HFCs used in the servicing and/or repair of refrigerant-containing equipment in the covered RACHP subsectors and EPA may evaluate the requirements established in this rulemaking after assessing the reported data. With respect to the comment suggesting that the final requirements be sensitive to market conditions, EPA notes that these discrete reporting requirements will improve EPA's ability to evaluate market conditions and consider whether adjustments are appropriate.⁹⁸

EPA responds to comments stating that these provisions may result in some

⁹⁷ EPA received multiple comments, available in the docket of this rulemaking, related to taking a data driven approach to establish requirements for servicing and/or repairing refrigerant-containing equipment with reclaimed HFC refrigerants. Examples include EPA-HQ-OAR-2022-0606-0109, EPA-HQ-OAR-2022-0606-0121, and EPA-HQ-OAR-2022-0606-0147, among others.

⁹⁸ To the extent this commenter refers to refrigerant production and consumption, EPA further notes that it appears that the commenter may be using these terms differently from how EPA uses them, and it is not clear what relevance those terms have in this context. Both of these are defined terms under the AIM Act, and as defined in 40 CFR 84.3 they refer to regulated substances.

equipment owners or operators switching to a refrigerant that is a substitute for an HFC by noting that entities may choose to transition to a different refrigerant for a number of reasons. For example, some equipment owners or operators may choose to transition on a decision based on energy efficiency. However, EPA is establishing reclamation requirements for servicing and/or repair of refrigerant-containing equipment in certain RACHP subsectors to promote reclamation of HFCs, consistent with the purpose identified in subsection (h)(1) of the Act of maximizing reclamation of HFCs. The Agency is not establishing these provisions as a means to promote transitions to substitutes for HFCs. While EPA did not primarily focus on this provision as a way to minimize emissions of HFCs from refrigerant-containing equipment, the Agency describes in the Economic Impact and Benefits TSD that the reclaim requirements may lead to additional emission reductions by increasing recovery of refrigerant at equipment disposal. In our analysis, however, we assumed such emission reductions would take place due to previous AIM Act regulations (although not specifically required by such) and normal, business-as-usual practices by the industry—for instance in response to the venting prohibition in 40 CFR 82.154—and so conservatively did not include such emission reductions as benefits attributable to this rule. The Agency views other provisions finalized in this rule as primarily focused on minimizing emissions (e.g., leak repair requirements as discussed in section IV.C). The Agency acknowledges these comments related to supply and availability of reclaimed HFCs as well as the availability of advanced reclamation technologies for efficient reprocessing and complex separations. Many commenters provided support that the supply of reclaimed HFC refrigerants would be adequate to achieve the provisions in this rulemaking, while other commenters noted concerns on supply. Further, commenters provided information on the availability and current use of these technologies to support the requirements of this rulemaking. EPA agrees with commenters that there is adequate supply of reclaimed HFC refrigerants to support the provisions in this rulemaking. Comments related to supply of reclaimed HFCs are discussed in additional detail in other responses later in this section and in section IV.E.1.

The Agency agrees with the comments stating that increased reclamation could help to reduce the demand for virgin HFCs, particularly for HFCs such as those used in servicing and/or repair of refrigerant-containing equipment in RACHP subsectors such as supermarket systems, refrigerated transport, and automatic commercial ice makers. Further, EPA agrees with the comments stating that increased reclamation is likely to help insulate the market from possible price spikes for certain refrigerants as the phasedown of the production and consumption of virgin HFCs progresses. Reclaimed HFCs are and will continue to be an important source for refrigerants for existing refrigerant-containing equipment. As virgin HFCs may become scarcer to support the servicing and/or repair of existing refrigerant-containing equipment, reclaimed HFCs will be increasingly more vital. EPA also acknowledges comments stating the reclamation process is overall less emissive than production of virgin HFCs for use as refrigerants. However, EPA believes this point warrants further evaluation in the context of the U.S. market, and thus, is not concluding that the reclamation process is overall less emissive than the producing virgin HFCs for use as refrigerants.

EPA recognizes the importance of increased recovery as it relates to maximizing reclamation. In agreement with some of the comments, EPA anticipates that the provisions in this rule would drive additional recovery to support the reclamation of HFCs. EPA discusses the anticipated effect of increased recovery in responding to another comment in this section. For example, additional recovery is expected as more refrigerant-containing equipment reaches their end-of-life, and the value of refrigerants needed to service existing refrigerant-containing equipment increases.

Comment: Several commenters supported reclaim requirements for servicing existing equipment. One commenter stated that all HFC refrigerants used in the servicing of equipment should be applicable to the proposal. One commenter generally supported reclaim requirements for the sectors specified. The commenter recommended extending servicing requirements to additional subsectors as adequate reclaimed HFC supplies become available. Another commenter supported the role of recovery and reclamation of refrigerants, particularly as the supply of virgin HFCs is reduced.

Some commenters expressed support for the use of reclaimed refrigerants in existing equipment and urged EPA to

maximize the use of reclaimed refrigerants in the market. One commenter claimed that until the transition to near-zero GWP refrigerants is complete, the use of reclaimed refrigerant will lessen the impact of continued use of mid-range GWP refrigerants and will help avoid stranding existing higher-GWP equipment that may be well within its useful life. Another commenter stated that a reclaim mandate for servicing of existing equipment would be reasonable, as refrigerants supplied to service equipment are distributed through many channels and would not conflict with current business models. Another commenter requested that reclaimed refrigerants be mandatory only in servicing applications and states that the recovery of high-GWP refrigerants currently in use can be promoted more effectively, leading to a significant contribution towards mitigating global warming.

Another commenter generally supported most aspects of the proposed rule and stated that successful carbon reduction initiatives require cooperation among chemical manufacturers, wholesale distributors, technicians, EPA-certified reclaimers, and government agencies. The commenter appreciated EPA's transparent, collaborative, and market-neutral approach to the HFC allocation, technology transitions, and refrigerant management rulemakings.

Response: EPA acknowledges these comments in support of the provisions related to the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors. In the Agency's view, based in part on its experience with ODS-containing equipment, reclaimed HFCs will play an increasingly key role in supporting existing equipment as virgin materials become scarce; several of these comments provide additional support for that view. As described in more detail in responses later in this section, EPA is establishing requirements for the servicing and/or repair of refrigerant-containing equipment to be done with reclaimed HFCs in three RACHP subsectors: supermarket systems, refrigerated transport, and automatic commercial icemakers. EPA agrees that these requirements for the servicing and/or repair of certain refrigerant-containing equipment to be done with reclaimed HFCs are reasonable and will not be disruptive, as reclaimed refrigerants are available for these sectors and used to a degree already. EPA also is reiterating that the Agency is not at this time establishing requirements for the initial

fill of refrigerant-containing equipment with reclaimed HFCs in any RACHP subsectors and is maintaining the focus of this rulemaking on servicing and/or repair of equipment in the covered RACHP subsectors.

EPA acknowledges comments regarding evaluating for additional applicability of the requirements for servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in other RACHP subsectors. The Agency discusses the consideration of additional subsectors in another response in this section.

Comment: One commenter stated that reclaimed refrigerant has played a crucial role in maintaining chillers for decades, starting with CFCs. The commenter also noted that reclaimed HCFC-22 played a critical role in the gaps of supply after EPA, in compliance with the Montreal Protocol, accelerated the HCFC phaseout schedule and banned HCFC-22 for new equipment when there were brief periods of concerns about shortages for servicing.

Response: EPA acknowledges this comment and agrees that reclaimed refrigerants have played an important role in servicing ODS equipment leading up to and since the production and consumption of those ODS have been phased out, as noted in a prior response in this section the Agency's experience with ODS-containing equipment informs its view that reclaimed HFCs will play an increasingly key role to support existing equipment as virgin materials become more limited. While this rulemaking does not include required use of reclaimed HFCs for chillers, EPA notes the commenter's example of the importance of reclaimed refrigerants to meet servicing demand where virgin refrigerants have become scarce.

Comment: Some commenters opposed the proposed requirements for the use of recovered and reclaimed HFCs for certain RACHP subsectors for servicing of existing equipment. The commenters claimed that the proposal is creating consternation and uncertainty for their supermarket customers who have already been converting their systems to low-GWP refrigerants as quickly as possible. The commenters also asserted that the HFC phasedown and 2023 Technology Transitions Rule will create demand for reclaimed refrigerants, and EPA does not need to impose mandates to accomplish this. The commenters strongly encouraged EPA to withdraw any mandates on the use of reclaimed refrigerant and allow market dynamics to create an increased demand for reclaimed refrigerant without the added burden of a compliance risk. A few

additional commenters expressed opposition to mandating the use of reclaimed HFCs in the specific refrigeration sectors, arguing it is unnecessary market manipulation. Some of these commenters added that the best time for switching may not be the same across all sectors and supported allowing market forces to drive the transition to reclaimed HFCs. The commenters claimed that regulations may distort key market features and negatively impact consumers. Another commenter suggested that EPA delete requirements for use of reclaimed refrigerants from the rule.

One commenter suggested that the phasedown schedule, most imminently the 2024 reduction, will significantly reduce the supply of regulated substances. The commenter further stated that with the reduction in available allowances to produce or import virgin regulated substances, the supply of higher-GWP refrigerants will be reduced such that sufficient allocation is available to meet demand for lower-GWP refrigerants. The commenter stated that the 2023 Technology Transitions Rule by design, will increase the demand for lower-GWP refrigerants exponentially each year due to new appliance GWP limits. The resulting dynamic of these requirements will lead to an increase in the demand for reclaimed HFCs, especially to service the installed base of higher-GWP refrigerant-containing appliances. The commenter also stated that there is no evidence that the requirement to use reclaimed HFCs will lead to greater reclamation, and the Agency did not show how this aspect of the rule would reduce releases of refrigerant. Further, the commenter stated there is no need for regulation to create demand for reclaimed refrigerant. For these reasons, the commenter stated that EPA's proposal to require the use of reclaimed refrigerants in servicing of certain equipment is unnecessary.

Response: EPA acknowledges the comments and concerns described. EPA understands that the supermarket industry, like many industries, has been transitioning to lower-GWP refrigerants over time and will continue to do so consistent with the GWP limits and compliance dates in the 2023 Technology Transitions Rule. EPA acknowledges the concerns raised by some entities within the supermarket industry regarding the available supply of reclaimed refrigerants that will also be compliant with the 2023 Technology Transitions Rule's GWP threshold for new supermarket systems. EPA notes that it is not, at this time, finalizing

requirements for the initial fill of refrigerant-containing equipment to be done with reclaimed HFCs. Therefore, the Agency is not responding to comments on initial charge in this final rule.

In prior responses in this section, EPA noted the importance of reclaimed HFC refrigerant to support the continued operations of existing equipment, including certain older supermarket systems. The Agency agrees that existing market dynamics and other regulatory drivers may incentivize the use of reclaimed refrigerants over time, but disagrees with the conclusion that those possible incentives mean this requirement is unneeded. Congress put particular weight on reclamation in subsection (h) of the AIM Act, directing EPA in subsection (h)(1) to promulgate certain regulations, where appropriate, for purposes including maximizing reclaiming. Subsection (h)(2)(A) of the Act further provides that the EPA Administrator "shall consider the use of authority available under this section to increase opportunities for the reclaiming of regulated substances used as refrigerants." This requirement is consistent with both of these provisions. Moreover, even assuming that market dynamics or implementation of other programs lead to some additional reclamation and use of reclaimed refrigerant over time, the commenters do not provide any reason to think that those factors alone would "maximize" reclamation. It is the Agency's view that the regulatory programs established under the AIM Act work in conjunction with each other and implementation of each is necessary as HFCs are phased down, and the reclaim requirements established in this action will help increase reclamation and support additional recovery of HFC refrigerants, as discussed in another comment response in this section. To the extent that the comments intend to suggest that EPA should provide a particular type or amount of information related to each regulatory provision's effects on increasing reclamation or reducing releases, EPA disagrees. As explained earlier in this preamble, as EPA interprets the statutory text in subsection (h)(1), the suite of regulations established under subsection (h)(1) of the Act, taken together, are focused on serving the three purposes identified in subsection (h)(1), but individual regulatory provisions under subsection (h)(1) need not each connect to all three purposes. This interpretation is integral to establishing an effective regulatory program, as some regulatory provisions

that might be considered under (h)(1) may be highly efficacious at addressing one of the regulatory purposes but not address the other two, or alternatively, may be important to support the functioning of the regulatory program as a whole, but not be focused on any of the identified purposes.

The Agency does not agree with the comments that requirements for reclaimed refrigerants by subsector are market manipulation. Entities within in these subsectors are able to purchase reclaimed HFC refrigerants from whichever supplier or reclaimer they choose, just as they could for virgin refrigerants. EPA discusses the estimated demand and supply of reclaimed HFCs for the affected RACHP subsectors in greater detail in other comment responses in this section, but notes here that EPA estimates that the supply of reclaimed HFCs will be sufficient for the demand anticipated for the servicing and/or repair of refrigerant-containing equipment in the affected RACHP subsectors. The Agency also describes elsewhere in this preamble that reclaimed HFCs are required to meet the same purity standards as virgin HFCs and must be verified to meet those standards by specified analytical methods. Thus, entities within the supermarket systems, refrigerated transport, and automatic commercial ice makers subsectors can continue to purchase refrigerants for servicing and/or repair of equipment. Further, as EPA explains in another comment response in this section, EPA is not aware of market data or trends signifying that reclaimed HFCs are more expensive than virgin HFCs. The Agency received a comment on its NODA (87 FR 62843, October 17, 2022) stating that prices for reclaimed HFCs and virgin HFCs are generally equivalent.⁹⁹ Nonetheless, for conservative purposes, the analysis in the Economic Impact and Benefits TSD assumes a ten percent premium for reclaimed refrigerant, and we also included a sensitivity analysis where costs are equivalent. With these considerations, the Agency does not view the subsector approach as market manipulation.

Further, these requirements are a reasonable approach to implementing aspects of subsection (h)(1). Among other things, subsection (h)(1) of the AIM Act directs the Agency to establish regulations to control, where appropriate, practices, processes, or activities regarding the servicing or repair of equipment that involves a

regulated substance or the reclaiming of a regulated substance used as a refrigerant. EPA interprets subsection (h)(1) to authorize this type of provision to require reclaimed HFCs in the servicing and/or repair of certain equipment in certain subsectors. The requirements in this rulemaking to control the servicing and/or repair of certain refrigerant-containing equipment are within this authority and support the purpose of maximizing reclaim of HFCs. Further, EPA's decision to apply these requirements only to refrigerant-containing equipment in particular RACHP subsectors is based on consideration of where such controls are "appropriate," as the availability of reclaimed HFCs may not be prepared to support such requirements for all existing RACHP equipment by the compliance date. By requiring that servicing and/or repair of certain refrigerant-containing equipment be done with reclaimed HFCs by a certain time frame, these requirements provide some predictability in the market, which is expected to encourage efforts to increase capacity for reclamation and support recovery of HFCs.

Comment: EPA received many comments regarding the availability of the supply of reclaimed refrigerant to meet the required uses of reclaimed HFC refrigerant as proposed. A few commenters claimed that the reclaim rate will not increase to meet demand and that EPA has not provided sufficient data to support the availability of necessary reclaim material for the regulated sectors. The commenters stated that even if HFC reclamation continued to grow at 38 percent every year, supply would barely provide half of the quantity needed in 2028. One commenter stated that not enough recovery machines are sold in the United States to support the reclaim mandate, thus leading to insufficient refrigerant recovery and reclamation. The commenter claimed that this resulting refrigerant shortfall will drive up costs. Another commenter noted that the inadequate supply of reclaimed gas would mean that the reclaim mandates are consequently unlikely to be practical, achievable, or enforceable. Another commenter was skeptical that enough reclaimed refrigerant will be available in the market by 2028 and claimed that the rulemaking record does not support that a sufficient quantity will be available. One commenter stated that only four percent of 2022 demand for R-410A was reclaimed in 2022. The commenter further stated that new systems need to be installed in order to realize the transition to lower-GWP

refrigerants and that there will be a lack of recovered refrigerant from new technologies using lower-GWP refrigerants until equipment approaches retirement. The commenter also claimed that including equipment meeting Technology Transitions GWP limits would complicate the reclamation process. The commenter claimed that this approach is consistent with the statutory design of the AIM Act by allowing the phasedown to move at its prescribed pace while accommodating sector and subsector-specific restrictions and avoiding potential disruptive market effects. Another commenter stated that current low recovery and reclamation volumes and a lack of market readiness do not support establishing reclaim mandates but, if EPA proceeds, such requirements should require use equal to reasonable market supply projections. Another commenter stated the challenge of obtaining a sufficient amount of recovered refrigerant available to reclaim and stated that any provisions to minimize releases should be balanced such that adequate supply of refrigerant is available.

A couple of other commenters stated that EPA has not evaluated reclaim availability on a sector-specific basis, instead, assuming that the availability for each reclaimed HFC will increase consistently across all HFC blends. The commenters stated that EPA needs to look at HFC blends in each sector because certain blends are hard to recover and are end-use specific. The commenters stated that R-404A and R-507 are two examples of refrigerants that are difficult and expensive to reclaim and that many reclaimers cannot reclaim these blends or would choose not to, leading to insufficient supply and refrigeration problems.

Another commenter expressed concerns regarding the future market availability and price of certified reclaim such as that of R-410A because there are no "drop in" substitutes to replace it. The commenter stated that this is very different from EPA's most recent 2010 refrigerant transition in the stationary air conditioning and heat pump market where there were alternatives for HCFC-22; thus, industry had options that they do not have in this transition. The commenter noted this could create unforeseen shortages unless EPA takes actions to ensure reclaim mandates are based on actual data and are focused on the service market. The commenter expressed concerns that EPA's future projected reclaim quantities will not be sufficient to meet actual market demand for both initial charge as well as service/

⁹⁹ See comment number EPA-HQ-OAR-2022-0606-0009.

aftermarket demand and thus encouraged EPA to focus on the service/aftermarket and remove the initial charge mandates from the proposed rule.

Another commenter stated that the challenge of providing sufficient reclaimed HFCs to maintain HVACR systems is not the reclamation capacity of reclaimers but rather obtaining sufficient recovered HFCs. The commenter claimed that regulations increasing demand for HFCs or adding costs to reclamation would exacerbate the situation. The commenter pointed to the fact that most manufacturers have typically mandated virgin refrigerants in new applications and that the reclaim mandate in the proposed rule upends this. The commenter noted that some in the industry anticipate that HFC availability will drop significantly following the 2024 phasedown step of a 30 percent reduction, motivating the use of less refrigerants. The commenter stated that only one percent of the expected 2028 HFC market requirements are currently recovered, that it is not clear how this will satisfy the 85 percent requirement for new system charging, and that consumers will still demand that systems function even if there is insufficient supply. The commenter acknowledged that moving to alternate refrigerants will take some pressure off the HFC demand but stated that very little new A2L product is entering the market. The commenter stated that ramping up significant transition by the end of 2024 looks to be very challenging and questioned whether there will be enough relief in the HFC supply by 2028.

One commenter stated that contrary to EPA's suggestion in the preamble to the proposed rule that HFC reclamation is increasing, the reclamation sector is experiencing significant structural, market, and regulatory challenges that have limited refrigerant reclamation's growth in the United States over the past decade. The commenter asserted that despite expectations of an increase in reclamation volumes, the overall data indicate a decrease, with 2018 yielding 18.1 million pounds per year, and even with the slight rise in HFCs in 2022, the total weight amounted to 15.4 million pounds for the same year. However, the commenter also stated that this rule, once finalized and implemented, could catalyze a substantial shift, resulting in the HFC reclamation market growing tenfold by 2032. The commenter stated that the reclamation volumes that EPA foresees are highly attainable by 2028, due to the effectiveness of the AIM Act hinging not on the capabilities of U.S. reclaimers, but on overcoming structural

barriers in refrigerant pricing to establish a genuine circular economy for refrigerants, where reclamation stands as the low-cost solution.

A few commenters suggested that EPA formulate alternatives to the proposed reclaim provisions and align with more realistic expectations and assumptions. Both commenters stressed the following two principles: basing reclaim mandates on relevant data to ensure practicality and phasing in reclaim mandates on a gradual basis. These commenters recommended that EPA establish a process to review data on the projected availability of reclaimed refrigerant and adjust requirements for the following year as needed. One commenter recommended that EPA use a data driven approach to set reclaim mandate requirements using a lagging model where future mandate amounts depend on actual reclaim production amount. The commenter stated that such a lagging model would allow EPA to mandate higher reclaim if recovery rates increase but also avoid market disruption. Two commenters recommended that EPA actively engage with industry stakeholders to gather comprehensive data on reclaim infrastructure capacity, available refrigerant types and quantities, and market demand across different sectors to provide a solid foundation for a more effective and efficient regulatory framework. One commenter recommended that EPA revisit reclaimed HFC data and adjust requirements based on real-world feasibility. Another commenter stated that the Agency may consider other mechanisms within its authority to increase reclamation. Another commenter urged EPA to conduct further analysis on a refrigerant-by-refrigerant basis to ensure there will be enough used refrigerant available for reclaimers to process to support the volume of reclaim needed by January 1, 2028.

Another commenter suggested that EPA may wish to consider collecting information on the total amount of refrigerant recovered compared to the total amount purchased by various entities as well as the percentage of the total amount purchased that is used for installation of new equipment compared to the total amount used to top up leaks. The commenter suggested that EPA may wish to interview CARB and OEMs as to the successes and challenges associated with the R4 Program to learn from the largest experiment of its kind in the United States, which appears to have resulted in an increase in R-410A reclaim by as much as approximately 500 metric tons from 2021 to 2022. The

commenter noted that CARB allowed for an alternate compliance pathway of "Early Action" to transition to a low-GWP refrigerant prior to 2025, meaning that not all OEMs were required to participate, which may be reflected in the slight increase in reclaimed refrigerant reported to EPA.

Response: EPA acknowledges these comments related to the supply of reclaimed HFCs to support the requirements for the servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs established in this rulemaking. EPA understands the need for increasing recovery of refrigerants and ensuring that these refrigerants are provided to reclaimers for subsequent reclamation. The Agency took advanced comments on technician certification and in a future proposal could consider the relationship between technician certification and recovery. The Agency has taken into consideration, in this rule, requirements for reclaimed HFCs and expects these regulations will provide market signals that will support increased recovery of HFC refrigerants becoming available for reclamation, and will support reclaimers increasing the amount of reclaimed refrigerants available to meet the increased demand. The Economic Impact and Benefits TSD does not include increased recovery in the base case for this rule based on the assumptions for that scenario; however, EPA did consider an alternate scenario with increased recovery and anticipates that the reclamation provisions could support increased recovery during servicing or disposal where the refrigerant may otherwise have been vented or released. EPA also acknowledges comments describing a need to evaluate data related to the requirements for servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs. In this rulemaking, EPA is making modifications to the proposed approach and finalizing provisions based on additional consideration of these challenges and needs, as described in the following paragraphs.

First, the Agency is not at this time establishing requirements for the initial fill of refrigerant-containing equipment with reclaimed HFCs. The Agency understands concerns related to reclaiming newer refrigerant blends that are more recently being used in equipment and comply with the restrictions established in the 2023 Technology Transitions Rule. Because EPA is not finalizing the proposed requirements for initial fill with reclaimed HFCs at this time, the concerns in comments related to HFC

refrigerants used in the first fill of refrigerant-containing equipment to comply with the 2023 Technology Transitions Rule are not implicated in this final rule. The Agency also notes that it is not finalizing any exclusions based on GWP for other provisions in this rule related to servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs, as discussed in another comment response in this section.

Second, under the requirements finalized in this rule, the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs covers a narrower scope of RACHP subsectors than in the proposal. EPA is finalizing these requirements for supermarket systems, refrigerated transport, and automatic commercial icemakers. EPA is not, at this time finalizing these provisions for stand-alone retail food refrigeration equipment; however, the narrower scope of the provisions finalized in this rulemaking does not have much impact on EPA's analysis of the supply of reclaimed refrigerants, given in part that in many cases this equipment is hermetically sealed and less likely to have field repairs in the same way as field-charged equipment. The draft Economic Impact and Benefits TSD accompanying the proposal estimated that demand for reclaimed HFCs in the servicing and/or repair of refrigerant-containing equipment in the stand-alone retail food refrigeration equipment subsector in 2028 was approximately 20 metric tons, with about 80 percent being HFC-134a. EPA notes that the analysis provided for the proposal did not take into account effects of the 2023 Technology Transitions Rule, as the rule was not yet finalized when this proposal was issued. The 20 metric tons of reclaimed HFCs for servicing and/or repair in the stand-alone retail food refrigeration subsector is minor relative to the estimated demand for reclaimed HFCs in the servicing and/or repair of the other three RACHP subsectors, which was estimated at 12,168 metric tons. While not finalizing at this time, the requirements for servicing and/or repair with reclaimed HFCs in the stand-alone retail food refrigeration subsector only alleviates a small amount of needed supply in 2029. EPA discusses anticipated supply relative to estimated demand with the updated analyses in another comment response and notes that anticipated supply is expected to meet the estimated demand. Further, EPA is focusing these requirements in the final rule on servicing and/or repair of certain existing refrigerant-containing

equipment that use HFC refrigerants that are currently being reclaimed. EPA understands that a significant portion of recovered and reclaimed refrigerants is sourced when refrigerant is recovered at a piece of equipment's EOL. The types of refrigerant-containing equipment affected by these provisions are those that are currently existing and in-use; thus, the installed stock of refrigerants to continue to support the useful life of these types of refrigerant-containing equipment will be supported as older ones reach their EOL. The Economic Impact and Benefits TSD accompanying this rulemaking provides additional analysis of the existing stock of HFCs by type of refrigerant-containing equipment. Accordingly, under the provisions in this final rule, resources can be focused on providing reclaimed HFCs for servicing and/or repair of existing refrigerant-containing equipment in certain RACHP subsectors, where there is a greater ability to obtain recovered refrigerants from equipment that is at its EOL.

Third, EPA is delaying the compliance date for these provisions by one year to January 1, 2029. This delay of the compliance date should enable reclaimers to increase their supply of reclaimed refrigerants to meet demand for servicing and/or repair of equipment in the covered subsectors. EPA notes this date aligns with the next major phasedown step of production and consumption of virgin HFCs under the AIM Act, when reclaimed HFCs will play an even greater role in supporting the servicing and repair of existing equipment. Further, EPA is aware of examples from reclaimers that are actively building capacity of advanced separation technologies.¹⁰⁰ EPA acknowledges comments related to suggestions for phasing in these requirements; however, the Agency is not finalizing such a method for these requirements, for the reasons discussed in another comment and response in this section.

Finally, EPA is establishing a discrete reporting requirement to better understand the sale, distribution, and availability of reclaimed HFCs in the subsectors covered in this rulemaking. As described in this section, EPA is requiring reporting by reclaimers and distributors that contain information on the volumes of reclaimed HFCs sold and intended for servicing and/or repair of equipment in the covered subsectors. EPA is establishing a two-time reporting

requirement to gather this information and better understand the landscape for reclaimed HFC availability for these subsectors in 2026 and 2027 (reports must be submitted by February 14, 2027, and February 14, 2028, respectively), leading up to the compliance date of January 1, 2029. EPA notes that the Agency will review this information and may consider proposing changes to the requirements for reclaimed HFCs, if warranted.

EPA acknowledges the comments related to assessing particular blends and subsectors as related to reclaimed HFC refrigerant availability. EPA considered this in the report "*Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices*," available in the docket for this rule and evaluated the anticipated demand of HFCs in the covered subsectors. Among the covered RACHP subsectors in this rule, the most anticipated demand HFC and HFC blend refrigerants are HFC-134a, R-404A, R-407A, and R-507. Related to R-404A and R-507, the Agency understands the uses of these particular blends in each of the covered subsectors of this rulemaking. Even if the commenters were correct about the current costs and difficulties sourcing these refrigerants today, EPA notes that these blends are currently being reclaimed, and the Agency anticipates this rulemaking to provide market signals to reclaimers to increase reclamation of these blends and secure additional recovered materials. Similarly, EPA anticipates those recovering HFCs from equipment will be aware of reclaimers' increased need for such materials and will increasingly develop arrangements to provide recovered HFCs to reclaimers. R-404A, in particular, has had a steady volume of reclamation between approximately 400,000 and 500,000 pounds each year from 2017 to 2022 with a larger increase upwards of 800,000 pounds in 2023.¹⁰¹ While specific data on R-507 reclamation are not published, reclamation volumes of R-507 between 2017 and 2023, as reported to EPA, have been steady between approximately 40,000 and 130,000 pounds each year. EPA reiterates that the Agency is only finalizing requirements for the servicing and/or repair of refrigerant-containing equipment to be done with reclaimed HFCs in a limited number of RACHP subsectors.

The Economic Impact and Benefits TSD estimates that approximately 12,168 metric tons (26.8 million

¹⁰⁰ A-Gas (2023). A-Gas Breaks Ground on Additional Market-Leading Refrigerant Separation Technology. Available at: <https://www.agas.com/news-insights/a-gas-breaks-ground-on-additional-market-leading-refrigerant-separation-technology/>.

¹⁰¹ Available at: <https://www.epa.gov/section608/summary-refrigerant-reclamation-trends>.

pounds)¹⁰² of reclaimed HFCs will be needed to meet this demand in 2029 and that this amount will decline in future years due to the transitions to lower-GWP refrigerants under the 2023 Technology Transitions rule. The Agency anticipates increased rates of reclamation of recovered refrigerants as the phasedown continues. EPA also notes that there are several options available to reclaimers, including reclaiming the blends themselves, reclaiming individual HFCs that can be combined to form specific blends, and separating blends into individual components to meet demand of specific refrigerants. EPA also notes that in some cases, reclaimers may plan to stockpile recovered HFCs ahead of the AIM Act phasedown milestone in 2029. Stockpiling both virgin and reclaimed refrigerants ahead of phasedown steps has been a common practice both with regards to the ODS phaseout and thus far with implementation of the HFC phasedown.

EPA does not assume that all HFCs are recovered and reclaimed. For example, some HFCs are used in other sectors, such as foams or aerosols, where the HFCs are not typically recovered or their use is, by nature, emissive, respectively. Further, HFCs in refrigerant-containing equipment may leak, reducing the amount that is recoverable at the piece of equipment's EOL. In the Economic Impact and Benefits TSD, EPA estimates in 2029, that the amount of HFC refrigerants available to be recovered (after accounting for the factors above) from refrigerant-containing equipment will be 35,458 metric tons (78.2 million pounds). If all HFC refrigerants available for recovery in refrigerant-containing equipment are in fact recovered and reclaimed, EPA notes that this amount represents nearly three times the estimated servicing demand of reclaimed HFCs for refrigerant-containing equipment in the affected subsectors in 2029. However, even if a substantially lower share (e.g., approximately one third) of what is available for recovery in a given year is actually reclaimed, sufficient amounts of reclaimed refrigerant would be available to meet the rule's requirements. Further, this assessment does not consider the amount of recoverable HFC refrigerants that are available in the years leading up to 2029. EPA understands that it is

common practice for reclaimers to stockpile recovered refrigerants and reclaim them when most efficient or opportune. Thus, EPA anticipates that reclaimers will be securing sufficient amounts of recovered HFC refrigerants to reclaim to meet the estimated demand in 2029. EPA also expects that the HFC reclamation market will increase in future years as more refrigeration and air conditioning equipment using HFC refrigerants reach their EOL, and more HFCs are potentially available for recovery and reclamation. CAA title VI prohibited the use of HCFC-22 in new air conditioning and refrigeration equipment starting in 2010, facilitating manufacturers to transition to use ODS substitutes—including, HFCs. That market shift nearly 15 years ago means that today we are just starting to see certain HFC-containing equipment reach its EOL. Going forward, we will see an increased amount of HFC-containing equipment reach its EOL, which will impact the amount of HFCs available for recovery. EPA also notes that the Agency is establishing a two-time reporting requirement to gather information and better understand the landscape for reclaimed HFC availability for the affected RACHP subsectors in 2026 and 2027, leading up to the compliance date of January 1, 2029. The Agency will review this information and may consider proposing changes to the requirements for reclaimed HFCs, if warranted.

EPA notes that the amount of reclaimed HFCs increased over 40 percent from 2021 to 2022 and increased a further 20 percent from 2022 to 2023.¹⁰³ These year-over-year increases may suggest that the reclamation market for HFCs is continually becoming more robust. EPA included an analysis of recent trends in reclamation totals and anticipated growth related to the requirements in this final rule in the report available in the docket of this action, *Analysis of the U.S. Hydrofluorocarbon Reclamation Market: Stakeholders, Drivers, and Practices*. The analysis finds that even assuming a linear and conservative growth trajectory, reclamation totals approach the expected demand for 2029. However, EPA notes that reclamation totals in reality are unlikely to follow a linear growth trend, and that growth in capacity may increase at a significantly higher rate due to the provisions in this rule and other factors, such as new reclamation facilities

coming online.¹⁰⁴ EPA notes that the year-over-year increases in 2022 and 2023 are absent additional regulations to maximize reclamation, which this rule is establishing. EPA also notes that the phasedown may have had some effect on this increase; for example, the increases in reclamation data as reported to EPA in 2022 and 2023 were likely linked to overall awareness and reaction to the AIM Act and, more recently, the increase in 2023 may be in anticipation of the phasedown step in 2024. These effects may be observed as related to the overall phasedown; however, the regulations established in this rule are necessary to maximize reclamation of HFCs throughout the course of the phasedown and beyond. EPA also notes, as stated above, that the Agency is establishing a two-time reporting requirement to gather information and better understand the landscape for reclaimed HFC availability for the affected RACHP subsectors in 2026 and 2027, leading up to the compliance date of January 1, 2029. The Agency will review this information and may consider proposing changes to the requirements for reclaimed HFCs, if warranted.

EPA also acknowledges comments related to outreach and engaging with industry stakeholders to gather data and information. As noted in section IV.E, EPA provided multiple opportunities for engagement for this rulemaking. Among those opportunities include the publication of a NODA with a public comment period, a public stakeholder meeting, and a public webinar. Further, EPA provided notice and an opportunity for public comment on the proposed rule, and has considered those comments in this final rule, as appropriate.

Regarding the commenter's statement that allowance use for virgin HFCs could potentially shift to other subsectors as requirements for reclaimed HFCs come into effect for the subsectors covered in this rulemaking, EPA responds that as the phasedown continues, EPA anticipates market shifts that could include changes in the production and consumption of certain HFCs and changes in the use patterns with reclaimed HFCs replacing virgin HFCs. EPA further notes that under the phasedown schedule established in subsection (e)(2)(C) of the Act, in the last step of the phasedown HFC production and consumption allowances equal to 15 percent of the

¹⁰² This estimate is based only on demand and does not take into account that reclaimed refrigerants may contain up to 15 percent virgin HFCs, by weight. See Appendix D in the Economic Impact and Benefits TSD for more information.

¹⁰³ Available at: <https://www.epa.gov/section608/summary-refrigerant-reclamation-trends>.

¹⁰⁴ A-Gas (2023). A-Gas Breaks Ground on Additional Market-Leading Refrigerant Separation Technology. Available at: <https://www.agas.com/news-insights/a-gas-breaks-ground-on-additional-market-leading-refrigerant-separation-technology/>.

respective baselines will continue to be available indefinitely. The Agency assumes applications that are difficult to transition and/or applications requiring higher purity HFCs may continue to require virgin HFCs into the future. While the Agency acknowledges that there will be shifting business practices given the HFC phasedown, the 2023 Technology Transitions Rule, and this final rule that will increase the reliance on reclaimed HFCs especially for servicing RACHP and fire suppression equipment, there are business practices including patents and licensing arrangements that could affect the ability of certain reclaimers to supply certain customers with reclaimed HFCs. The Agency anticipates that as patents expire and licensing arrangements expand, these limitations will lessen. EPA reiterates that the requirements in this rule only apply to servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in three RACHP subsectors. Further, the compliance date for these requirements is January 1, 2029, which should give industry sufficient time to adjust current business practices.

EPA acknowledges the concerns of the commenters regarding challenges facing the reclamation industry and the Agency responds that several of the provisions established in this rulemaking are designed to support increased reclamation. These provisions focus specifically on the maximizing of reclaiming HFCs, consistent with one of the purposes identified in subsection (h)(1) of in the AIM Act. Per reported data for reclaimed refrigerants, the total amount of reclaimed refrigerant (ODS and HFCs) was 14.7 million pounds in 2018 and 14.2 million pounds in 2022.¹⁰⁵ The commenter is correct that the total amount was reduced, considering both ODS and HFCs together. However, as noted, this rulemaking is focused on increasing reclamation of regulated substances (*i.e.*, HFCs), and HFC reclamation increased from 5.25 million pounds in 2018 to 7.6 million pounds in 2022, an increase of over 40 percent. EPA anticipates this trend to increase related to the provisions established in this rulemaking as well as the overall phasedown and increasingly limited supply of virgin HFCs.

EPA acknowledges the comment on collecting information on amount of refrigerant recovered. The information suggested by the commenter related to total refrigerant recovered to compare to the amounts purchased by entities

(identified by use in first fill, servicing, etc.) may be useful to understanding trends in refrigerant recovery. Such data may also be helpful in understanding how refrigerant is recovered and recycled in equipment (whether it be the same piece of equipment or another piece of equipment under the same ownership). However, EPA did not propose such information collection, which would require additional reporting by various entities in the supply chain, and notably, reporting from certified technicians performing the actual recovery and servicing and/or repair activities. Further, EPA recognizes the important role technicians play in recovering refrigerant destined for reclamation and that it may be useful to have such information collected; however, the Agency did not propose and is not finalizing recordkeeping or reporting requirements for certified technicians to collect information on the total refrigerants they recover in this rulemaking. However, the Agency notes that it may consider proposing information collection requirements on recovered refrigerant, such as recordkeeping and reporting for technicians on the amount of refrigerant recovered in a future rulemaking. For example, this suggestion could warrant additional consideration in a potential future rulemaking where the role of technician certification programs is considered more fully.

EPA notes that under current reporting for certified reclaimers per 40 CFR 82.164, reclaimers are required to report on the annual totals of refrigerants they receive. EPA notes the value of reporting on a more granular level, however. As noted previously in this response, EPA is establishing discrete reporting requirements to better understand the availability of reclaimed refrigerants in the covered subsectors prior to the compliance date for these requirements.

The Agency also notes that in issuing the proposed rule and reviewing comments in development of this final rule, we reviewed information on the R4 Program, including a review of the State agency's statement of reasons related to establishing such a program. EPA found this to be a useful source of information. EPA notes that the data presented by the commenter alluding to the increase in R-410A reclamation from 2021 to 2022 reference EPA's published data on reclamation totals as reported under EPA's CAA section 608 regulations.¹⁰⁶ The total increase in R-410A

reclamation from 2021 to 2022 was approximately 1.04 million pounds (520 tons). While this increase was greater than previous years' trends, EPA did not explicitly discuss with CARB the use of the early action pathway related to the State's R4 Program. This program may have contributed to the increase in reclamation of R-410A from 2021 to 2022; however, the Agency is also aware that reclaimers have been building additional capacity and notes that increased reclamation could also be a result of other factors, such as the progression of the HFC phasedown. For example, the reclamation of HFC-134a also saw a significant increase from 2021 to 2022 of approximately 473,000 pounds (237 tons). Further, the CARB R4 Program is applied at the State level and this rulemaking applies at the national level and thus, considers the availability of reclaimed HFCs nationwide. Entities may choose to service and/or repair their refrigerant-containing equipment with reclaimed HFCs prior to the compliance dates. The compliance dates for this rule were informed by analysis (*e.g.*, assessing the estimated demand of reclaimed HFCs) and consideration of comments received on the proposed rule, and they allow the reclamation industry to provide sufficient supply for servicing and/or repair of refrigerant-containing equipment in the affected RACHP subsectors with reclaimed HFCs. With these considerations, the Agency is not establishing an early action option for compliance at this time.

Comment: One commenter noted that the reclaim industry has already reached a large scale of reclaimable refrigerant even though there was no Congressional mandate to reclaim this product and the public was generally unaware of the negative environmental effects associated with HFC refrigerant emissions. The commenter stated that EPA can meet its 100 percent reclaim usage goals through rapid scaling of recovery rates for HFC refrigerants under the AIM Act which has already given HFCs high economic value. The commenter suggested that the refrigerant in the installed base aftermarket and in equipment approaching its EOL will both coincide well with recovery opportunities. The commenter stated that the servicing sector, specifically the contractors, is the only real material source for increasing the amount of reclaimed refrigerants, which if recovered more consistently will lead to the corresponding growth in reclamation necessary for an orderly transition under the AIM Act. The commenter also

¹⁰⁵ Available at: <https://www.epa.gov/section608/summary-refrigerant-reclamation-trends>.

¹⁰⁶ Available at: <https://www.epa.gov/section608/summary-refrigerant-reclamation-trends>.

noted that mandating reclaimed HFCs in the servicing sector would encourage more recovery by contractors and that this approach incentivizes contractors to provide more recovered refrigerant to reclaimers to ensure access to reclaimed refrigerant to service consumers' needs.

Response: EPA acknowledges this comment. EPA agrees that scaling up HFC refrigerant recovery and reclamation may become increasingly important, particularly as a business strategy, as HFCs are phased down and appreciates efforts that have already been made, including those made prior to the enactment of the AIM Act. EPA acknowledges the role of the technicians and contractors in the overall recovery of refrigerant, especially as equipment reaches its EOL. The Agency is aware of a range of programs, including those with incentives, that have been used by OEMs and reclaimers to support recovery of refrigerants.

Comment: One commenter stated that requiring reclaimed HFCs for servicing is largely untried in the United States and needs gradual testing and iteration. The commenter mentioned that California is currently in the first year of implementation of its R4 Program, which requires OEMs for residential AC and VRF systems to use specific calculated reclamation volumes in 2023 and 2024. The commenter noted that since the inaugural year of the program has not yet concluded, comprehensive data and conclusive findings regarding the program's efficacy and success are currently unavailable to the broader stakeholder community to inform the formulation of a national reclaim requirement rule.

Response: EPA disagrees that reliance on reclaimed refrigerants is untried in the servicing sectors. As discussed elsewhere in this final rule, the Agency notes that since 2020, reclaimed HCFC-22 is the only viable option for servicing legacy HCFC-22 systems. Similarly, for the CFC systems, this has been the case since the 1990s. The Agency also notes that the amount of reclaimed HFCs has been reported annually to EPA since 2017 and that the amount has been increasing. Reclaimers are selling reclaimed HFCs and competing with virgin HFCs in many markets particularly for servicing certain RACHP and fire suppression equipment. The Agency proposed and is finalizing a program that is markedly different from the R4 Program. Further, the Agency will be interested in any data California will be able to share; however, the Agency does not need those data to finalize a reclamation program under subsection (h).

Comment: Many commenters discussed the demand and supply of relevant refrigerated blends for servicing, especially R-410A. One commenter stated that EPA's mandate for reclaimed HFCs, when combined with the 2023 Technology Transitions Rule, will likely drive perverse commercial practices to meet this demand because companies will be incentivized by EPA's rules to take usable, reclaimed R-410A and separate out the HFC-32 from the HFC-125 in order to make reclaimed HFC-32. The commenter claimed that not only would this be counterproductive to meeting demand for reclaimed R-410A service gas for that equipment base, but it would also require unnecessary energy consumption from the distillation process. In addition, the commenter stated that the stranded HFC-125 ultimately would simply be re-blended with virgin HFC-32 to make R-410A to be sold to subsectors that are not subject to the reclaim mandate, creating a repetitive and unproductive loop.

Additionally, a commenter stated that separating individual HFC refrigerants from recovered refrigerant mixtures, such as R-410A, R-404A, and the R-407 series, is not necessary because the demand for such reclaimed refrigerant mixtures particularly for service will be high and would in fact be an environmental detriment due to the high energy consumption required for the separation process.

An additional commenter stated that the HFC market would be disrupted by the requirements described in the NPRM and noted that reclamation currently services at best less than nine percent of the expected 2028 demand. The commenter additionally stated that the proposed rule does not explain how the reclamation industry will achieve the necessary growth and that even achieving growth at a rate of 38 percent (*i.e.*, the growth from 2021 to 2022) would not supply a sufficient quantity of reclaimed HFCs. The commenter claimed that the disconnect between supply and demand would be even wider than this because of highly mixed refrigerants, which require advanced fractional distillation, technical expertise, and high capital costs. The commenter provided an example for HFC-32, estimating that HFC-32 reclamation in 2022 represented 2.4 percent of what will be needed in 2028. The commenter further claimed that, given that HFC-32 units will not be available to be reclaimed in significant quantity for 15–20 years, reclaimers may try to reclaim mildly flammable HFC-32 from R-410A. The commenter noted that R-410A is azeotropic and therefore

requires significant energy to separate, that it requires investments in equipment due to HFC-32's mild flammability, and that there would only be a limited market for the HFC-125 that remained. The commenter concluded that there is therefore a mismatch between HFC-32 demand and supply of reclaimed material and that the weight of the reclaim requirement would fall on the HFC-32 producer. Another commenter noted that they currently use fractional distillation to separate HFC-32 from recovered refrigerant blends to ensure purity that meets or exceeds the AHRI 700 standard for the product. The commenter claimed that sustaining adequate HFC-32 supplies to 2029 and beyond is crucial to ensure equipment operation until the EOL because its GWP is below certain thresholds established in the 2023 Technology Transitions Rule.

Another commenter claimed that EPA's reclaim requirements ignore how refrigerant is recovered. The commenter stated that refrigerant is recovered when equipment is replaced, retrofitted, or retired, and that given the long lag times between when new equipment is installed and when equipment is replaced or retired, the large increase in R-410A reclamation that occurred from 2021 to 2022 could be due to R-410A equipment that was installed in 2010 and reached its EOL, and that a large annual increase in R-410A reclamation is not foreseeable based on existing data. The commenter claimed that EPA should model reclaim supply based on the installed base of refrigerants, estimated by yearly turnover and estimated recovery efficiency. The commenter modeled the R-410A installed base using AHRI shipment data for RACHP from 2008 to 2022 and provided an attachment with modeled data to support its argument. The commenter used these data to assert that the growth in reclamation of R-410A in 2022 was expected, because there was an increase in new units using R-410A in 2010 compared to 2009. Furthermore, the commenter stated that it considered the equipment mix when factoring in future reclamation numbers of R-410A, as well as how refrigerant is recovered.

Another commenter mentioned that the maximum amount of annual "recoverable" and subsequently "reclaimable" R-410A in 2022 would be approximately 29,000 metric tons or 63 million pounds of R-410A and that the amount of reclaimed R-410A reported to EPA by the reclaimers in 2021 was 2.5 million pounds. The commenter stated it is abundantly clear that there is great scope for improving recovery and reclamation rates for HFCs that

would yield significant climate benefits resulting from preventing those GHGs from being emitted into the atmosphere and reduce the need for supplies of virgin HFCs. The commenter further noted that some may argue that the small quantities of HFCs reclaimed today are evidence that the reclamation market will not be able to meet the demand for reclaimed HFCs under the proposed rule but stated that the current HFC reclamation data reflect the absence of market drivers that will make reclaimed HFCs a valuable commodity. The commenter stated that the amount of R-410A reclaimed in 2022 is nearly 40 percent higher than the previous year and that this is a clear sign that the start of the HFC phasedown and the expectation of regulatory mandates for use of reclaimed HFCs can lead to dramatic, positive shifts in the industry. The commenter also stated that EPA may hear that scaling capacity for advanced fractional distillation reclamation will take time, and that splitting out component gases of azeotropic or near-azeotropic refrigerant blends tends to use more energy than reclaiming blends like R-410A back to their original form without separating out their components. The commenter noted that this may be true; but there is also good reason to encourage the development of a reclamation industry that is capable of splitting mixed gases.

The commenter mentioned that new refrigerants favored by most of the large OEMs are HFC-32 and blends using HFC-32 (e.g., R-454B). The commenter stated that the main source of reclaimed HFC-32 will be recovered R-410A, which is the refrigerant currently used in most RACHP equipment, and that separating HFC-32 out from R-410A is feasible and, if recovery is maximized, as is the intent of the proposed rule, there will be a sufficient quantity of it available to meet the demand. The commenter estimated that there will be a need for approximately 72 million pounds of recovered R-410A and that if recovery of R-410A from retiring equipment is maximized, an estimated 63 million pounds of R-410A would be recovered in 2022. However, the commenter noted that the amount of recoverable R-410A will grow, since the number of retiring systems grows just as the number of new systems does. The commenter estimated the amount of recoverable R-410A in 2028 will be approximately 70 to 74 million pounds, which will be sufficient for meeting the demand for reclaimed HFC-32 in 2028. The commenter noted that there might be challenges, but ultimately, the data suggest that there is a tremendous

untapped opportunity for upscaling HFC recovery and reclamation in the United States.

Another commenter stated that 63 million pounds of recovered R-410A could yield 31.5 million pounds of reclaimed HFC-32 for use in the initial charge of new equipment using HFC-32 or other blends mainly composed of HFC-32 and HFOs. The commenter noted that the R-410A available from 2024 to 2027 would also supplement annual amounts recoverable from 2028 onwards.

Another commenter stated that EPA's existing data support the availability of sufficient refrigerant in the aftermarket to meet service sector demand at 100 percent by 2028. The commenter suggested that the total amount of refrigerant available for recovery at EOL is likely in excess of 80 million pounds annually and that based on this estimate, the amount of refrigerant available for recovery via service is sufficient to meet the goals described in the proposed rule. However, the commenter suggested that it will be difficult for EPA to meet their reclaim goals without the consideration of an alternative construction of the reclaim mandate as a servicing mandate based on refrigerant types rather than sectors. The commenter noted that it would be impossible to meet EPA's goal without focusing on the recovery of R-410A, which is predominately used in small outdoor units.

Response: EPA acknowledges these comments and understands the competing interests for reclaiming particular HFC blends as compared to separating out and reclaiming particular components to be used either neat or in other blends. EPA understands that the example of HFC-32 as a component of R-410A is one of the more common scenarios. EPA notes, as described in other responses, that we are finalizing requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors. EPA is not establishing requirements for initial charge with reclaimed HFCs at this time, where the Agency anticipates a majority of HFC-32, blends that include HFC-32, and other blends will be used in the coming years.

EPA acknowledges comments about supply of reclaimed HFCs and those related to driving supply of reclaimed HFCs through the requirements established in this rulemaking. The Agency also notes comments providing specific detail on potential availability of reclaimed refrigerants, and in particular of HFC-32 as sourced from recovered R-410A, and the Agency

understands that there is room for improvement in the increase of refrigerant recovery to supply to reclaimers. EPA notes that R-410A comprised about 39.2 percent of the existing installed refrigerant stock by mass in 2022, while other blends such as R-404A, R-407C, and R-507 also make up a significant portion of the 2022 installed refrigerant stock. Reclamation data, as reported to EPA, show that R-410A is also currently the most commonly reclaimed HFC refrigerant in the United States by weight. Annual reclamation data reported to EPA indicates that the annual supply of reclaimed R-410A has increased from about 2,100,000 pounds in 2017 to approximately 4,626,000 pounds in 2023.¹⁰⁷ The Agency provides additional detail on similar comments related to supply of reclaimed refrigerants and provides a response earlier in this section. EPA understands that the significant recent increases in R-410A reclamation could be attributed to refrigerant-containing equipment with R-410A installed in the early 2010s reaching its EOL. The Agency expects this trend to continue, as additional refrigerant-containing equipment with R-410A would be expected to reach their EOL in the coming years as well.

The mix of refrigerants will change over time given the overall phasedown of HFCs, the 2023 Technology Transitions Rule, business decisions, and other factors including demand for more energy efficient equipment. The reclaim requirements help to support the goal of subsection (h) of the AIM Act to maximize reclamation. EPA understands that it may be preferable at times for reclaimed R-410A and/or other reclaimed refrigerant blends not separated to their components EPA considers reclaiming and making available refrigerant blends to be one way to avoid retiring equipment early. However, EPA also acknowledges comments regarding increasingly available capabilities of reclaimers to separate out components from refrigerant blends for individual reclamation or to combine them so as to increase the available supply of a different refrigerant blend. Over time, particularly as the refrigerants used in equipment change, the Agency anticipates seeing movement in this direction. The Agency anticipates that demand will drive reclaimers' decisions concerning reclaiming a blend or separating the blend for its components. EPA previously noted and agrees with

¹⁰⁷ Available at: <https://www.epa.gov/section608/summary-refrigerant-reclamation-trends>.

comments that HFC-32 reclamation by separating from recovered blends is a current practice. The Agency further acknowledges the need for reclaimers to address safety considerations when handling HFC-32, and other mildly flammable and/or flammable refrigerants particularly if reclaimers choose to use separation technologies. Further, the Agency is establishing alternate RCRA standards for reclamation facilities related to handling flammable refrigerants, as described further in section IV.H of this rulemaking.

As noted, EPA is not establishing requirements for reclaimed HFCs in the initial fill of equipment in certain subsectors in this rulemaking. Therefore, subsectors that may be using HFC-32 or blends that contain HFC-32 could source the refrigerant for initial charge from either virgin or reclaimed supplies.

In the case that recovered R-410A is separated out to its components for their individual reclamation, the Agency disagrees that the HFC-125 would be stranded or only be used for reclaimed R-410A. EPA notes that HFC-125 is used in other HFC refrigerant blends besides R-410A. If HFC-32 reclamation is achieved through separation of recovered R-410A, the remaining HFC-125 could be used in these other blends, including R-404A, the R-407 series, or R-507, which are HFC blends the Agency anticipates will be used in the covered subsectors for the requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs. HFC-125 is also a component of several newer refrigerant blends and could be used in the those blends as well.

EPA responds to comments on establishing provisions related to requirements for reclaimed HFCs on a refrigerant basis rather than a subsector basis. The Agency notes that a subsector approach is preferable in this rulemaking, as it avoids cases where there could be shortages of particular reclaimed HFCs or HFC refrigerant blends. The Agency has similarly looked at sectors and subsectors in other parts of this rule (e.g., leak repair thresholds, ALD systems) and in other AIM Act rules (e.g., 2023 Technology Transitions Rule). The Agency considers this approach, sectors and subsectors as a means of setting a level playing field for all participants in that affected sector or subsector.

Comment: Multiple commenters expressed support for phased-in reclamation requirements. One commenter expressed support for EPA's proposed requirements but

acknowledged that the supply of reclaimed refrigerant will need to be scaled up quickly to meet the requirements by 2028. To facilitate this transition, the commenter suggested that EPA assist the industry by setting benchmarks and interim targets to ensure that refrigerant recovery and reclamation will expand at the pace and scale needed to support the HFC phasedown. Another commenter strongly agreed with the principle behind requiring use of reclaimed and recycled HFCs and was optimistic about the pace of change in the recovery and reclamation industry. The commenter noted that the benefits of a graduated schedule would outweigh greater reporting requirements, but that the schedule should start sooner than 2028 and ramp up to 100 percent by 2028. The commenter stated that it would be important to boost reclaimed HFC availability before the 2029 HFC phasedown step to fulfill HFC demand. Another commenter proposed using reclaimed refrigerant in the servicing of equipment with the interim goals of 10 percent in 2026, 20 percent in 2027, and 35 percent in 2028 and beyond. Other commenters recommended a gradual phase-in of reclaim requirements based on data for the anticipated need of reclaim on a yearly basis.

Another commenter stated that a gradual step-up/phased-in approach is preferable to reach the 100 percent requirement goal in 2028 for reclaim usage under the proposed rule and it would allow sufficient reclaim supply growth to offset any shortage of available virgin HFCs and avoid market interruption, which is needed for climate mitigation. The commenter stated they expect HFC reclamation to continue to increase and they urged EPA to adopt a step-up/phased-in approach to incentivize HFC recovery and reclamation between now and 2028. The commenter noted that a phased-in approach would incentivize the necessary changed behavior by all involved, especially the contractors, who will need to recover more refrigerants over time to meet the demand for 100 percent reclaim in servicing and repair by 2028. The commenter noted that larger charged systems in the sectors already included in the proposed rule's service/repair mandate typically operate in confined spaces and have greater recovery rates at EOL and servicing when compared to smaller, outdoor systems. The commenter stated that the types of refrigerant systems would include HFC-134a, R-404A, R-407A, R-407C, and R-507 systems, among others. The

commenter suggested creating an initial reclaim mandate for servicing these systems starting in 2025 with a lower percentage of 25 percent and then building the requirement overtime to meet the 100 percent reclaim mandate in the proposed rule by 2028. The commenter expressed support for requiring the contractors to report that they are purchasing the proper amount of reclaimed refrigerant as defined in the proposed rule at a minimum on an annual basis to ensure compliance with this mandate. The commenter suggested that servicing of R-410A systems with reclaimed refrigerant might need a slightly longer ramp-up period due to the behavioral change necessary for the contractors that service these R-410A systems. The commenter also suggested a 10 percent mandate for servicing these systems in 2025, increasing to 25 percent in 2026 and then continuing to increase to a 100 percent mandate by 2028.

Another commenter suggested a phased approach for reclaimed HFCs with initial targets based on data and industry feedback to incentivize reclaimed HFC use, which the commenter maintained would better align with the manufacturing process and supply chain realities of both equipment and reclaimed HFCs. The commenter encouraged EPA to revisit the reclaimed HFC data and adjust its approach based on real-world feasibility, considering existing supply chain disruptions and rising costs. The commenter recommended initially prioritizing the reclaim of high-GWP refrigerants and allowing the market to adjust and around 2028 revisiting the need for low-GWP reclaim requirements based on market adoption, performance, technological advancements, and feasibility, starting with 2036 as a potential timeframe.

Two commenters noted that to the extent that EPA adopts a phased-in schedule for these mandates, it should be sector neutral (not sector specific) and differentiated where necessary only on a product-by-product basis. Another commenter noted the reduced HFC supply under the AIM Act step-down and 2023 Technology Transitions Rule and suggested a phased approach that would be coordinated with the 2023 Technology Transitions Rule. The commenter also noted that only a small fraction was reclaimed in 2022 and that significant changes would be required to the entire supply chain to ensure sufficient recovery and reclaim quantities, which takes time.

One commenter noted they would not support a phased approach whereby EPA uses subsector percentages to work

gradually towards 100 percent use of reclaimed HFCs in servicing and/or repair, given the administrative burdens necessary to track and verify compliance that are stated in the proposed rule.

Response: EPA is not establishing a phased-in approach for the requirements for reclaimed HFC refrigerant, though the Agency encourages affected entities to consider increased reliance on reclaimed HFCs ahead of the compliance date. As described above, EPA is finalizing requirements that the servicing and/or repair of refrigerant-containing equipment in three RACHP subsectors be done with reclaimed HFCs with a delayed compliance date of January 1, 2029, but is not at this time finalizing either the proposed requirement for servicing and/or repair with reclaimed HFCs in a fourth subsector or the proposed requirement for the initial fill of refrigerant-containing equipment to be done with reclaimed HFCs. The Agency understands the industry identified certain potential benefits to a phased-in approach with limited data to support this approach. The Agency is instead establishing a discrete reporting requirement to better gauge the sale, distribution, and availability of reclaimed HFC refrigerants in the subsectors required to service and/or repair refrigerant-containing equipment with reclaimed HFCs. EPA intends to use these reported data to better assess transitions to reclaimed HFCs in these subsectors and may consider revisiting the timing for the provisions for servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs prior to the compliance date, if warranted. While EPA intends to use this reporting to better understand the landscape of reclaimed HFCs in these subsectors, the Agency disagrees with commenters that suggested delaying the timing beyond 2029 (e.g., starting in 2036). Reclaimed HFC refrigerants are already being used and will increasingly play a significant role throughout the entire phasedown, not starting when the phasedown reaches its final step in 2036.

EPA agrees with the importance of increased recovery of refrigerants to support additional reclamation and potential need for changes related to this practice. The provisions in this rulemaking are expected to drive demand for additional recovery. Recovery and sending recovered refrigerants to reclaimers is likely to increase as the value of the recovered HFC refrigerants is more widely appreciated, HFC equipment reaches its EOL, and a reduced amount of virgin

HFCs is available as the HFC phasedown continues. EPA notes that many of the transitions to R-410A occurred in response to the 2010 HCFC phasedown step and associated restrictions on the use of HCFC-22 in new equipment. This means that a large amount of R-410A-containing equipment is approaching an expected EOL and this equipment will increasingly be a source of recoverable R-410A. Moreover, EPA disagrees that a required phased-in approach is necessary to cause a shift in behavioral changes and would be more effective than having the requirement begin at 100 percent for reclaimed HFCs in the servicing and/or repair of refrigerant-containing equipment in the covered subsectors.

EPA is establishing the requirements for servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs on a subsector basis at this time. The Agency considered and is finalizing in this rulemaking requirements for servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in three RACHP subsectors after further evaluation and informed by comments on a range of factors. Additional discussion on covering more subsectors and on taking a subsector approach are covered in another comment response in this section. The Agency is not establishing requirements for initial fill of refrigerant-containing equipment with reclaimed HFCs in this rulemaking. EPA acknowledged in a previous response on the challenge of securing sufficient reclaimed HFC refrigerants where the refrigerants have not been in the installed stock of equipment for sufficient time and may take a number of years for adequate reclaimed refrigerant to be available.

Comment: One commenter requested that EPA include a force majeure or hardship clause in the rule should the mandated amounts of certified reclaim not be available to regulated entities including OEMs because without such a clause, OEMs and other regulated entities could fall into non-compliance due to no fault of their own. The commenter also requested that EPA provide a mechanism whereby a regulated authority can appeal to EPA for relief should this situation occur. Another commenter stated that the proposed stipulation to utilize recycled or reclaimed substances poses a notable challenge, as the future accessibility of these recycled or reclaimed materials remains entirely uncertain. The commenter stated that complying with the requirement might prove impractical and could result in significant operational delays or business closures.

In lieu of these explicit requirements, the commenter strongly urged EPA to incorporate an alternative compliance approach, contingent upon the regulated entity maintaining documented evidence that the requisite recycled or reclaimed substances are unavailable, necessitating the use of virgin products. The commenter stated that this approach aims to offer flexibility in situations where compliance with the primary requirement is unfeasible due to material unavailability.

Response: EPA responds that the Agency is not establishing a force majeure or hardship clause as described by the commenter in this rulemaking. As noted in prior responses, EPA is only finalizing some of the proposed reclamation requirements at this time, is delaying the compliance date, and will use data to assess the uptake of reclaimed HFCs ahead of the compliance date. EPA acknowledges comments related to unforeseen events, which could affect operations at individual facilities that may impact contractual arrangements. However, the Agency does not agree with the need to provide any general regulatory exceptions to remove liability for unforeseeable and unavoidable catastrophes that interrupt the expected course of operations, though the Agency recognizes that there may be value in regulated entities including force majeure clauses in their contracts if the parties to the contract believe such a clause is appropriate.

Comment: Multiple commenters commented on whether lower-GWP refrigerants should be included in reclamation requirements for servicing. Some commenters supported excluding refrigerants with GWPs below the 2023 Technology Transitions thresholds from reclaim requirements. One commenter proposed that EPA should focus on refrigerants with GWPs that are above the GWP limits included in the 2023 Technology Transitions Rule for a final rule. The commenter noted that this change would also focus recovery and reclamation activity on the products with the highest GWP, where reclaim has the most environmental benefit per pound of gas recovered. Another commenter requested that EPA limit the reclaim servicing requirements to HFC refrigerants that are restricted by the 2023 Technology Transition Rule and not all HFCs regulated by the AIM Act. The commenter claimed that many low-GWP HFCs will not be introduced until January 1, 2025, so there will not be enough low-GWP HFCs recovered to generate enough reclaim to use in service for these sectors. Another commenter stated that reclaim mandates

on low-GWP refrigerants do not make sense because these are not in widespread use. In contrast, a different commenter stated that EPA should not exempt low-GWP refrigerants from reclaim mandates and that having reclaim requirements for low-GWP refrigerants will benefit the environment and create a more circular economy.

One commenter urged EPA to provide an exception for certain newer and commonly used low-GWP refrigerants such as R-448A, R-449A, and R-407A, stating that they are unlikely to be reclaimed in sufficient quantity to satisfy industry needs, as these substances have only recently started to be used in newly installed or retrofitted in commercial refrigeration systems. The commenter noted that these refrigerants are subject to patents held by their manufacturers; thus, not all reclaimers can legally formulate their blends, which will constrict supply. Another commenter suggested that the use of reclaimed refrigerant for service and repair of existing supermarket refrigeration appliances starting in 2028 should be limited to refrigerants with GWPs greater than 1,500, if the reclaim mandate as of 2028 is pursued by EPA. Another commenter recommended that EPA prohibit the use of virgin refrigerant for servicing equipment in supermarket systems, cold storage warehouses, refrigerated transport, and automatic commercial icemakers with a GWP greater than 2,200 beginning January 1, 2029, and with a GWP greater than 1,400 beginning January 1, 2034.

Another commenter proposed that a refrigerant supplied for servicing in the applicable sectors that exceeds the established GWP thresholds set forth in the 2023 Technology Transitions Rule could be a specified percentage of reclaimed refrigerant, as determined by the Administrator on an annual and gradually increasing basis. The commenter suggested additional subsectors for consideration for servicing and/or repair requirements with reclaimed refrigerants. An additional commenter suggested EPA review market data and applicable percentages for servicing using reclaimed refrigerant annually via a notice and comment process. The commenter also suggested excluding from servicing requirements any equipment containing a refrigerant with a GWP below the applicable threshold established by the 2023 Technology Transitions Rule.

Another commenter stated that the requirements for reclaimed HFCs cause concerns regarding the excessive burden being placed on the retail industry. The commenter expressed support for the

need to incentivize reclaimed refrigerant as a way to balance the decreased supply of HFCs due to the decreased allocation of allowances; however, the commenter expected the focus of reclaim to be on the refrigerants that were not included as future options of the 2023 Technology Transitions Rule. The commenter also expected the focus of the proposed rule to be on the need to service existing equipment throughout its natural lifetime.

One commenter added that heating, ventilation, and air conditioning (HVAC) equipment typically has a lifespan of around 10–15 years, and refrigerant recovery is very limited during this time, with recovery only possible during maintenance and repair work. Therefore, the commenter asserted that after the transition to low-GWP refrigerants in 2025, these low-GWP refrigerants must not become the focus of recovery efforts until 2035 to 2040. The commenter stated that until then, the refrigerant contained in the already installed equipment will be the dominant part of the recovery work. The commenter stated that in the domestic and commercial HVAC sector, R-410A is the main target for recovery as there are no refrigerants below GWP 700 on the market. Therefore, the commenter suggested that it is substantially infeasible to obtain reclaimed refrigerants with a GWP of 700 or less as of 2028.

One commenter stated that there should be no exemptions for newer, lower-GWP refrigerants (such as HFC-32, R-454A/B, R-448A, R-449A, R-450, R-456A, R-444A, or others). Another commenter claimed that there is not enough HFO refrigerant available to support the service and new equipment market and recommended that reclaimed HFC and HCFC makes sense for 2028. The commenter requested further specificity regarding the statement requiring reclaimed refrigerant for repair and servicing.

Response: EPA acknowledges these comments concerning the GWP of refrigerants and basing the provisions for the requirements for reclaimed HFCs with this consideration. Further, EPA understands commenters' suggested rationale of considering reclaimed refrigerant requirements related to GWP limits established in the 2023 Technology Transitions Rule. As noted in previous responses in this section, EPA is not establishing requirements for the initial fill of refrigerant-containing equipment to be done with reclaimed HFCs in this rulemaking. EPA understands that many newer refrigerants (e.g., R-448A, R-449A, and R-407A) would be used for the initial

fill of new equipment in compliance with the restrictions established in the 2023 Technology Transitions Rule. However, EPA notes that based on reported data from certified reclaimers, newer refrigerants are currently being reclaimed albeit in smaller amounts but as previously noted, those amounts will increase over time. Newer equipment is less likely to require repairs so the amount of newer refrigerants being reclaimed should comport with transition to those refrigerants. Also, as noted above, HFC blends can be separated into components and these components can be used in other blends to the extent patents, licensing agreements, and other business relationships allow. As described above, EPA is establishing a reporting requirement that will further inform the provisions for reclaimed HFC refrigerant use in the covered RACHP subsectors. EPA will use the information in these reports to evaluate these provisions.

EPA is not establishing exclusions based on GWP for the requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in this rulemaking. The Agency disagrees with the suggested GWP level of 1,500 on which to base exclusions, noting among other things, that this would exclude HFC-134a, which by volume is currently the second most reclaimed HFC refrigerant, has a GWP of 1,430; thus supply is not tied to that GWP level. In response to comments on GWP considerations of 2,200 in 2029 and 1,400 in 2034, the Agency notes that similar to reasons discussed related to the GWP consideration of 1,500, these suggested cut-offs would exclude HFCs that have significant GWP levels. Regarding a GWP of 2,200, this would exclude HFC-134a, as noted above, and other HFC refrigerants that are currently being reclaimed, including R-407A, R-407C, and R-410A. A GWP-based exclusion of 2,200 would be inappropriate and could discourage the recovery and reclamation of these and other HFC refrigerants and refrigerant blends that will be important to have available per the established requirements for using reclaimed HFC refrigerants in this rulemaking and as the phasedown progresses. Further, the GWP based exclusion at 1,400 would exclude other HFCs, such as R-448A and R-449A which are used in supermarket systems. A GWP cut-off of 1,400 may discourage efforts to recover and reclaim these refrigerants. In response to comments suggesting the GWP of 700 as the cut-off, which is the GWP threshold used for requirements established for certain sectors and

subsectors in the 2023 Technology Transitions Rule, EPA notes differences in the statutory provisions in subsections (h) and (i) and maintains that in this final rule, EPA is promulgating requirements maximizing reclamation.

EPA acknowledges other comments related to not placing GWP-based limits on the reclaimed HFC refrigerant requirements for servicing and/or repair of certain refrigerant-containing equipment and the need to protect the useful lifetime of the equipment. The Agency agrees and effectively designed provisions in this rule to avoid stranding equipment or forced early retirements. The Agency considered the long and successful use of reclaimed refrigerants as well as some of the longstanding concerns reclaimers have raised with market access and acceptability.

As noted in response to other comments, EPA is aware of both patents and certain business arrangements that pertain to certain newer refrigerants and notes the changes between proposal and the final rule.

Comment: Another commenter requested that the reclaim mandate be limited to refrigerants with GWPs greater than 1,500. The commenter stated that it will be very challenging to meet the food retail industry's need for reclaimed R-404A in 2028 and proposed that the mandate be postponed until 2030 at the earliest to avoid the certainty of commercial system shutdowns due to lack of refrigerant for servicing. The commenter stated that while the existing reclaim banks of all HFCs are currently inadequate to meet a servicing tail need in 2028, exempting refrigerants with GWPs less than 1,500 from the reclaim mandate would serve to accelerate retrofits out of high-GWP refrigerants into HFC/HFO blend refrigerants like R-448A and R-449A, which would serve to quickly increase the amount of R-404A and R-507A especially. The commenter further claimed that including refrigerants like R-448A/R-449A in the reclaim mandate would remove all motivation for food retailers to retrofit high-GWP R-404A systems to R-448A or R-449A. The commenter stated that if it is clear when this regulation is finalized if there will be a way to service or maintain existing R-448A or R-449A equipment because if there are no reclaimed refrigerant available, food retailers will immediately stop using these refrigerants, and possibly start using higher-GWP refrigerants that are more likely to have significant banks of refrigerant available for service and

maintenance. The commenter also noted that R-448A and R-449A are used today in new appliances, which are unlikely to reach their EOL until 2035–2040 at the earliest. The commenter stated that refrigerant is reclaimed at the EOL, so the only opportunity to establish banks of reclaimed refrigerant is when a new generation of appliances using those refrigerants begin to be retired. The commenter noted that, while it is true that there are older appliance retrofits being carried out that use R-448A and R-449A, retrofitted appliances can be expected to continue to operate at least for an additional 10 years after the retrofit; otherwise, the cost of the retrofit cannot be justified.

Response: EPA responds and refers to the discussion in the previous response of this section related to a GWP-based exclusion for the reclaimed HFC refrigerant requirements at a GWP of 1,500. Further, the Agency notes that the requirement for the servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs is being delayed by one year to January 1, 2029. EPA also responds, as explained in prior responses, that the Agency is not establishing requirements for the initial fill of certain refrigerant-containing equipment with reclaimed HFCs in this rulemaking. Thus, decreasing the estimated need for supply of reclaimed HFCs needed to meet those provisions and, in particular, the reclaimed HFC or HFC blend refrigerants discussed in this comment.

EPA responds that setting such a GWP limit may have the opposite effect and that by not including all HFC-containing refrigerants based on a GWP limit, there would be less incentive to recover and reclaim these blends. If the requirements were established such that R-448A and R-449A, for example, were exempted from the requirements for servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs, there could be less incentive to properly recover these blends for future reclamation. Based on data reported to EPA on reclamation totals, these blends are currently being reclaimed to a degree, as are their components. EPA notes that while these or other newer blends may be under patent, the Agency is aware that, on a global basis,^{108 109} there are certain

agreements in place among producers and reclaimers to reclaim certain blends. Further, the Agency notes that it anticipates that with proper maintenance and adherence to the leak repair and ALD requirements, as applicable, in this rulemaking, leaks of HFCs should be minimized, decreasing the need for additional servicing of equipment.

In response to comments related to retrofit, EPA explains that retrofit is considered as a servicing or repair activity in this rulemaking. For the subsectors that are required to service and/or repair of refrigerant-containing equipment with reclaimed HFCs (*i.e.*, supermarket systems, refrigerated transport, and automatic commercial ice makers), retrofits must be done with reclaimed HFC refrigerants if the refrigerant-containing equipment is being retrofitted to use a refrigerant that contains an HFC. Where a piece of refrigerant-containing equipment is being retrofitted to use a substitute for an HFC, reclaimed refrigerant would not be required.

Comment: Two commenters provided comments recommending establishing exemptions from the requirements for reclaimed HFC refrigerant for those applications that receive application-specific allowances under the AIM Act.

Response: EPA responds to these comments related to providing exemptions in cases for which application-specific HFC allowances are provided under subsection (e)(4)(B) of the AIM Act. As discussed in section I.B, EPA is excluding two applications, mission-critical military end uses and on board aerospace fire suppression, from these regulations for a year or years for which the application receives an application-specific allowance as defined at 40 CFR 84.3. EPA is establishing requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFC refrigerants in the supermarket systems, refrigerated transport, and automatic commercial ice makers subsectors. If mission-critical military end uses and/or on board aerospace fire suppression applications received application-specific allowances for HFCs in a particular year or years, then the exemption would apply.

This rulemaking establishes a definition for “refrigerant-containing equipment,” which specifically does not include military equipment used in deployable and expeditionary

¹⁰⁸ Chemours and Honeywell Announce Program to Enable Reclamation and Recycling of Refrigerants in Support of Circular Economy, November 16, 2022, available: <https://www.chemours.com/en/news-media-center/all-news/press-releases/2022/chemours-and-honeywell-announce-program-to-enable-reclamation-and-recycling-of-refrigerants-in-suppo>.

¹⁰⁹ A-Gas Named Authorised Reclaimer of Patent Protected Refrigerants, 2023, available: <https://www.agas.com/uk/news-insights/a-gas-named-authorised-reclaimer-of-patent-protected-refrigerants/>.

situations. Where reclaimed HFC refrigerants are required to be used for servicing and/or repair of certain refrigerant-containing equipment per this rulemaking, the requirements do not apply to the specific case of military equipment used in deployable and expeditionary situations.

Comment: One commenter suggested EPA move the January 1, 2028, compliance date back at least two years to allow for development of the necessary supply of reclaimed HFC refrigerants on the market. Another commenter supported the 2028 timeline for the implementation of reclaimed refrigerants and noted that EPA's firm rulemaking will help make a strong business case for scaling up separation technologies.

Response: EPA acknowledges these comments and responds that the Agency is delaying the compliance date for the requirements for the servicing and/or repair of certain refrigerant-containing equipment to be done with reclaimed HFCs to January 1, 2029. The Agency has reviewed comments and considers January 1, 2029, as an appropriate compliance date. The delayed compliance date provides industry more time to build up capacity of reclaimed HFCs available for these activities and for those in RACHP subsectors required to service and/or repair refrigerant-containing equipment with reclaimed HFCs to establish avenues to obtain the reclaimed HFC refrigerants. A compliance date of January 1, 2029, also aligns with the next major step of the phasedown under the AIM Act when virgin HFC production and consumption will be reduced to 30 percent of the baseline. Reclaimed HFCs will play a crucial role in supporting refrigerant-containing equipment using HFCs as this next step of the phasedown occurs.

Comment: EPA received many comments on the included subsectors for the requirements for use of reclaimed refrigerants for servicing and repair. One commenter recommended that EPA follow the approach taken by California's SB 1206 and implement reclaimed use requirements for all HFC sectors. The commenter stated that CARB adopted a prohibition on the sale, distribution, or other entrance to the market of newly produced bulk high-GWP HFCs, regardless of the sector. The commenter recommended that EPA take this comprehensive approach to establishing requirements for reclaimed HFCs, since it would apply to bulk refrigerant used in all sectors, including retail food applications and non-space conditioning heat pump sectors such as clothes dryers, water heaters, and pool

and spa heaters. The commenter also stated that since these technologies are projected to experience rapid adoption in the next decade, if they are not addressed in the 2023 Technology Transitions Rule, these sectors' equipment manufacturers may not be incentivized to transition away from high-GWP refrigerants.

One commenter recommended that EPA include residential air conditioning, light commercial air conditioning, heat pumps, cold storage warehouses, and IPR sectors in the requirements for servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs if EPA does not take a comprehensive approach to include all sectors in these requirements. One commenter requested that the proposed prohibition of virgin refrigerant usage for equipment servicing be limited to supermarkets, cold storage warehouses, refrigerated transport, and automatic commercial icemakers. Another commenter noted that many of these subsectors are already transitioning to ultra-low-GWP alternatives for new equipment. The commenter stated that the supermarket sector in particular is anticipated to undergo significant near-term retrofits from high- to low-GWP HFCs, which will make large quantities of retired refrigerant available for reclamation and reuse in the refrigeration servicing market.

One commenter urged EPA to expand the servicing and repair reclamation mandate to additional sectors; specifically light commercial and residential air conditioning and heat pumps. The commenter stated that the inclusion of this sector is essential to any material growth in recovery and reclamation as it has the greatest number of operating units and therefore the greatest number of pounds of refrigerant that can be recovered at EOL. The commenter also suggested expanding the proposed rule to include smaller outdoor units would also increase the amount of reclaim recovered annually. The commenter suggested that EPA should focus the rule on system mandates, as opposed to mandates by sector. The commenter noted that this approach will help contractors better understand the reclaim refrigerant requirements by relying on the type of system and stated refrigerant charge. Moreover, the commenter claimed that, as the lower-GWP systems begin to be installed pursuant to the 2023 Technology Transitions Rule, EPA could then lower its GWP target below 1,000 GWP as stated in this suggested approach and create additional reclaim mandates for

the lower-GWP systems. The commenter further stated that, as with the ODS phaseout, using the "worst first" principle creates significant reduction in the earlier years.

Some commenters expressed opposition to EPA's proposed mandate to use reclaimed gas for servicing various subsectors; specifically, the retail food manufacturing and distribution sector. Multiple commenters expressed opposition to EPA's proposed requirements for HFC refrigerant reclaim in the retail food industry and other commercial refrigeration. The commenters stated that the cost of reclaimed HFC refrigerants will not be cheaper than new HFCs. Three commenters claimed that reclaimed HFCs are more expensive than HFCs because reclaimers incur significant equipment and operational costs, including HFC losses during reclamation, equipment upkeep costs, and costs associated with rebalancing refrigerants. One commenter stated that, since some industries are not required to use reclaimed HFC refrigerant, they will procure either new or used HFCs, depending on which is cheaper, so the price of reclaimed HFC refrigerant will always be at least as high as new HFCs. The commenter continued by stating that the proposed requirements will drive demand for reclaimed HFC refrigerant above that of new HFC refrigerant, likely causing them to cost more. Further, the commenter claimed that the use of reclaimed HFCs for equipment servicing and repair may be technically infeasible for custom-built equipment, particularly when upgrading or replacing components. The commenter stated that a limited supply of niche HFCs or blends not manufactured or reclaimed in significant volumes but essential for specific subsectors may also create compliance challenges. The other commenter expressed concerns that the mandate to use reclaimed gas for servicing will strand installed equipment if there is insufficient reclaimed gas to service the equipment. The commenter also noted that any time market supply and demand for a commodity are short, the price of that commodity will increase, and some consumers have to forgo the product, which the commenter stated would be especially unfortunate for equipment owners in the food manufacturing and distribution sectors. The commenter stated that any further disruptions or cost escalations to the food manufacturing and distribution sectors would increase already historically high food costs.

Response: EPA acknowledges these comments related to including additional subsectors in the requirements for using reclaimed HFCs in this rulemaking. At this time, the Agency is finalizing requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in the supermarket systems, refrigerated transport, and automatic commercial ice makers subsectors. The Agency is not finalizing requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in the stand-alone retail food refrigeration subsector and is not establishing requirements for the initial fill of refrigerant-containing equipment with reclaimed HFCs in this rulemaking. EPA is removing requirements for reclaimed HFCs in the servicing and/or repair of stand-alone retail food refrigeration equipment in part due to the nature of the equipment. EPA understands that these types of refrigerant-containing equipment are likely hermetically sealed and are less likely to need servicing and/or repair.

EPA is not establishing an approach for requirements to all RACHP subsectors. As described in other responses, EPA considered available supply of reclaimed HFC refrigerants per these requirements. EPA is also establishing a reporting requirement to better assess the use of reclaimed HFCs in the RACHP subsectors covered in this rulemaking to evaluate the requirements in this rulemaking. The Agency acknowledges comments to establish an approach for all subsectors or to include additional subsectors and may consider additional subsectors in a future rulemaking.

EPA disagrees with the assertion that reclaimed HFCs are substantially more expensive than virgin HFCs and is not aware of market data or analyses clearly indicating such a trend. In response to the NODA that the Agency published on October 17, 2022 (87 FR 62843), in which EPA requested comment on current trends on the price of refrigerant, one reclaimer noted: “The market price for reclaim and virgin are generally equivalent. There is neither a ‘green premium’ nor a lower price for reclaim.”¹¹⁰ EPA is also aware of at least one study indicating that reclaimed HFCs may actually be more cost-effective than virgin manufacture, when considering the full refrigerant lifecycle. In the analysis for the proposed ER&R rule, EPA referenced a

study, Yasaka et al. (2023),¹¹¹ which performed a life cycle assessment for the virgin production, destruction, and reclamation of R-410A, HFC-32, and HCFC-22 in Europe and Japan and found that the reclamation process had lower energy consumption and costs and emitted fewer GHG emissions compared to production and destruction, regardless of the refrigerant type or plant location. EPA is not aware of a similar study for the United States and so has conservatively assumed higher costs for reclaimed HFCs in the analysis for the final rule. Specifically, in its assessment of costs and benefits detailed in the Economic Impact and Benefits TSD and summarized above EPA has assumed a cost premium of 10 percent for reclaimed HFCs vis-a-vis virgin manufactured HFCs.

EPA notes that the commenter has not provided any quantitative information regarding a supposed cost increase in food prices resulting from refrigeration, or the effect that other factors such as refrigerant savings resulting from leak detection and repair provisions contained in this rule could have in mitigating such a cost increase.

EPA does not agree with the commenter’s position that the requirement for the servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs will strand installed equipment. The commenter suggests a scenario where there is an insufficient supply of reclaimed refrigerant. As EPA notes above, the Agency considers these provisions as encouraging increased reclamation. Further, as described above, the provisions for servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs finalized in this rule differ from the proposal. The Agency made changes from the proposal to delay the compliance date. Further, the Agency is only finalizing these provisions for refrigerant-containing equipment in three RACHP subsectors at this time. Accordingly, the Agency does not expect these concerns to be implicated by this final rule. The Agency does not agree that the provisions will result in unfavorable pricing for consumers. The Agency notes the overall phasedown of HFCs is more likely to affect the price of HFCs than these provisions. In addition, EPA describes current reclamation trends in other responses in this section, including reclamation of certain HFC refrigerants that are in

blends and/or form the components of other blends. EPA anticipates that, while direct recovery reclamation of certain blends may be occurring at a lower rate, the recovery of blend components is expected to support the overall reclamation of these blends.

Comment: Another commenter suggested that this proposal will create confusion by requiring the use of reclaimed refrigerants in certain subsectors, while not requiring it in others even though some of these sectors use the same refrigerants. The commenter stated that, currently, based on EPA’s proposal, stand-alone retail food refrigeration, supermarket systems, refrigerated systems, refrigerated transport, and automatic ice makers are required to use reclaimed refrigerants, but cold storage warehouses and IPR are exempt. The commenter suggested that the refrigeration reclaim usage requirements are not separated by subsectors. The commenter noted that the use of reclaimed refrigerants in imported equipment depends on the availability of recovered HFCs in the exporting countries and that it may be challenging to prove the authenticity of reclaimed refrigerants abroad. The commenter stated that these two factors could amount to an import ban for equipment with reclaimed HFCs. The commenter therefore requested that imported equipment be exempted from the mandatory use of reclaimed refrigerants.

Another commenter stated that the NPRM did not address how reclaim requirements would apply to imported units and HFCs. The commenter questioned what the effects of reclamation in other countries would be upon capacity in the U.S. market and suggested that EPA should not provide offshore producers with an advantage.

Response: EPA responds to comments about the requirements for servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs by noting that these types of provisions are within the authority under subsection (h) to promulgate regulations to control practices, process, or activities related to the servicing, repair, disposal, or installation of equipment. EPA disagrees that requiring that the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors and not others would create confusion. The Agency is establishing labeling requirements for containers of reclaimed refrigerants that contain HFCs (as discussed in section IV.E.1) such that equipment owners and operators can verify they are using reclaimed HFC refrigerants for servicing and/or repair

¹¹⁰ See comment number EPA-HQ-OAR-2022-0606-0009.

¹¹¹ Yasaka, Yoshihito, et al. “Life-Cycle Assessment of Refrigerants for Air Conditioners Considering Reclamation and Destruction.” *Sustainability*, vol. 15, no.1, 2023, p. 473, doi:10.3390/su15010473.

of refrigerant-containing equipment in the supermarket systems, refrigerated transport, and automatic commercial ice maker subsectors. Further, EPA clarifies that this rule would not preclude the use of reclaimed HFC refrigerants in any manner. Consistent with the proposed rule and EPA's experience in the use of reclaimed ODS refrigerants, EPA anticipates that reclaimed HFC refrigerants will continue to play an increasingly significant role in the servicing and/or repair of existing equipment that use HFC refrigerants as the phasedown on production and consumption of virgin HFCs progresses.

EPA responds that the Agency is not establishing requirements for the initial fill of refrigerant-containing equipment with reclaimed HFCs at this time.

Comment: One commenter proposed an alternative where EPA could finalize a program to define a "service gas" to distribute the finite reclaimed HFCs across the entire service market, and in this alternative, exclude first fill requirements with reclaimed HFC refrigerants. The commenter further claimed that EPA could require a minimum percentage of reclaimed HFCs (with consideration of the 15 percent limit, by weight, on virgin HFCs) to be used in service gas sold to the aftermarket. The commenter further suggested requiring that all reclaimed HFCs be recovered from equipment manufactured in the United States (excluding equipment meeting GWPs under the 2023 Technology Transitions Rule and first fill requirements), claiming that this would maximize reclaim across the full market, maintain free market competition, return reclaimed higher-GWP refrigerants to service, and maximize reclaim as recovery rates grow over time. The commenter recommended that EPA consider different service levels by market sector, exempting IPR because of its requirement to continuously maintain temperature ranges.

A couple of commenters discussed the feasibility of EPA creating a new service gas category for refrigerants. One commenter requested that EPA reject arguments that reclaim goals cannot be met due to challenges in recovery practices and that a new service gas category can be used in the secondary market (that is less than 85 percent reclaim). The commenter contended that such arguments were intended to cast doubt on the ability of reclaimers to provide sufficient reclaimed refrigerant. Another commenter suggested that a limit on virgin refrigerant could thwart reclaim goals and restrict uses like a "service gas" where an increasing

percentage of reclaimed refrigerant could be used over time.

Response: EPA did not propose and is not finalizing the creation of a service gas category for refrigerants as EPA does not agree that the creation of a service gas category is necessary. EPA acknowledges that under the CAA title VI phaseout ODS regulations, virgin HCFCs can be produced and imported in very small quantities solely for purposes of servicing certain appliances. For example, today under the "servicing tail" requirements, EPA issues allowances that allow for no more than 0.5 percent of the U.S. HCFC baseline to be produced and imported, requires that those HCFCs must be used solely for servicing, and further limits the allowances to only the two HCFCs with the lowest ozone-depleting potentials (*i.e.*, HCFC-123 and HCFC-124). The structure of the AIM Act and the CAA differs significantly in this area and, in particular, the AIM Act's phasedown and not phaseout of HFC production and consumption is a stark difference from the ODS structure, resulting in a need for a different approach with regards to servicing. EPA does not agree conceptually with a new category of gas that has a percentage of reclaimed material between a "virgin regulated substance" and "reclaimed refrigerant." It is EPA's view that the creation of this new category could create unnecessary complications in the market and could weaken the demand for reclaimed refrigerant rather than strengthening it. As EPA explains in section IV.E.1, the Agency is establishing a standard for the limit on the percentage of virgin HFCs, by weight, in reclaimed HFC refrigerants. EPA explains that, in addition to supporting maximizing reclamation, this standard helps to provide a consistent understanding of what constitutes reclaimed HFCs for their use in refrigerant-containing equipment. EPA views that a service gas category as described by the commenter would be detrimental to this, such that the service gas category would introduce refrigerants with more virgin HFCs than would be in reclaimed HFC refrigerants meeting the standard established in this rulemaking. Such a service gas category would contradict the goal of maximizing reclamation by allowing more virgin HFCs in the servicing and/or repair of refrigerant-containing equipment. Further, EPA anticipates that this approach would require additional recordkeeping, and potential reporting, to confirm particular owners and operators were using a service gas of a specified percentage of reclaimed HFCs.

Where the commenter states that varying percentages of reclaimed HFCs could be in service gas by subsector, the Agency responds that this could create confusion on the market. Equipment owners and operators would be required to ensure that the correct service gas was being used to service and/or repair their refrigerant-containing equipment depending on the subsector they are in. The established requirements for the standard on reclaimed HFC refrigerants avoid this confusion by ensuring there is a consistent understanding of reclaimed HFC refrigerant on the market. This standard and the established labeling requirements (discussed in section IV.E.1) properly support the requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors, such that equipment owners or operators in these subsectors can be sure that the reclaimed HFC refrigerants are compliant and can be used to service and/or repair their refrigerant-containing equipment.

As explained in other responses in this section, the provisions that EPA is finalizing to require that the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors are within the authority of subsection (h) of the AIM Act. EPA is also notes that the Agency discusses considerations and responds to comments related to establishing the servicing and/or repair with reclaimed HFCs provisions with a GWP limit (including considering those GWP levels established in the 2023 Technology Transitions Rule). The Agency is not establishing GWP-based cut-offs for reclaimed HFC refrigerants for the provisions in this rulemaking for servicing and/or repair of refrigerant-containing equipment in certain RACHP subsectors. Further, the Agency is not establishing requirements for reclaimed HFC refrigerants in the initial fill of any refrigerant-containing equipment in this rulemaking.

Comment: Several commenters expressed concern about patent and intellectual property issues with reclamation. One commenter recommended that EPA provide an exception for certain newer and commonly used low-GWP refrigerants such as R-448A, R-449A and R-407A, given that they are unlikely to be reclaimed in sufficient quantity to satisfy industry needs, as these substances have only recently started to be used in newly installed or retrofitted commercial refrigeration systems. The commenter further claimed that these refrigerants are subject to patents held

by their manufacturers; thus, not all reclaimers can legally formulate their blends, which will constrict supply. The commenter also stated that the proposed rule does not clarify EPA's analysis with respect to patent issues when carrying out HFC reclamation activities. Another commenter requested that EPA exclude patented or intellectual property-protected products from these requirements. One commenter stated that a portion of reclaimer recovered refrigerants are patented and cannot be reclaimed to AHRI 700 specifications without "rebalancing" through the addition of blend components. The commenter claimed that rebalancing puts reclaimers at odds with patent laws and the refrigerant producers. The commenter noted that if out-of-specification patented refrigerants fell under RCRA, within a year the reclaimers would be unable to process the material and unable to store it. Another commenter expressed concern about intellectual property restrictions, particularly for new low-GWP refrigerants. The commenter stated that reclaimers would need to secure authorization from producers to re-blend recovered HFCs into mixtures. The commenter suggested that this would be a bottleneck in the supply of reclaimed refrigerant and that recovered refrigerant should be primarily utilized to service the installed base (e.g., R-410A) instead of for the production of low-GWP blends (e.g., R-32 from R-410A to blend R-454B). Another commenter pointed out that many refrigerant blends are patented and cannot be reclaimed until the patents expire, which would make it impossible to supply the necessary refrigerants for this proposal.

One commenter recommended that the final rule exclude patented refrigerants from any reclaim requirements under subsection (h) due to the requirements' potential to create serious issues for patented blends and incentivize patent infringement. The commenter stated that licensing rights would need to be secured to sell patented blends. Alternatively, the commenter suggested that the reclaim mandates could compel owners or operators to prematurely decommission equipment, leading to high costs and waste, counteracting sustainability goals. Another commenter highlighted that other free market initiatives are already underway to support refrigerant recovery, reclaim, and recycling by U.S. companies exploring programs to enable the circularity of proprietary HFO blends. The commenter stated that EPA should not finalize any rule that

incentivizes or requires patent infringement or authorizes reprocessing of patented blends when source material is unknown.

Response: On a global basis,^{112 113} EPA is also aware that some chemical producers have entered into agreements with reclaimers that support additional reclamation particularly where patents may be in place. EPA acknowledges there may be patents, licensing agreements, and other business practices that may impact the ability of some reclaimers to reclaim certain refrigerants. The Agency saw a similar situation when the market shifted from ODS to HFC refrigerants and to some extent has seen it with each introduction of a new HFC blend. However, requiring an upper bound of virgin HFCs, as the Agency is doing in this final rule, would not change whether or not a reclaimer could reclaim or introduce to commerce reclaimed HFCs.

Comment: Two commenters stated that the proposal to mandate the use of reclaimed HFCs in servicing/repair for certain subsectors exceeds EPA's authority in subsection (h) of the AIM Act, as the Act provides no authority for the Agency to single out specific subsectors to shoulder the increased costs of using reclaimed HFC refrigerants. The commenters noted that subsection (i) of the statute provides specific authority for EPA to "restrict, fully, partially, or on a graduated schedule, the use of a regulated substance in the sector or subsector in which the regulated substance is used," and that EPA has used that authority to promulgate specific requirements for subsectors in the 2023 Technology Transitions Rule. One commenter continued by stating that subsection (h), the authority for this rulemaking, does not refer to "sectors" or "subsectors," giving no basis for EPA to treat subsectors differently in requiring the use of reclaimed HFCs. The commenter noted that this action exceeds the scope of EPA's AIM Act authority and is arbitrary and capricious within the meaning of the Administrative Procedure Act.

¹¹² Chemours and Honeywell Announce Program to Enable Reclamation and Recycling of Refrigerants in Support of Circular Economy, November 16, 2022, available: <https://www.chemours.com/en/news-media-center/all-news/press-releases/2022/chemours-and-honeywell-announce-program-to-enable-reclamation-and-recycling-of-refrigerants-in-suppo>.

¹¹³ A-Gas Named Authorised Reclaimer of Patent Protected Refrigerants, 2023, available: <https://www.agas.com/uk/news-insights/a-gas-named-authorised-reclaimer-of-patent-protected-refrigerants/>.

Two commenters stated that the proposed rule would regulate the "use" of HFCs, which would require fulfilling prerequisites under subsection (i) of the AIM Act, and that this rulemaking does not fulfill them. The commenters stated that manufacturing a new unit or supplying refrigerant for servicing is not such a practice, process, or activity related to the servicing, repair, disposal, or installation of equipment. One commenter stated that subsection (h) provided one specific example for what would be "appropriate"—requiring servicing, repair, disposal, or installation to be performed by a trained technician. The commenter further stated that the same practices, processes, or activities are done for virgin or reclaimed HFCs and the requirement to use reclaimed HFCs is removed from subsection (h)'s example of what is appropriate—technician training. The commenter also claimed that EPA's interpretation of subsection (h) was impermissibly broad and could cover "anything and everything" that has to do with HFCs as connected to equipment. The other commenter claimed that these practices do not include opportunities for reclamation. The commenter stated that EPA's justification under subsection (h) to require the use of reclaimed HFCs in certain applications to minimize the release of regulated substances is creating a situation where EPA's authority could theoretically become unlimited. The commenter gave a theoretical example of EPA requiring lower-GWP refrigerants in certain applications to "minimize releases" of HFCs.

Response: EPA disagrees with the comment that the requirement for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors exceeds EPA's authority in subsection (h) of the AIM Act. EPA does not consider the authority conveyed in subsection (i)(1), or the use of the terms "sector" and "subsector" in subsection (i), to preclude EPA from tailoring its regulations under other provisions of the Act to particular sectors or subsectors, where it is appropriate and reasonable to do so. As noted elsewhere in this action, EPA interprets the AIM Act as providing separate and distinct regulatory authorities, which can be implemented in ways that reinforce and complement one another. In this final rule, EPA is requiring that the servicing and/or repair of certain refrigerant-containing equipment be done with reclaimed HFCs as part of the regulations implementing its authority

under subsection (h) of the Act. That provision directs EPA to promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment that involves: a regulated substance, a substitute for a regulated substance, the reclaiming of a regulated substance used as a refrigerant, or the reclaiming of a substitute for a regulated substance used as a refrigerant. A requirement for the servicing and/or repair of certain refrigerant-containing equipment be done with reclaimed HFCs controls a practice, process, or activity regarding the servicing or repair of equipment and involves a regulated substance or the reclaiming of a regulated substance. This requirement also supports and encourages reclamation of HFCs and thus is consistent with at least one of the purposes identified in subsection (h)(1). Accordingly, this requirement is within the scope of EPA's authority under subsection (h). In contrast to the regulations established under the 2023 Technology Transitions Rule, in this rule, EPA is not restricting the use of specific HFCs in a sector or subsector, nor is it limiting the use of HFCs based on a GWP threshold. Rather, it is requiring that the HFCs used in servicing and/or repair of refrigerant-containing equipment in certain RACHP subsectors meet criteria related to the processing of the HFC before it is used; specifically, requiring that the reclaimed HFC refrigerants meet specific purity standards and meet the established standards in this rulemaking limiting virgin HFC content (see section IV.E.1). EPA identified the refrigerant-containing equipment subject to this requirement by sector or subsector in part to build on terms that are already familiar to the regulated community so that it is easier to understand how these requirements will apply. Nothing in subsection (h) requires that regulations established under this subsection apply equally to all types of equipment. Such an interpretation would make little sense, as different types of equipment necessarily involve different practices, processes, or activities regarding their servicing, repair, disposal, or installation. EPA has explained its rationale for this action elsewhere in this preamble, and for those reasons, views this requirement as a reasonable measure to implement its authority under subsection (h)(1) of the Act.

In response to comments that state that subsection (h) provides one, specific example of what is "appropriate" to control, which the commenter states is technician training,

EPA disagrees that the statutory language under subsection (h) is best read as narrowly defining technician training as the only appropriate practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment. Rather, EPA interprets the text at subsection (h)(1) to simply identify an example of a requirement that would fit within the scope of (h)(1), not as a limitation that would preclude establishing other regulations that are also within the scope of (h)(1). The fact that the statutory text says, "including requiring, where appropriate . . .," indicates that the example was not intended as a limitation, as "including" makes clear that what follows is a potential requirement contemplated under the statutory text but does not exclude other possibilities. Further, the phrase "where appropriate" in the parenthetical suggests that Congress contemplated that the Agency would consider whether such a requirement was appropriate before establishing it, not that Congress automatically assumed that any such requirement would necessarily be appropriate, much less be the only appropriate option. Moreover, as discussed previously in this preamble, the phrase "where appropriate" in subsection (h)(1) provides EPA discretion to reasonably determine how the regulations under subsection (h)(1) will apply. Thus, as explained above, the phrase "where appropriate" in the parenthetical in subsection (h)(1) clearly leaves EPA flexibility to determine whether and in what circumstances to require that "such servicing, repair, disposal, or installation be performed by a trained technician meeting minimum standards, as determined by the Administrator," as well as discretion to establish such minimum standards.

Comment: Two commenters stated that EPA lacks authority over non-servicing actions under the AIM Act. The commenters claimed that EPA's proposal in section 84.112 to regulate the marketing and sale of HFCs in commerce upstream from the use of HFC gas in equipment is not reasonably within EPA's authority. In particular, EPA's proposal to restrict the sale of reclaimed gas in section 84.112(b) does not relate to servicing of equipment, but rather restricts the sale of reclaimed gas upstream from the equipment. EPA's rule would restrict any sale of reclaimed HFCs in lieu of virgin gas for any uses that are still available to virgin gas under EPA's various AIM Act regulations. One commenter claimed that EPA is going beyond its subsection

(h) authority by implementing reclaim requirements that go beyond maximizing reclaim and minimizing emissions that occur during specified events such as servicing and repair, and that EPA only has explicit authority to regulate releases from equipment and to ensure safety of technicians and consumers. The other commenter further asserted that, read together, the terms that Congress used—"servicing, repair, disposal, or installation of equipment"—naturally refer to work performed on equipment, not to the design of the equipment or the choice of which refrigerant gas is used in the equipment, and that given the context of the statute, it is not natural (and therefore not reasonable) to describe the choice of what gas is used in equipment as a "practice, process, or activity." The commenter maintained that the choice or specification of what refrigerant gas to use to charge a system is simply not an "activity" as used in the statute, and that EPA's reading of the concept of "activity," which they characterize as overly expansive, would lead to unexpected and overbroad results if, for example, specification of equipment components is considered to be an activity and EPA could dictate the type of steel used in the refrigeration system or the energy efficiency of the system.

The commenter asserted that the mandate to use reclaimed gas when servicing or repairing equipment relates to the choice of which gas to use, not to the activities that are normally considered repair and servicing such as refrigerant recovery or charging gas (apart from the choice of using virgin or reclaimed gas), replacing parts, or fixing coupling or seals, and further claimed that if Congress had intended to delegate to EPA the authority to dictate the type of refrigerant gas that can be sold in the marketplace, it would have provided express authority similar to that in subsection (i) relating to technology transitions. The commenter further stated that there is no indication in subsection (h) that Congress intended to give EPA the ability to "eliminate virgin gas" and replace it with reclaim gas. The commenter further claimed that had Congress intended to give EPA the power to do so, it would have "stated so in clear terms." There is no indication in the AIM Act that the reclaim provision was intended to trump the allowance program and technology transition provisions in this way. The commenter claimed that in contrast, a narrower approach focused on equipment servicing is entirely consistent with the statutory goal of

increasing reclaim, reducing emissions, and enhancing safety.

Response: The Agency disagrees with the comments that these provisions go beyond its authority under subsection (h) of the AIM Act. The AIM Act provides various grants of authority to EPA, which, while separate and distinct, can be implemented in ways that reinforce and complement one another. Under subsection (h), for purposes including maximizing reclaiming and minimizing the release of a regulated substance from equipment, Congress directed the Administrator to promulgate regulations to control practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment that involves a regulated substance and the reclaiming of a regulated substance used as a refrigerant. This final rule, including the requirements related to the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors, carries out this direction in subsection (h). The requirement for the servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs controls a practice, process, or activity regarding the servicing or repair of equipment and involves a regulated substance or the reclaiming of a regulated substance. This requirement also supports and encourages reclamation of HFCs and thus is consistent with the purposes identified in subsection (h)(1). Accordingly, this requirement is within the scope of EPA's authority under subsection (h). While this requirement regulates the activities of the person performing the servicing or repair by requiring that the refrigerant used during servicing or repair meet certain criteria, Congress did not limit EPA's authority under (h)(1) to only servicing activities that are performed directly on equipment. Rather, as noted previously, Congress authorized EPA to regulate a broader scope of processes, practices or activities *regarding* servicing, repair, disposal, or installation of equipment. The statutory term "regarding" is quite expansive and EPA interprets it broadly in this context. Selection of a refrigerant for servicing and/or repair is an important part of the servicing or repair process, as not all refrigerants are compatible with all equipment, and it is critical to select a refrigerant for servicing or repair that can appropriately be used with the equipment being serviced or repaired. For example, it would not be appropriate to use a flammable refrigerant in equipment that is

designed to use only nonflammable refrigerants, so selecting the appropriate refrigerant for recharging such equipment after repair is a vital part of the repair process. The commenter's hypothetical examples regarding EPA dictating the steel used in the refrigeration system or its energy efficiency are inapposite because neither of those choices appear to involve a regulated substance or substitute, nor the reclaiming of a regulated substance (or substitute) used as a refrigerant. *See* subsection (h)(1)(A)–(D).

The limitation on selling, identifying, or reporting a refrigerant as reclaimed unless it meets certain criteria helps ensure that the refrigerant used to comply with the requirements for reclaimed refrigerants actually contains HFCs that have had bona fide use in equipment and been recovered from equipment before being reclaimed. This provision helps ensure that the requirements in this final rule achieve their regulatory purposes of maximizing reclamation and minimizing release of HFCs from equipment. For instance, it gives assurance to a technician purchasing refrigerant for servicing equipment in a RACHP subsector subject to the requirement to service with reclaimed refrigerant that refrigerant that is marketed as reclaimed refrigerant will meet EPA's regulatory requirements. Under EPA's interpretation of subsection (h), the practices, processes, or activities regulated by this provision have sufficient relation to servicing or repair of equipment to also be within the Agency's authority under subsection (h)(1). Because EPA is not finalizing, at this time, the proposed requirement for the initial fill of refrigerant-containing equipment with HFCs, it is not responding to comments concerning its authority for that provision.

Contrary to the commenters' assertions, EPA further notes that this provision does not restrict the sale of all refrigerants in the marketplace, but rather only applies to those refrigerants that are being sold, identified or reported as reclaimed. Further, these requirements do not mandate elimination of virgin gas from the supply chain, but rather prevent it from being sold, identified, or reported as reclaimed refrigerant and limits its use in servicing or repairing certain refrigerant-containing appliances. Moreover, this final rule does not reflect an approach that would "trump the allowance program and technology transition provisions" but rather contains requirements that are designed to serve the direction and purposes in

subsection (h). Finally, EPA acknowledges the commenters' suggested approaches to refrigerant management that it believes EPA should adopt. Some of those suggestions are consistent with regulations that EPA is finalizing in this action; others reflect approaches that EPA did not propose and is not finalizing in this action, but which may be considered in the future under subsection (h).

Comment: A few commenters claimed that the proposed rule, if finalized, would improperly accelerate the phasedown of HFC production and import for specific sectors by restricting HFC use in those sectors to 15 percent of (baseline) levels for repair and servicing in contravention to the AIM Act and the HFC phasedown regulations. The commenters claimed that the proposed rule effectively mandates an 85 percent reduction of production and import of HFCs for use in those sectors by 2028, which is substantially faster than the 40 percent reduction in 2028 required by the AIM Act.¹¹⁴ While the commenters recognized that the proposed acceleration is limited to certain subsectors and activities, the practical implications are much broader because HFCs are specific to end-use. The commenters requested that EPA reconsider the reclaim requirements because the AIM Act does not authorize such an acceleration of the HFC phasedown in these sectors; there is not sufficient evidence that supply of reclaimed HFCs can meet demand for the specific sectors; and the mandate will increase HFC prices in the sectors, resulting in harm to consumers.

Another commenter stated that the possible outcome suggested in the Draft RIA addendum for the proposed rule that the requirements for the use of reclaimed HFCs in refrigerant-containing equipment in certain RACHP subsectors would reduce the need for production of refrigerant. Further, the commenter cited that the high additionality case in the Draft RIA addendum showed environmental benefits related to reduced consumption. The commenter stated that to the extent that occurs, it would be an improper acceleration of the phasedown in contravention with subsection (f). The commenter, however, also suggested that EPA separately consider accelerating the

¹¹⁴ EPA is clarifying the commenters' characterization of the phasedown on the production and consumption of HFCs under the AIM Act. The phasedown requires a 40 percent reduction from the baseline in 2024 (*i.e.*, 60 percent of the baseline) and a 70 percent reduction from the baseline in 2029 (*i.e.*, 30 percent of the baseline).

HFC phasedown pursuant to subsection (f) as a means of supporting reclamation. The commenter stated that there currently is an excess of HFCs available in the market due to stockpiling and soft demand for RACHP equipment. The commenter mentioned that the current over-supply of HFCs discourages reclamation. The commenter suggested that a 10 percent step-down in each of 2027, 2028, and 2029 would help prevent the shock of a sudden drop in supply and encourage reclamation.

Response: The Agency responds by noting the AIM Act provides various grants of authority to EPA, which, while separate and distinct, can be implemented in ways that reinforce and complement one another. As explained elsewhere in this notice, the requirements for the servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs are being finalized under subsection (h) of the AIM Act, consistent with the direction and purposes identified in that subsection. The Agency did not propose to and is not accelerating the HFC phasedown through this action, nor does the RIA addendum analyze an acceleration of the HFC phasedown. Rather, HFCs will continue to be available consistent with the phasedown codified at 40 CFR part 84, subpart A. Even if commenters' contentions were correct that these requirements would in effect reduce the production or consumption of HFCs used in particular sectors or subsectors faster than the scheduled reductions under the Act, that does not make this rule an acceleration under subsection (f). Subsection (f) addresses the EPA Administrator's authority to "promulgate regulations that establish a schedule for phasing down the production or consumption of regulated substances that is more stringent than the production and consumption levels of regulated substances required under subsection (e)(2)(C)" and the requirements for such regulations. As discussed in greater detail elsewhere in this notice, subsection (e)(2)(C) establishes an economy-wide phasedown schedule from baselines that are established pursuant to subsection (e)(1)(A) "for all regulated substances in the United States," and the production and consumption phasedown is implemented on an exchange value-weighted basis (rather than establishing caps for particular HFCs). This rule does not change the phasedown schedule, alter the amount of HFC production and consumption allowed in any year on an exchange value-weighted basis, nor does it alter the number of allowances that

EPA will allocate in a future year. Further, this rule does not prohibit any production or import of any HFC. Instead, the provisions in this rule govern specified processes, practices, and activities concerning the servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs in specific subsectors.

EPA notes that consideration of accelerating the phasedown under subsection (f) of the AIM Act is beyond the scope of this rulemaking and thus the comment suggesting that EPA consider such an acceleration requires no further response.

Regarding the claim that the supply of reclaimed HFCs cannot meet the demand, the Agency notes that the Economic Impact and Benefits TSD examined such supply. While EPA's analysis does show that the amount of HFCs reclaimed in 2023 (latest year available) was less than the estimated demand, the data showed a significant increase in HFC reclamation compared to the previous year and showed that if this trend continued, there would be enough reclaimed HFC to meet the projected demand many times over. Further, in the Economic Impact and Benefits TSD, EPA evaluated the expected amount of HFCs from equipment coming out of service when the requirements for servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors take effect, and sees that such amounts, if reclaimed, could meet the demand on a chemical-by-chemical basis. Further, nothing in this rule prevents reclamation of refrigerants in compliance with the standard in this rule before the reclaim requirements take effect. Reclaimers or users may then choose to hold such materials for any expected demand later on, meeting the recordkeeping and reporting provisions that apply to such material.

In the Economic Impact and Benefits TSD, EPA assumed an increase in price for reclaimed refrigerant compared to virgin refrigerant. Based on comments received, the Agency also provided a sensitivity analysis under which it assumed cost parity between reclaimed and virgin refrigerant.

Comment: Two commenters recommended that EPA consider an accelerated reclaim refrigerant requirement for federally owned equipment or buildings to lead by example and stimulate reclaim market expansion. One of the commenters recommended this as a pilot program to assemble real-world data on costs and various issues. The commenter stated that a pilot could allow the validation

of the Agency's assumptions about reclaim supply without risking adverse consequences. The commenter claimed that imposing a requirement for the use of reclaimed HFCs on Federal departments and agencies would allow EPA to assess the feasibility and resulting costs without imposing a widespread requirement nationwide. The commenter claimed that such a pilot would allow for the assembly of verified data and lead to "lessons learned" and the refinement of resulting regulation, minimizing any consumer and community impact that EPA may not have considered. Another commenter pointed to California as an example where reclaim requirements were implemented for State owned or operated equipment and noted the large number of buildings owned or leased by the Federal government. Another commenter noted that many large-scale purchasers are already purchasing reclaimed refrigerants and encouraged the General Services Administration and other Federal agencies to continue to support the reclaim market. Another commenter stated that the Biden Administration previously announced that the General Services Administration would review contracts to support the use of reclaimed refrigerants in facilities.¹¹⁵

Response: EPA appreciates the suggestion for a program aimed at federally-owned buildings. The Agency will share with other relevant Federal entities, including the General Services Administration, these comments encouraging a Federal program. While such a program is out of scope for this rulemaking and thus requires no further response, the Agency does note that for the leak repair provisions, the Agency did not propose and is not finalizing flexibilities that allow for additional time for federally-owned buildings, which is allowed under the related CAA section 608 regulations.

Comment: One commenter stated that, if EPA finalizes any of the proposed reclaim requirements, EPA should: require contractors to maintain records (subject to audit) of the quantity and type of refrigerant recovered and used to service equipment, require OEMs, distributors, reclaimers, and other allowance holders to annually report on the quantities of refrigerant recovered,

¹¹⁵ The White House, "FACT SHEET: Biden Administration Combats Super-Pollutants and Bolsters Domestic Manufacturing with New Programs and Historic Commitments," The White House, September 23, 2021, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/23/fact-sheet-biden-administration-combats-super-pollutants-and-bolsters-domestic-manufacturing-with-new-programs-and-historic-commitments>.

reclaimed, disposed of, and introduced into commerce, and review EPA's program, including opportunity for public comment, by October 1, 2026, and finalize revised standards by 2027. The commenter also requested that EPA "condition the effectiveness of such requirements on the development of new certification standards for contractors."

Response: EPA responds to this comment that the Agency solicited comments in an ANPRM related to technician training, certification, and other considerations. The Agency acknowledges the comment related to requiring certain recordkeeping and/or certification standards for contractors and considers this comment related to the ANPRM. As such, the Agency is not addressing the comment at this time.

As discussed earlier in this section, EPA is establishing a discrete reporting requirement for relevant data to be submitted to the Agency to evaluate the availability of reclaimed HFC refrigerants being supplied for servicing and/or repair of refrigerant-containing equipment in the supermarket systems, refrigerated transport, and automatic commercial icemakers subsectors. EPA is establishing these reporting requirements to be prior to the compliance date of the requirements for reclaimed HFC refrigerants used for servicing and/or repair in these subsectors. EPA intends to consider the reported data and evaluate the requirements that begin as of January 1, 2029.

Comment: One commenter claimed that subsection (h)(2) does not give EPA authority to require the use of reclaimed substances or substitutes. The comment stated that subsection (h)(2) simply provides that "[i]n carrying out this section" EPA is to "consider the use" of authority under "this section" with regard to opportunities for reclaim. The commenter asserted that this provision must be read within its statutory context and does not provide EPA with authority to utilize authority contained outside of subsection (h). The commenter stated that subsection (h)(2) is "most naturally read" to mean that when instituting regulations relating to servicing, repair, disposal, or installation of equipment, EPA consider opportunities for refrigerant reclamation. The commenter also stated that EPA cites no legislative history to support a broader interpretation of (h)(2), and asserts that EPA is arbitrarily creating an unauthorized, mandatory market for reclaimed HFCs based on its reading of the purposes of this section, while simultaneously claiming that market forces alone will increase the

amount of reclaimed HFCs available. The commenter further stated that there is no "market failure" for EPA to correct via regulation, and that market forces should take precedence.

Response: Although the commenter does not specify which part of subsection (h)(2) of the AIM Act the comment is referencing, the Agency, based on the excerpt quoted (which appears in subsection (h)(2)(A) of the Act) interprets this comment to relate to subsection (h)(2)(A) but not subsection (h)(2)(B), which as discussed elsewhere in this notice pertains to reclamation of recovered HFC refrigerants. As discussed in the proposal and in this final rule, the Agency has considered the use of authority available to the Administrator to increase opportunities for reclamation of HFCs used as refrigerants in developing the requirements established in this rule. As this action is taken under subsection (h) of the Act, EPA need not address the application of subsection (h)(2)(A) to other subsections of the AIM Act, and to the extent that the comment relates to other subsections of the Act it is beyond the scope of this rulemaking and thus requires no further response. As discussed in more detail elsewhere in this preamble and in other responses to comment, EPA interprets the requirements established in this final rule to perform servicing and/or repair of certain appliances in certain sectors or subsectors with reclaimed HFCs as being within the scope of its regulatory authority under subsection (h)(1) of the Act. Subsection (h)(1) of the AIM Act directs the Agency to establish regulations to control, where appropriate, practices, processes, or activities regarding the servicing or repair of equipment that involves a regulated substance or the reclaiming of a regulated substance used as a refrigerant. The relevant provisions in the final rule control the servicing and/or repair of certain refrigerant-containing equipment by requiring that it be done with reclaimed HFCs and thus are within this authority and support the purpose of maximizing reclaim of HFCs. This interpretation is based on the text of subsection (h), as the available legislative history for the AIM Act is very limited, and the commenter does not cite any statutory text or legislative history to suggest that this interpretation is inconsistent with Congressional intent. Given that the statutory text in subsection (h)(1) identifies particular purposes for regulations established under this provision, it is reasonable to consider those purposes in establishing such

regulations, as EPA is doing in this rule. The Agency disagrees with the commenter's assertion that these requirements arbitrarily create an unauthorized, mandatory market for reclaimed HFCs. While EPA acknowledges that existing market dynamics may incentivize the use of reclaimed refrigerants over time, as explained elsewhere in this final rule, the Agency disagrees with the conclusion that those possible incentives mean this requirement is unneeded or that those market dynamics mean that the Agency should not establish these requirements. Congress put particular weight on reclamation in subsection (h) of the AIM Act, including through the provisions of (h)(1) and (h)(2)(A) referenced previously in this response. Even assuming that market dynamics or implementation of other programs lead to some additional use of reclaimed refrigerant over time, the commenter did not provide any reason to think that those factors alone would "maximize" reclamation as stated in subsection (h)(1). It is the Agency's view that the reclaim requirements established in this action will help increase reclamation and support additional recovery of HFC refrigerants, are within its authority under subsection (h) of the Act, and will help serve the purposes identified in that subsection.

Comment: One commenter requested that EPA revise its proposed language in sections 84.112(e) and (f) to specify that all permissible substitutes will continue to be allowed for servicing and repair. The commenter stated that EPA's proposed regulatory language in sections 84.112(e) and (f) could be read to require that refrigerant-containing appliances in the identified subsectors may only be serviced and repaired with reclaimed HFCs, to the exclusion of substitutes.

The commenter stated that robust demand for reclaimed HFC refrigerant already exists and will continue to grow significantly due to the AIM Act's phasedown of HFCs. The commenter requested that EPA revise its proposed language to specify that all permissible substitutes will continue to be allowed for servicing and repair and include a regulatory exception to relieve the obligation to comply where there is an inadequate supply of reclaimed HFCs to meet service and repair needs in the identified subsectors.

Response: EPA responds that substitutes for HFCs can be used in the servicing and/or repair of refrigerant-containing equipment in the RACHP subsectors included in this rulemaking (*i.e.*, supermarket systems, refrigerated

transport, and automatic commercial ice makers). The proposed regulatory text at section 84.112(f) was intended to require that the servicing and/or repair of refrigerant-containing equipment in these subsectors must be done with reclaimed HFCs, where those pieces of refrigerant-containing equipment use a refrigerant containing an HFC, but would not apply to refrigerant that contains no HFCs or to any non-HFC constituents in the refrigerant. For example, if an owner or operator uses CO₂ as the refrigerant in its existing supermarket system, they would not be required to service and/or repair the refrigerant-containing equipment with reclaimed refrigerant, since such equipment is not using a refrigerant that contains an HFC. EPA is finalizing revisions to the regulatory text to make this intent clearer in response to this comment but does not view these edits as changing the substance of the provision. As discussed elsewhere in this preamble, EPA is not finalizing in this rule, the proposed requirement for the initial charge of new refrigerant-containing equipment with reclaimed HFCs and thus, is not making parallel edits to that provision. For the reasons described in a prior response to comment in this section, the Agency does not agree that exceptions are needed for the requirements to service and/or repair existing equipment in the covered subsectors using reclaimed HFCs when there is an inadequate supply and thus is not finalizing such an exception. The Agency recognizes that commenter's points on the existing market for reclaimed HFCs and agrees with that commenter's views that this market will in fact grow. The Agency is finalizing provisions to support and encourage growth in reclamation.

Comment: One commenter suggested EPA allow the use of reclaimed refrigerant for servicing in 2025 to be credited against compliance obligations in future years. Another commenter requested that EPA confirm that exports of virgin HFCs will be eligible under the Request for Additional Consumption Allowance (RACA) program, regardless of when the original HFCs or individual blend components were imported. The commenter added that it is critical that the RACA program, under 40 CFR 84.17, be available to obtain allowances for HFCs that can be used in the United States and that EPA has projected will be available in the market. The commenter stated that this is essential to minimizing stranded assets and preventing further disruptions to the market that would ultimately effectuate significant commercial harm to the

after-market and ultimately to consumers).

Response: EPA disagrees with the suggestion that the Agency allow the use of reclaim refrigerants for servicing and/or repair in 2025 to be credited against compliance obligations for future years. The Agency did not propose and is not finalizing any sort of early crediting regime. In the NPRM, EPA did discuss scaling the reclaim requirements for servicing and/or repair on a percentage basis, but as discussed in responses earlier in this section, the Agency is not finalizing that approach. However, EPA encourages early action by industry to support the uptake of reclaimed HFC refrigerants ahead of the compliance date.

Comments or requests concerning the structure of the allocation program are beyond the scope of this rulemaking. However, the Agency notes, allowing entities to receive allowances for the reclamation of refrigerant would artificially inflate the number of allowances in the market.

EPA agrees that the RACA process under 40 CFR part 84 subpart A is important to allowance holders. EPA is not modifying that RACA program in this rulemaking, and EPA further notes that the reclamation requirements for servicing and/or repair of refrigerant-containing equipment in certain subsectors in this rulemaking will not impact the RACA program.

Comment: Another commenter recommended that EPA not replicate California's HFC programs because California State law has no bearing on how the Agency interprets the AIM Act and because the State's current R4 Program is short term in nature. The commenter stated that EPA should avoid adopting different regulatory provisions based on State law instead of the intentional design of the AIM Act. The commenter claimed that the R4 Program was created as an interim measure after CARB finalized sector control limits that could not be implemented by the effective date. The commenter suggested that EPA consult with OEMs to understand the complications and burden of the R4 Program when the first reports are due in July 2024 and not to adopt provisions until after this.

Response: EPA acknowledges these comments and responds that the Agency proposed a rule and is now establishing provisions based on that proposal that are in correspondence with the AIM Act, not a State's regulation or legislation. EPA referenced and reviewed multiple States' programs and policies in place or under consideration, including the California regulations,

when developing the proposed rule. The Agency reviewed these regulations for informational purposes and awareness of what was being implemented under those programs; however, EPA did not propose and is not finalizing regulations that mirror, fully, any specific State requirements, nor was it the Agency's intent to do so. EPA consulted with many different stakeholders when developing the proposal, including information from comments received on the Agency's NODA, through multiple webinars, and through the comment period, including from OEMs. EPA is finalizing requirements for the servicing and/or repair of refrigerant-containing equipment in certain RACHP subsectors and is not finalizing requirements for reclaimed HFC refrigerants in the initial fill of refrigerant. The Agency acknowledges that in many instances, the industry seeks alignment with Federal and State regulations. However, this regulation is being finalized consistent with, and to serve the particular purposes of and direction in, subsection (h) of the AIM Act, and EPA understands that States are promulgating regulations based on their State authorities.

Comment: EPA received a few comments on establishing requirements for refrigerant recovery. One commenter was disappointed that EPA did not propose requirements that would increase recovery of refrigerants from existing equipment, but instead focused requirements on increasing demand for reclaimed refrigerant. The commenter stated that government mandates are not needed to increase demand through the HFC phasedown and that such solutions will not maximize reclamation. The commenter also stated that there does not appear to be a bias for or against reclaimed refrigerant according to distributors, so the emphasis should be on increasing refrigerant recovery. The commenter suggested that, if mandates are put in place, such mandates should be visible to the technician community by creating access to reclaimed refrigerant to create an incentive to increase their recovery rates. The commenter claimed that technicians understanding that reclaimed refrigerant must be used in servicing and that no additional virgin material is allowed will have a better understanding of why recovery is required.

Another commenter stated that not only is recovered refrigerant not reaching reclaimers, there also seem to be stockpiles not turned in to reclaimers. The commenter also stated that they have heard that it takes too long to recover refrigerant, especially R-410A. The commenter noted that this

could be because of using the recovery equipment for R-22 instead of R-410A. The commenter suggested that EPA may want to consider using some of its funding for small contractors serving low and medium-income communities to apply for grants or to outright purchase the correct recovery equipment. The commenter further suggested that EPA may wish to interview contractors to better understand the challenges they face with recovery and price points to incentivize purchasing reclaimed refrigerant. The commenter noted that despite these relatively high prices, reclaim rates have never been above 5,000 metric tons per year for HCFC-22, even with a complete ban on newly produced HCFC-22 for servicing, according to EPA's Summary of Refrigerant Reclamation.

One commenter states that the proposed rule did not pay sufficient attention to the role of recovery in maximizing reclamation. The commenter further proposed that, given the central role recovery plays, EPA should initiate a new rulemaking under subsection (h) of the AIM Act as soon as possible to ensure these and other issues related to recovery are adequately addressed before any further reclaim mandates are considered.

Another commenter recommended considering process enhancements to reduce refrigerant contamination before reuse or return for reclaim arguing that many reclamation facilities without fractional distillation capacities cannot separate components when contamination is above 15 percent. The commenter requested that EPA evaluate how much refrigerant is returned contaminated and how much is destroyed annually and integrate tools to reduce cross-contamination to maximize the potential for reusing refrigerants.

One commenter stated that increasing the recovery of HFCs for reclamation is essential for economic growth and other environmental benefits, while another commenter stated the importance of mandates for increased recovery is needed to support reclamation. Another commenter noted that financial incentives for technicians may be effective to enhance recovery of HFCs. Another commenter stated that in addition to incentivizing recovery, regulations can be effective for enforcement of recovery of HFCs.

One commenter stated that the requirements for reclaimed HFCs would lead to increased demand for reclaimed HFCs and thus incentivize recovery of HFCs; however, additional measures may also be needed to bolster recovery.

The commenter requested that EPA consider establishing a standard for equipment used to recover refrigerant to control leakage during recovery.

Response: EPA responds to these comments that requirements established for the recovery of HFCs from equipment would be related to those requirements for technicians and contractors performing the actual recovery. EPA understands that critical link between recovery and reclamation and agrees that increased recovery of refrigerants supports the increased reclamation of those refrigerants. The Agency views requirements related to recovery under the authority of subsection (h) of the AIM Act, as they are related to practices, processes, or activities related to the servicing, repair, or disposal of equipment. Recovery of the refrigerant would likely be a practice, process, or activity required to remove the charge of refrigerant to repair the equipment or would be performed during the process of disposing the equipment to recover the refrigerant before it is disposed. EPA views such practices, processes, or activities as those performed by a technician or contractor, and the Agency refers to the ANPRM published related to technician training, certification, and other considerations. The Agency, thus, acknowledges these comments and will consider them for a future rulemaking under subsection (h) of the AIM Act.

EPA acknowledges comments related to using the proper recovery machines to recover refrigerants from equipment. EPA also notes that certified recovery equipment is required for such practices, as handled under other regulations under the CAA.¹¹⁶ EPA acknowledges the comment related to grant funding for recovery equipment and notes that such considerations are outside of the scope of this rulemaking. EPA agrees there is value in understanding challenges faced with recovery of refrigerants. As previously stated, EPA solicited comments in an ANPRM on considerations related to technicians and, while not addressing in this rulemaking, the Agency will review and consider those for future rulemakings.

¹¹⁶ EPA has established standards for recovery and/or recycling equipment under section 608 of the CAA for the service, repair, or disposal of appliances containing ODS and ODS substitutes (e.g., HFCs) under 40 CFR 82.158. Additionally, EPA has standardized equipment for the servicing of refrigerant from MVAC systems under CAA section 609, and any technician servicing equipment for consideration must use approved refrigerant handling equipment pursuant to 40 CFR 82.36.

Comment: One commenter suggested that there is evident viability of on-site recycling during the refrigerant recovery process for HVACR appliances. The commenter stated that as long as HVACR technicians use AHRI 740 certified equipment and establish refrigerant identification protocols, the recycled refrigerant will be suitable for reuse within the same system. The commenter recommended that this industry learn from the successes that the MVAC industry has had with refrigerant reclamation. The commenter also recommended that there be a defined process to qualify refrigerant for reuse in the field alongside on-site analyses. In addition, the commenter stated that a refrigerant identifier or analyzer should be present. The commenter noted that such measures are fundamental to the safe and proper recycling of refrigerants to mitigate risks associated with the use of unqualified or contaminated refrigerants and to provide an alternative to reclaiming all refrigerant extracted.

Response: EPA responds to this comment that on-site recovery and recycling for stationary refrigerant-containing equipment is a current practice in industry, such that the recovered refrigerant is used in the same piece of refrigerant-containing equipment or is recovered and used in another piece of refrigerant-containing equipment of the same owner. This practice is consistent with the requirements under 40 CFR 82.156(h), which are applicable to appliances containing ODS refrigerants as well as certain substitutes for ODS refrigerants (e.g., HFCs). This rulemaking does not affect such practice and EPA notes that HFC refrigerants that are recovered can continue to be recycled to the same piece of refrigerant-containing equipment that the HFC refrigerant was recovered from or another piece of refrigerant-containing equipment under the same ownership.

EPA recommends but does not require the use of refrigerant identification technology in the servicing of AC systems. EPA agrees that refrigerant analyzers are an important tool to identify contaminated systems and to prevent a technician from charging the incorrect refrigerant into an air conditioning system. While not addressed in this rulemaking, EPA considers this comment to fall under the scope of the ANPRM as it relates to considerations for technicians. As explained in section VIII below, EPA is not responding to comments related to the ANPRM in this final rule.

Comment: One commenter stated that the proposed rule disrupts the supply

chain by creating a captive market where specific market transitions are mandated, losing economic incentives to lower the costs of products. The commenter claimed that the proposed rule requires that OEMs and technicians buy reclaimed HFCs, creating a closed market with a finite amount of reclaimed HFCs. The commenter claimed that EPA has not analyzed the cost impact of such an unbalanced, artificial market to the end consumer, nor the potential concentration of a finite reclaimed HFC supply within a small number of suppliers. The commenter recommended that proposed mandates be validated by robust supply/demand modeling.

Response: EPA responds to the commenter's concerns for a closed market and relevant analysis. This rulemaking does not limit the production or consumption of HFCs. HFCs will continue to be produced and imported in accordance with the phasedown schedule. HFCs will be available to be sold and distributed for a range of eligible applications. It is likely that as the phasedown continues, shifts in which HFCs are produced and imported will occur as well. The Agency notes and directs interested readers to the Allocation Framework Rule, where the Agency discussed more fully the use of an exchange value weighted approach rather than a chemical-to-chemical approach to phasing down HFCs.

The Agency acknowledges that by requiring the servicing and/or repair of refrigerant-containing equipment with reclaimed refrigerant in certain RACHP subsectors, the Agency is precluding the use of virgin HFCs for servicing and/or repair in those applications. The Agency disagrees that requiring the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain subsectors would create any sort of monopoly, as EPA has not mandated that stakeholders purchase refrigerant from any specific entity.

The Agency notes that there are over 50 certified reclaimers in the United States. Therefore, there will be sufficient competition among those reclaimers to supply reclaimed HFCs. The Agency further notes that there are only five HFC producers with production facilities in the United States, and often there is only one facility producing each of the HFCs that are produced domestically, with other HFCs only available through imports. Supply of virgin HFCs is significantly augmented by imports, and on an annual basis between 2024 and 2028, there are, or will be, approximately 75 companies with EPA-issued consumption

allowances that allow them to legally import virgin or reclaimed HFCs.

EPA has analyzed the compliance costs and benefits for using reclaim requirements in the Economic Impact and Benefits TSD included with this rulemaking. Results from this analysis indicate that requiring the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in the covered subsectors by this rulemaking may result in incremental costs to industry while also reducing demand for virgin HFCs. This reduction in demand may in turn reduce costs to industry by alleviating potential supply shortages, although EPA has not quantified such cost savings in its analysis. A study¹¹⁷ cited by EPA in the Economic Impact and Benefits TSD and comments EPA has received from at least one reclaimer of HFCs also indicate that the use of reclaimed HFCs may actually be on par with or more cost-effective than the use of virgin HFCs. Therefore, EPA has included a sensitivity analysis in its Economic Impact and Benefits TSD in which the use of reclaimed HFCs is assumed to be cost-neutral.

Comment: One commenter claimed that the existing record does not show a current need for the requirements for the use of reclaimed HFCs in certain RACHP subsectors, noting that the proposed rule extols the successes of recycling and reclaiming Class II ODS. The commenter cites EPA's *Draft Report—Analysis of the U.S. Hydrofluorocarbon Market: Stakeholders, Drivers, and Practices* (September 2023) in arguing that the use of recycled/reclaimed HFCs was already anticipated as a path to compliance with the phasedown. Further, the commenter noted that among impediments to the U.S. reclaim market noted in the draft report, inadequate demand for reclaimed HFCs was not identified as such an impediment to the market. The commenter also stated that environmental benefits estimated for the requirements for using reclaimed HFCs are non-existent, and that the requirements could result in shifting allowance use to meet demand in other sectors and subsectors.

Response: EPA responds that the requirements for reclaimed HFC refrigerants in the servicing and/or repair of refrigerant-containing equipment in certain RACHP subsectors are being established under subsection (h)(1) of the AIM Act, which provides

EPA with the authority to promulgate regulations to control, where appropriate, "any practice, process, or activity, regarding the servicing, repair, disposal, or installation of equipment" for purposes that include maximizing reclamation and minimizing releases of HFCs from equipment. EPA views these requirements for using reclaimed HFC refrigerants in the servicing and/or repair of refrigerant-containing equipment as controlling a practice, process, or activity regarding the servicing and/or repair of such equipment, and as helping serve the purpose of maximizing reclamation, as the requirements present opportunities for increased recovery of used refrigerants and use of and demand for reclaimed HFCs and thus increased reclamation. Even assuming increased recycling or reclamation is anticipated to occur under the phasedown, the commenter provides no reason to think that such voluntary increases alone would be sufficient to serve the statutory purpose identified in subsection (h)(1) of maximizing reclamation. To the extent that the commenter suggests that EPA must demonstrate a particular degree or magnitude of current need to establish regulations under subsection (h)(1), EPA disagrees, as such a requirement is not explicitly stated in the statutory language of subsection (h). Nonetheless, for the reasons described earlier in this response and elsewhere in this final rule, the Agency concludes that these requirements are appropriate to serve purposes identified in subsection (h)(1) and to implement that provision.

EPA acknowledges that inadequate demand was not identified as a barrier to increased reclamation in the Draft Report. However, as the Agency explains in this rulemaking and consistent with the proposed rule, these provisions are expected to support additional recovery of HFC refrigerants and, thus, reclamation. As noted in a previous comment response, EPA's Economic Impact and Benefits TSD does not include increased recovery in the base case for this rule based on the assumptions for that scenario; however, EPA did consider an alternate scenario with increased recovery and anticipates that the reclamation provisions could support increased recovery during servicing or disposal where the refrigerant may otherwise have been vented or released. EPA notes that the barriers described in the Draft Report were intended to capture the status of the reclamation industry and inform this rulemaking. The Draft Report identified barriers such as separating

¹¹⁷ Yasaka, Yoshihito, et al. "Life-Cycle Assessment of Refrigerants for Air Conditioners Considering Reclamation and Destruction." *Sustainability*, vol. 15, no.1, 2023, p. 473, doi:10.3390/su15010473.

mixed refrigerants and refrigerant release events (e.g., leakage during operation or venting at EOL), among others. The provisions in this rule and current market dynamics help to address these barriers. This final rule is expected to encourage reclamation and drive innovation in separation technologies as well as capacity of these technologies to meet the estimated demand of reclaimed HFCs related to the requirements in this rule. Further, the requirements related to leak repair and ALD systems will lead to reduced amounts of emissions of refrigerants from appliances; thus, ensuring additional material is available to be recovered and reclaimed.

The Agency acknowledges that allowance use for virgin HFCs may shift related to the provisions established in this rulemaking. However, the Agency anticipates that any such shifts in use of allowances would be related to allowances needed for difficult to transition applications where a path to substitutes for HFCs is less clear at this time. Further, even assuming such shifts occur, they do not provide a reason to not finalize the requirements in this rule. If anything, they merely provide an example of how implementation of this rule may also have the effect of assisting in supporting implementation of other programs under the AIM Act.

Comment: One commenter suggested that EPA did not analyze the economic cost and consumer pricing impacts of the HFC supply and demand mismatch. The commenter stated that EPA's awareness of impact without analysis is not consideration of relevant factors required by subsection (h). The commenter stated that the NPRM does not estimate the costs of resetting the market through new customer/supplier relationships, and the commenter further stated that restricting HFC quantities would increase refrigerant prices. The commenter stated that certain refrigerants from producers (e.g., certain HFC-32 lines) may no longer be economically viable and stated that the NPRM should have considered the likelihood of stranding production assets. The commenter additionally asserted that the reclaim mandate eliminates incentives to develop low-GWP blends with an HFC component, and recommended that EPA base any reclaim requirement on robust and appropriate data.

Response: The HFC allowance allocation system is out of scope for this rulemaking; however, EPA reminds readers that the United States is phasing down HFC production and consumption. The overall phasedown of HFCs will result in changes in

production and consumption of specific HFCs and blends. Furthermore, the commenter mischaracterizes the relevant factors for this rulemaking. The Agency has provided an analysis of the costs and benefits of this rule for informational purposes and to address E.O. requirements. The Agency does not rely on this information as a record base for this rule and would have reached the same conclusions without this analysis. Instead, this rule is focused on serving the statutory purposes identified in subsection (h), which are maximizing reclaiming and minimizing the release of regulated substances from equipment and ensuring the safety of technicians and consumers.

EPA disagrees that the proposed rule disincentivizes the development and deployment of low-GWP blends. As noted elsewhere, the overall phasedown of HFC production and consumption, as well as the 2023 Technology Transitions Rule, will affect both the overall supply and demand for virgin HFCs. The Agency does not agree that this rule results in a mismatch of supply and demand. Nor does the Agency consider this rule as contributing to a disincentive for U.S. innovation. The Agency further notes that innovation can come in many forms. It could be the introduction of new chemistry, and it also could include better and more efficient ways to recover and reuse HFCs, including through HFC reclamation technologies.

Further, EPA is establishing a reporting requirement in this rulemaking for information related to the availability of reclaimed HFC refrigerants in the supermarket systems, refrigerated transport, and automatic commercial ice makers subsectors. EPA intends to assess the reported data and consider further evaluating the established requirements for reclaimed HFC refrigerants in the servicing and/or repair of refrigerant-containing equipment in these subsectors.

Comment: One commenter expressed concern that there is no plan for banned virgin refrigerants that can no longer be used for service in the proposed sectors. The commenter claimed that these virgin refrigerants would have no value. The commenter stated that EPA has not done research to determine the quantity of HFCs currently stockpiled in the country (imported before the AIM Act) and that this quantity is large. The commenter recommended a carbon credit program for destroyed HFCs and stated that without such a program the price of virgin HFCs will drastically decline as distributors with stockpiles sell this material, limiting the number of system retrofits to lower-GWP

refrigerants. The commenter noted that this would continue until late 2027, at which point companies would be forced to change or use expensive and scarce refrigerant to service equipment, leaving considerable virgin material with no value and no destruction and carbon credit program. The commenter questioned if there was a need to speed up the HFC phasedown that is already in place.

Another commenter stated that the requirements for using reclaimed HFC refrigerants for refrigerant-containing equipment in certain RACHP subsectors could have adverse effects on existing allowance holders by denying them customers and therefore harming business plans and investments.

Response: EPA disagrees that a specific plan is needed for the virgin HFCs that would have been used for the servicing and/or repair of refrigerant-containing equipment in the covered RACHP subsectors where this rule requires that those activities be done with reclaimed HFCs. EPA also disagrees that these virgin HFCs would have no value, as they could still be used other applications, such as the servicing and/or repair of refrigerant-containing equipment in other RACHP subsectors. Furthermore, the Agency is not at this time finalizing requirements for the initial charge of refrigerant-containing equipment, and the virgin HFCs could be used in these cases. EPA notes that the requirements to service and/or repair refrigerant-containing equipment in the supermarket systems, refrigerated transport, and automatic commercial ice makers subsectors will be effective beginning January 1, 2029. Regulated entities would have approximately four years to determine how to best use any remaining virgin HFCs that they own, which includes the option to continue servicing and/or repairing refrigerant-containing equipment with any virgin HFCs they own until these requirements are effective.

The Agency disagrees with the need to establish a destruction program for virgin HFCs for generating carbon credits. As stated above, EPA disagrees with the commenter's statement that virgin HFCs would lose their value, as they could be used in other applications. Further, the Agency notes that it has been more than 30 years since the CFC phaseout, yet there is still demand for reclaimed CFCs, indicating there is continued demand for these substances. EPA believes there will continue to be demand for both virgin and reclaimed HFCs as the phasedown progresses and even after the final step of the phasedown, when 15 percent of

the baseline of production and consumption of virgin HFCs will be allowed. EPA discusses this in a prior response in this section, noting that any such program would, among other things, need to consider additionality of any generated credits and moreover such consideration of carbon credits is outside of the scope of this rulemaking. EPA notes that the phasedown of production and consumption addresses virgin HFCs by reducing the overall levels in a stepwise fashion while not precluding their use generally in a range of acceptable applications. Regarding comments about stockpiles of HFCs in the United States, the Agency responds that as with the CFC phaseout, the Agency anticipates the continuing demand for these HFCs in the multitude of acceptable applications. The 2024 Allocation Rule provides additional detail related to assessing stockpiling and how that is considered in the methodology for allocating allowances.¹¹⁸ EPA notes that allocation of allowances is out of scope for this rulemaking.

EPA disagrees that this rulemaking would accelerate the phasedown of HFCs under the AIM Act, which would require meeting specific criteria as provided in subsection (f) of the AIM Act. EPA responds to comments regarding the acceleration of the phasedown in an earlier response in this section.

EPA disagrees that the requirements for the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors would drastically disrupt current allowance holders' business plans. EPA is not establishing requirements for reclaimed HFC refrigerants in the initial fill of refrigerant-containing equipment in this rulemaking. Such requirements are only for the servicing and/or repair of refrigerant-containing equipment in certain RACHP subsectors. Most of these existing types of equipment are currently using refrigerants that contain HFCs that have been in equipment for an extended period of time. As such, these types of refrigerant-containing equipment are likely to continue to rely on reclaimed HFCs as the phasedown progresses. EPA does not dictate how allowance holders use their allowances but understands that some may use allowances for refrigerants that contain HFCs that would be compliant with the 2023 Technology Transitions Rule. Further, as noted above, EPA is establishing a compliance date of January 1, 2029, for the requirements for

reclaimed HFC refrigerants for servicing and/or repair of refrigerant-containing equipment in certain RACHP subsectors. This period of approximately four years provides entities with time to secure and adjust business relationships as needed.

Comment: One commenter recommended that, if after each three-year period (starting in 2028) EPA requires each consumption allowance holder to acquire a quantity in exchange value equivalent metric tons of reclaimed HFCs produced by any U.S. reclaimer equal to a portion of their consumption allowance allocation (capped at a maximum five percent to reasonably balance the supply of reclaimed material with consumption holder demand) and the program remains necessary, then the percentage be adjusted for the following three-year period based on changes over the prior three-year period in reclaim capacity and availability, the supply of HFCs, and market demands. The commenter stated that the program could include exemptions for *de minimis* allowance holders and economic hardships, such as lack of reclaimed HFCs in the market or unreasonable prices.

Response: EPA responds that this comment is out of scope for this rulemaking. EPA did not propose or seek comments on changes to the allowance system codified at 40 CFR part 84, subpart A.

Comment: One commenter stated that if EPA goes forward with these requirements, it should make grant funding available to offset the increased costs associated with purchasing reclaimed HFC refrigerant, and the requirement should be imposed only on grant recipients.

Response: EPA notes that establishment of grant funding is outside the scope of this rulemaking.

Comment: One commenter expressed concern that the proposed rule could impact smaller businesses by adding tasks for recovering HFCs and for related logistics and that burdensome demands coupled with potentially unrealistic reclaim targets may divert resources from core operations and stifle innovation of the value chain.

The commenter further stated that requirements for reclaimed refrigerants at the OEM level is impractical, and that the Agency should shift its regulatory scope to focus on chemical producers and importers, which could allow the Agency to reduce its burden on small businesses and reduce supply chain disruptions and costs. The commenter stated that it will be difficult for the Agency to achieve its goal of regulating anyone who produces, imports,

reclaims, repackages, or fills a container with a regulated substance used in servicing, repair, or installation of equipment by regulating at the wholesaler/distributor or contractor level. The commenter asserted that doing so would require extensive container tracking and reporting frameworks alongside enforcement mechanisms. The commenter claimed that since a majority of wholesalers and contractors are small businesses, EPA would have to complete EPA's Small Business Ombudsmen assessment. Additionally, the commenter claimed EPA would have to regulate over 1,000 wholesalers/distributors and 200,000 contractors, making enforcement more difficult. Additionally, the commenter stated that EPA would require significant support from industry, potentially delaying implementation.

Alternatively, the commenter stated that EPA should regulate reclaim at the producer/importer level. The commenter mentioned that chemical producers/importers are already regulated under the AIM Act, and that these entities already have established infrastructures to report sales, imports, production, and destruction of refrigerants. The commenter continued that regulating at the point of sale would make implementing reclaim requirements easier, reduce the number of companies that EPA would have to regulate, and allow for more effective communication and collaboration between EPA and the regulated entities. The commenter further noted that 14 companies control 89% of the consumption allowances and that eight of these 14 are reclaimers themselves, reducing the need for new infrastructure and investment. The commenter stated that this approach would also reduce the burden on small businesses.

Response: EPA disagrees with the commenter both on the small business impacts associated with recovering refrigerant and with how those impacts would be affected by the reclamation provisions. The Agency conducted a small business screening analysis and refers readers to section VI of this preamble and to Appendix G of the Economic Impact and Benefits TSD. The commenter did not provide sufficient information to explain how these provisions would divert resources from core operations and stifle innovation of the value chain. EPA considered supply chain and logistics when drafting the rule, including projections of future refrigerant supply. Based on these projections, EPA determined that finalizing requirements for the servicing and/or repair of refrigerant-containing

¹¹⁸ 88 FR 46843, July 20, 2023.

equipment with reclaimed HFCs in the covered subsectors is feasible.

EPA responds to the commenter's suggestion to regulate reclaim at the producer/import level by noting that it is not clear to the Agency how such a regime would work in practice. The commenter provides information on the potential benefits of efficiency and a reduced number of regulated entities, but does not make clear statements how this program could work. The commenter States that the existing framework under 40 CFR 84 could simplify to implementation for point of sale for the reclaim requirements. However, it is unclear how the majority of reclaimers who are not importers or who do not receive allowances would operate under such a program for the effective implementation of the requirements for reclaimed HFC refrigerants for servicing and/or repair of refrigerant-containing equipment in certain RACHP sectors. Further, to the extent that this comment relates to proposed requirements that EPA is not finalizing at this time, EPA notes that it is not responding to comments on those aspects of the proposal in this final rule.

Comment: One commenter stated that to purchase "reclaim materials" in the market, a company would need to be an EPA-certified reclaimer; have reporting responsibility under EPA's HAWK (HFC and ODS Allowance Tracking) ¹¹⁹ electronic reporting system; demonstrate analytical chemistry and blending capabilities; avoid engaging in transshipping or various import schemes; demonstrate chain of custody ability; have a fleet of refillable cylinders; and maintain a physical reclamation facility in the United States. The commenter asserted that a company should not be engaged in simply dropshipping refrigerants to actual EPA-certified reclaimers to control access to the market. Similarly, no company involved in market manipulation or illegal imports should be allowed to grow market share by forcing small reclaimers out of the market and purchasing their allowances. Given the increased emphasis the proposed rule places on the role of EPA-certified reclaimers, the commenter recommended that EPA develop enhanced requirements for reviewing the qualifications of certified reclaimers. The commenter noted that this process should also involve the inclusion of

individuals on their hotline who are not reclaimers but are buying material.

Response: EPA acknowledges this comment. EPA understands the term "reclaim materials" to refer to recovered materials that are available to be reclaimed. The Agency appreciates these considerations, but notes that it is neither reopening nor modifying the criteria and qualifications for certification for reclaimers under 40 CFR part 82, subpart F in this rulemaking. EPA has established recordkeeping and reporting requirements for reclaimers under both the AIM Act and CAA section 608. In addition to these requirements, starting in 2024, EPA is requiring third-party auditing of EPA-certified reclaimers. Information related to the auditing of reclamation facilities can be found in 40 CFR 84.33.

Comment: One commenter recommended that EPA consider a mechanism that would allow negotiations between entities to fulfill reclaim requirements. The commenter stated that, for example, allowance holders of refrigerants, who may not want to manage reclaim operations or purchase reclaimed gas directly, could negotiate with another entity to take on CO₂ equivalent reclaim obligations, allowing smaller entities to participate in the reclaim program without significant investments in infrastructure or expertise. The commenter claimed that this would make the reclaim program more accessible and flexible for smaller allowance holders, promoting broader participation.

Response: EPA responds that EPA is not implementing a reclaim program based on CO₂ equivalency at this time. EPA notes that the established requirements in this rulemaking may result in some allowance holders purchasing reclaimed HFC refrigerants to service or repair their equipment in the covered RACHP subsectors; however, EPA does intend for all of these allowance holders to manage their own reclamation operations. Reclaimers, who in some cases are also allowance holders, are certified under 40 CFR 82.164. If an allowance holder who is not already a certified reclaimer wishes to manage their own reclamation operations, they would need to be approved by EPA to become a certified reclaimer.

The Agency understands the availability of advanced reclamation technology and describes some of these considerations in section IV.E.1 of this preamble, related to the reclamation standard. As EPA understands, some reclaimers have access to more advanced separation technologies to

reprocess materials to proper specifications. These advanced technologies can be useful for reclaiming more complex and multi-component refrigerants blends. However, the Agency is establishing that reclaimed refrigerant may still contain an amount of virgin HFCs that may be necessary for reclaiming these blends. Further, the Agency is not establishing requirements for the initial fill of refrigerant-containing equipment with reclaimed HFCs in RACHP subsectors, including those where newer blends of refrigerants that are compliant with the 2023 Technology Transitions Rule would be used in new equipment. By limiting requirements for reclaimed HFCs to servicing and/or repair, EPA is focusing on existing equipment where more common HFCs and HFC blends have been used for years and are currently being reclaimed.

Comment: One commenter recommended that EPA put a per-pound deposit on regulated refrigerants that would be refunded when the substance is recycled. The commenter noted a potential downside due to the creation of a market for stolen refrigerant but noted that recordkeeping requirements would deter theft. The commenter suggested a balance between a price that could encourage recycling but not encourage theft and claimed that the cost would also support leak reduction measures. The commenter also recommended monthly reporting of refrigerants given the importance of the issue but noted a negative impact on consumers as the cost of reporting increases. The commenter recommended relying on market forces where possible and providing rewards for compliance.

Response: EPA did not propose and is not finalizing a refrigerant deposit program. If in the future, the Agency were to consider such a program, the Agency would evaluate the potential drawbacks of implementing such a program (such as the potential for fraud and increased recordkeeping or reporting burden) that could outweigh potential benefits. EPA notes that the requirements in the rulemaking have been established considering market conditions and other analyses as described in the Economic Impact and Benefits TSD for this rule.

Comment: Another commenter supported the provision in section 84.104(a) to prevent resale of reclaimed refrigerant for any purpose besides reclamation and recommended that there be explicit enforcement mechanisms. The commenter requested that EPA provide clearer guidance for

¹¹⁹ EPA's HAWK electronic reporting system can be accessed through the Electronic Greenhouse Gas Reporting Tool (e-GGRT). Regulated entities that are subject to reporting requirements under the AIM Act submit reports this electronic reporting system.

what enforcement would entail under this rulemaking.

Response: EPA acknowledges this comment and notes that this provision is consistent with the statutory language in subsection (h)(2)(B) of the AIM Act, which provides that recovered regulated substances that are used as a refrigerant must be reclaimed before it is sold or transferred to a new owner, unless the recovered regulated substances are being sold or transferred to a new owner solely for the purposes of reclamation or destruction. As described above, under 40 CFR part 82, subpart F, recovered refrigerant may be recycled and used for servicing or repair of the same appliance or another appliance of the same owner. EPA clarifies that this rulemaking does not prevent that practice.

EPA notes that the provisions related to reclaimed refrigerant use for servicing and/or repair of certain equipment build on the established reclamation standard for limiting the virgin HFC content in reclaimed refrigerant to 15 percent, by weight. This requirement, as described in section IV.E.1 includes labeling, recordkeeping, and certification requirements to ensure reclaimed refrigerants are meeting the established standard. Certification must be provided to the purchaser of the reclaimed refrigerants to verify that the product does not exceed the limit on virgin HFCs. Thus, the purchaser can ensure that reclaimed HFCs are appropriately used to service or repair equipment in the covered subsectors of this rulemaking. Enforcement action may be taken where virgin HFC refrigerant is used for servicing or repairing equipment in the covered subsectors, where containers of refrigerant do not have the proper labeling for reclaimed refrigerants and records/certifications can be checked. Specific requests about what more information is being asked for has not been described by the commenter, and the Agency may consider issuing additional guidance in the future.

Comment: One commenter expressed concern that the proposed rule does not allow sufficient flexibility to spread reclaimed refrigerants across the entire market, allowing for potential circumvention in the aftermarket space. The commenter requested that EPA tailor reclaim requirements for sectors and end users to create a more flexible, practical, and achievable program. The commenter stated that reclaiming many newer refrigerants with HFO components is currently impractical and that EPA should proceed on a CO₂e net basis to allow producers to provide more virgin lower-GWP substances and offset them with higher-GWP

substances, in order to ensure both the transition to low-GWP alternatives and continued reclaim activity and to encourage the responsible transition to low-GWP refrigerants without hindering the overall effectiveness of the reclaim program, with requirements implemented at the producer or importer level to streamline AIM Act reporting.

The commenter further stated that companies should be encouraged to recover low-GWP refrigerants by receiving GWP credit towards compliance requirements, incentivizing low-GWP recovery. The commenter requested that EPA allow companies to voluntarily reclaim and place on the market refrigerants exceeding the 2023 Technology Transitions Rule thresholds beyond their percentage reclaim requirements and receive GWP credits. The commenter claimed that these two measures would encourage a consistent culture of refrigerant management across the industry, reward companies for reclaiming, and pave the way for future regulations. The commenter additionally proposed that EPA consider requiring that businesses or persons offering refrigerant for sale or distribution for service must receive recovered refrigerant for reclaim in a ratio determined and updated by the Administrator, preferably based on CO₂ equivalents. The commenter stated that, if implemented at the wholesaler/distributor level, this could be audited using the proposed container tracking system.

Response: EPA acknowledges the commenter's interest in flexibility and in spreading the requirements to service and/or repair refrigerant-containing equipment with reclaimed HFCs across additional subsectors as well as their concerns for reclaiming blends with HFOs. As described above in section IV.E.1 of this preamble, EPA is establishing a limit of 15 percent, by weight, virgin HFCs in reclaimed HFC refrigerants. Further, EPA notes that it is not establishing a limit on the amount of virgin HFC substitutes that can be used in a reclaimed refrigerant blend and is thus not requiring reclamation of HFC substitutes. However, EPA recognizes that for HFC/HFO blends the commenter is likely referring to concerns with patents, licensing arrangements, and other business practices that may limit who can reclaim certain newer refrigerants. As discussed in a previous response in this section, the Agency is aware of these practices. However, the Agency has considered these concerns and made modifications to what it is finalizing in this rule that are intended to address

these concerns with respect to provisions finalized in this rule. For example, EPA delayed the compliance date, which will allow regulated entities additional time to prepare to comply with the rule. Further, EPA is finalizing the requirement for servicing and/or repair with reclaimed HFCs for refrigerant-containing equipment in only three RACHP subsectors; EPA is not finalizing requirements for the initial fill of refrigerant-containing equipment with reclaimed HFCs or the proposed requirement for the servicing and/or repair of refrigerant-containing equipment in the stand-alone refrigeration subsector at this time. Existing equipment in the majority of cases currently uses HFCs or HFC blends that are common and are currently being reclaimed.

The Agency did not propose and is not finalizing a crediting system. Moreover, the 2023 Technology Transitions Rule sets GWP limits for certain new equipment and not for existing equipment where this rule will establish requirements for reclaimed HFCs. EPA did not reopen the 2023 Technology Transitions Rule in this rulemaking and is not making any changes to its requirements in this rule. EPA further notes that these requirements are not optional, and the Agency is not establishing a credit system that could be related to exceeding the requirements in those regulations. The Agency is requiring the servicing and/or repair of refrigerant-containing equipment with reclaimed HFCs in certain RACHP subsectors in the ER&R regulations established in this rulemaking. Moreover, EPA anticipates that there will be reclaimed refrigerant to meet demand for refrigerant servicing in the affected subsectors consistent with the compliance date, which may prevent the early retirement of existing equipment.

The Agency did not propose and is not finalizing refrigerant reclaim requirements on a CO₂e net basis. EPA acknowledges the comment on the use of a tracking system and notes that the Agency is not finalizing the proposed tracking system at this time.

Comment: One commenter stated that the supply of virgin refrigerants is far more plentiful than anticipated in 2021. The commenter stated that there seems to have been significant stockpiling, some amount of illegal imports, and significant growth in the import of products containing HFCs, with the value of imported air conditioning systems from Mexico increasing by approximately 50 percent from 2020 to 2022. The commenter noted that the allowance for Mexican refrigerant

extends to R-410A containing condensing units, which may currently be imported with no restriction other than a label for service consistent with the 2023 Technology Transitions Rule. The commenter stated that EPA could increase demand for reclaimed refrigerant by addressing this issue under the Technology Transitions Program. The commenter claimed that without these changes, it is unlikely that a transition away from R-410A will occur fully in the United States until 2034 when both countries are impacted by their phasedown schedules. The commenter also claimed that there will not be any significant demand for reclaimed refrigerant because of this legal allowance of imported products containing HFCs.

Response: EPA acknowledges these comments and concerns related to demand for reclaimed refrigerant due to the factors mentioned. EPA notes that this comment is out of scope for this rulemaking.

F. How is EPA establishing an HFC emissions reduction program for the fire suppression sector?

HFCs and substitutes for HFCs are used in many different sectors, subsectors, and applications beyond those in the RACHP sector, and EPA interprets its authority under subsection (h) to include promulgating regulations that control the types of practices, processes, or activities identified in subsection (h)(1) in those sectors, subsectors, and applications, with the limitation that the Agency does not interpret its regulatory authority under subsection (h) to extend to HFCs or substitutes for HFCs when they are contained in foams.

HFCs are also used in the fire suppression sector. EPA is establishing certain requirements to address HFC management for fire suppression under subsection (h), further described in section IV.F.2 of this preamble. EPA proposed and is finalizing requirements for the initial installation¹²⁰ and servicing and/or repair of fire suppression equipment to be done with recycled HFCs as well as requirements for minimizing HFC releases during the servicing, repair, disposal, or installation of fire suppression equipment; technician training; recycling of HFCs prior to the disposal of fire suppression equipment containing HFCs; and recordkeeping and reporting. EPA is finalizing a

compliance date of January 1, 2026, for the following fire suppression requirements: (1) Minimizing HFC releases during the servicing, repair, disposal, or installation of fire suppression equipment; (2) the servicing and/or repair of fire suppression equipment to be done with recycled HFCs; (3) technician training; (4) recycling of HFCs prior to the disposal of fire suppression equipment containing HFCs; and (5) recordkeeping and reporting. EPA is finalizing a compliance date of January 1, 2030, for the requirement for the initial installation of fire suppression equipment to be done with recycled HFCs.

EPA notes that the finalized definition of “fire suppression equipment” for purposes of subsection (h) excludes military equipment used in deployable and expeditionary applications, as well as space vehicles. Those applications are exempt from the requirements to use recycled HFCs in the installation, servicing, and/or repair of such fire suppression equipment. This exclusion is based on EPA’s understanding that there are situations in which the unique design and use of such military equipment and space vehicles make it impossible to recover fire suppression agents during the service, repair, disposal, or installation of the equipment. They are also exempt from the requirement to use recycled HFCs for the initial installation of equipment and for the servicing and/or repair of equipment.

Application-specific HFC allowances are available to mission-critical military end uses as well as on board aerospace fire suppression¹²¹ applications under regulations at 40 CFR 84.13. EPA is not extending the requirement to use recycled HFCs in the installation, servicing, and/or repair of such fire suppression equipment provided that they meet the requirements for application-specific allowances in 40 CFR 84.13. As long as they meet the requirements for application-specific allowances, these applications are also exempt from the requirement to use recycled HFCs for the initial installation of equipment and for the servicing and/or repair of equipment.

1. Nomenclature Used in This Section

This section uses the term “recycled” or “recycling” to describe the testing and/or reprocessing of HFCs used in the fire suppression sector to certain purity

standards.¹²² HFCs that are recycled for fire suppression use include HFC-227ea, HFC-125, HFC-236fa, and HFC-23. The term “recycled” or “recycling” as used in the fire suppression sector is similar, but not identical, to the term “reclaim” as defined under the AIM Act. Under the AIM Act, the terms “reclaim; reclamation” are defined in subsection (b)(9) of the Act, and that definition refers to the purity standards under AHRI Standard 700-2016 (or an appropriate successor standard adopted by the Administrator) and the verification of purity using, at a minimum, the analytical methodology described in that standard.

The fire suppression industry describes clean agent as “a gaseous fire suppressant that is electrically nonconducting and that does not leave a residue upon evaporation,” and the term “clean agents” includes HFCs, according to the National Fire Protection Association (NFPA).¹²³ For the purposes of this section, EPA is generally referring to the term “clean agents” as HFCs. While the term “fire suppressants” may have a broader meaning, including non-gaseous agents for example, EPA generally views the terms “fire suppressants” and “fire suppression agents” as interchangeable for the purposes of this section.

2. Emissions Reduction in the Fire Suppression Sector

As part of implementing subsection (h)(1), EPA is finalizing a number of requirements to minimize releases of HFCs during the servicing, repair, disposal, or installation of fire suppression equipment containing HFCs or during the use of such equipment for fire suppression technician training. These requirements are similar to the halon emissions reduction requirements found at 40 CFR part 82, subpart H. The fact that recycled halons have been the only supply of halons in the United States 30 years after its production and consumption phaseout in 1994 demonstrates the important role recovery and recycling of clean agents from fire suppression equipment can

¹²² These industry standards may include NFPA 2001 (Standard on Clean Agent Fire Extinguishing Systems), NFPA 10 (Standard for Portable Fire Extinguishers), ASTM D6064-11 (Standard Specification for HFC-227ea), ASTM D6231/D6231M-21 (Standard Specification for HFC-125), ASTM D6541-21 (Standard Specification for HFC-236fa), and ASTM D6126/D6126M-21 (Standard Specification for HFC-23).

¹²³ National Fire Protection Association, NFPA Today, May 6, 2022, <https://www.nfpa.org/News-and-Research/Publications-and-media/Blogs-Landing-Page/NFPA-Today/Blog-Posts/2022/05/06/Clean-Agent-System-Basics>.

¹²⁰ EPA understands these terms “initial installation,” “initial charge,” or “initial fill” to be synonymous when discussing fire suppression equipment to be done with recycled HFCs.

¹²¹ On board aerospace fire suppression is defined at 40 CFR 84.3.

play by providing an ongoing supply where substitutes may not be suitable. As discussed in the proposal, EPA understands that this model has carried over on a voluntary basis to the management of HFCs by many in the fire suppression sector.

a. Minimizing Releases of HFCs

To minimize releases of HFCs, EPA is requiring that covered entities installing, servicing, repairing, or disposing of fire suppression equipment containing a regulated substance may not release into the environment, such as by intentional venting, any HFCs used in such equipment. EPA is also requiring that owners and operators of fire suppression equipment containing HFCs not allow the release of HFCs as a result of failure to maintain such equipment.

Recognizing the extensive requirements for testing (e.g., Federal Aviation Administration, United States Coast Guard, Department of Defense) associated with the approval for use of fire suppressants in certain applications, certain limited HFC releases for health, safety, environmental, and other considerations are exempted, including:

- Releases during the testing of fire suppression equipment only if the following four criteria are met: (1) Equipment employing suitable alternative fire suppressants is not available, (2) release of fire suppressants is essential to demonstrate equipment functionality, (3) failure of the equipment would pose great risk to human safety or the environment, and (4) a simulant agent cannot be used in place of the regulated substance for testing purposes.
- Releases associated with qualification and development testing during the design and development of equipment containing regulated substances only when (1) such tests are essential to demonstrate equipment functionality, and (2) a suitable simulant agent cannot be used in place of the regulated substance for testing purposes.

In addition, these requirements to minimize HFC releases do not apply to emergency releases of HFCs for actual fire extinguishing, explosion inertion, or other emergency applications for which the equipment was designed.

Below, EPA is responding to comments related to its approach and requirements to minimize releases of HFCs from the fire suppression sector.

Comment: Several commenters expressed support for the requirements to reduce HFC emissions from the fire suppression sector. One of the commenters stated that the proposed

requirements are akin to the 1998 halon emissions reduction requirements. The commenter stated that the fire suppression sector has developed several voluntary measures to decrease emissions, such as the voluntary code of practice (VCOP) and the voluntary recycling code of practice, and that these voluntary programs and the industry's experience in recycling halons provide the infrastructure necessary for the success of the HFC recycling requirements in EPA's proposal. The commenter also maintained that the required use of recycled HFCs is important in mitigating emissions and encouraging the use of other alternatives due to the high-GWP HFCs typically used in the fire suppression sector. Another commenter stated that the fire suppression industry fully supports EPA's goals of minimizing emissions of HFCs and encouraging the recycling and reuse of HFCs. The commenter stated that as a companion to the VCOP, an HFC emissions estimating program (HEEP) was developed that collects data on sales of HFCs for recharge of fire protection equipment as a surrogate for emissions. The commenter stated that compiled data of estimated emissions of HFCs from fire protection equipment have been submitted to EPA and published each year since 2002. Another commenter generally supported exploring potential practices that can help expand HFC recycling and reduce GHG emissions, while expressing concern with whether there is a sufficient supply of recycled HFCs for use in fire suppression systems.

A couple of commenters stated that the proposed requirements of 40 CFR 84.110(a), (b), (d), (e), and (f) are similar to the halon emission reduction requirements found at 40 CFR part 82, subpart H. One of the commenters stated that the halon emission reduction requirements have proven to be effective and useful in the responsible management of fire suppressants and that these practices are commonplace in the fire protection industry and are incorporated into industry codes and standards. Another commenter commended EPA for basing the requirements for HFC management in fire suppression equipment on the halon emission reduction rule, as these practices are commonplace within the fire protection industry and are incorporated into industry codes and standards. The commenter expressed support for the prohibition in 40 CFR 84.110(a) against knowingly venting HFCs in the installation, servicing, repair, or disposal of fire suppression

equipment. The commenter stated that the proposed exemptions for testing fire suppression equipment and qualification testing during system design and development are appropriate. The commenter also expressed support for the prohibition in section 84.110(b) against allowing release of HFCs as a result of failure to properly maintain equipment.

Response: EPA acknowledges the commenters' general support of the fire suppression requirements, and that the Agency considered the fire suppression industry's past experience with recycled halons as well as their voluntary efforts with recycled HFCs to develop fire suppression requirements that complement current industry practices to minimize emissions of HFCs.

Comment: A commenter recommended a stricter set of terms and greater consistency in alignment between industry groups represented in subsection (h), including the fire suppression industry and the RACHP industry. The commenter expressed support for the proposal to align requirements for recyclers of fire suppression or refrigerant-based systems to meet the same rigid standards as EPA's CAA section 608 certified reclaimer program. The commenter maintained that voluntary practices do not require the level of recycling, such as the need for reclaim, so recycled HFCs sourced from fire suppression applications "could act to undermine the integrity and quality of the refrigerant supply chain." The commenter stated that the marketplace should be able to expect the same quality, rigor, and tracking as proposed for refrigerants in the rulemaking.

Response: The Agency considers the fire suppression sector and the RACHP sector as distinct sectors with unique specifications and experiences; thus, the requirements established for each sector are tailored to that sector. EPA understands that entities in the U.S. fire suppression industry typically operate in accordance with requirements from NFPA 2001¹²⁴ or NFPA 10¹²⁵ or appropriate American Society for Testing and Materials (ASTM) standards to recover and recycle HFCs during servicing and/or repair of fire suppression equipment. None of these current industry standards or specifications related to HFCs used in

¹²⁴ NFPA 2001 Standard on Clean Agent Fire Extinguishing Systems. Available at: <https://www.nfpa.org/codes-and-standards/nfpa-2001-standard-development/2001>.

¹²⁵ NFPA 10 Standard for Portable Fire Extinguishers. Available at: <https://www.nfpa.org/codes-and-standards/nfpa-10-standard-development/10>.

fire suppression contain specific requirements to minimize releases of HFCs, including during servicing or repair of the equipment. Therefore, and as noted by the commenter, efforts by the industry to minimize emissions of HFCs used in the fire suppression sector have to date been on a voluntary basis. For example, the VCOP includes as part of its emission reduction strategies during storage, handling, and transfer of HFCs to recover and recycle agents during servicing and to adopt maintenance practices that reduce leakage as much as is technically feasible. By adopting regulatory requirements informed by these current voluntary practices and relevant industry standards, this action will minimize emissions of HFCs more broadly within this sector of where HFCs are used, consistent with the purposes identified in subsection (h), and in a manner that maintains the integrity of recycled HFCs from this source.

b. Requirements for Initial Installation of Equipment for Fire Suppression

EPA is requiring for the fire suppression sector where HFCs are used, that the initial installation of fire suppression equipment, including both total flooding systems and streaming applications, must be with recycled HFCs, starting on January 1, 2030. Specifically, for factory-charged equipment that uses HFCs, EPA is requiring that in order to install such equipment, the equipment is required to use recycled HFCs for the initial installation during the manufacture of the equipment. These requirements apply whether the HFCs are used neat or in a blend.

However, EPA notes that most often, where fire suppression agents are needed and HFCs are being used, these are single component HFCs with some of the highest GWPs for the regulated HFCs. Given the high GWPs for the commonly used HFC fire suppression agents, this aspect of the action is anticipated to further minimize emissions by requiring that recycled HFCs be used for the initial installation of fire suppression equipment.

Currently, recycled HFCs are primarily used for the servicing and recharge of existing fire suppression equipment. EPA understands that, in practice, recycled HFCs are required to meet applicable purity standards and function the same as their virgin counterparts when used in equipment in the fire suppression sector.

Comment: One commenter expressed support for EPA's proposal to increase the use of reclaimed and recycled HFCs

in new and existing HFC-containing fire suppression equipment. Some commenters expressed concern with the requirement to use recycled HFCs for the initial installation of fire suppression equipment. One of these commenters stated that the requirement to use recycled HFCs for the first fill of fire suppression equipment should not be included in the final rule. The commenter also stated that there is uncertainty in whether the supply of recycled HFCs will be adequate to serve new and existing equipment. The commenter questioned the appropriateness and necessity of the requirement to use recycled HFCs for the initial fill of fire suppression equipment. Additionally, the commenter stated that during meetings with EPA staff and in the public stakeholder meeting, no indication was given that initial fill of equipment would be regulated in this rule, as the commenter understood that the technology transition section of the AIM Act was the appropriate place for such proposed regulations.

Another commenter stated that the proposed requirement to use only recycled HFCs for the initial fill is not supported based on the historical success of halon recycling. The commenter stated that the current market for clean agent fire systems and the need for virgin HFCs are very different from the historical halon market. The commenter stated that they are a contributor to this success and suggested that EPA should not equate the current HFC market with that of halon given important differences between halons and HFCs and their use patterns. Specifically, the commenter stated that recycled halon has been made available for redeployment by a steady system of replacement with HFCs on a comparable performance basis, while current non-HFC replacement fire technologies provide many challenges to comparable replacement, extending the lifetime for HFC fire systems to remain in place, and reducing the availability of material to be recycled. The commenter also maintained that installed halon systems are significantly older than HFC systems, and that the accelerated changes in facilities and technologies being protected make many of these halon installations obsolete, providing sufficient stocks for recycling. The commenter provided an example that shipbreaking of aged vessels is a significant halon source for which there is no HFC equivalent. Additionally, the commenter stated that halon recovery and recycling is active and viable on a global basis and the

United States receives significant quantities of halon from non-domestic sources, while non-domestic HFCs for recycling will require AIM Act allowances limiting their viability to relocate to the U.S. market, requiring a domestic bank of installed HFC to support requirements for both service and new systems. However, the commenter stated that most installed HFC fire systems are protecting viable ongoing facilities with no anticipated need to convert or retrofit to alternate technologies, reducing the available resource bank.

Response: In response to the comment's assertions that there was no notice in public meetings of an intent to cover initial fill or installation, EPA notes that the proposed rule provided notification of the Agency's intention to include both initial installation and servicing requirements (88 FR 72216, October 19, 2023). EPA disagrees with the commenter's assertion that it should not draw parallels between the experience with recycled halons and with recycled HFCs. There are numerous similarities between the use of halons and the use of HFCs for fire suppression. This includes the supply chain, the types of applications and equipment, and general industry practices. Recycled halon is still available today, 30 years after the United States phased out production and consumption of halons. It is this experience, since the phaseout of the halons in 1994, that demonstrates the important role recovery and recycling of fire suppression agents can play by providing an ongoing supply of HFCs in fire suppression applications especially where other substitutes may not be suitable. EPA understands that this model has carried over on a voluntary basis to the management of HFCs by many in the fire suppression sector.

In response to the comments questioning the appropriateness and necessity of the requirement for initial installation of fire suppression equipment with recycled HFCs, EPA views the requirement to use of recycled HFCs for the initial installation of fire suppression equipment as part of its efforts to minimize emissions of HFCs from equipment, consistent with one of the purposes identified in the Act for regulations under subsection (h). EPA notes that most often, where fire suppression agents are needed and HFCs are being used, these are single component HFCs with some of the highest GWPs for the regulated HFCs. Given the high GWPs for the commonly used HFC fire suppression agents, this provision will further minimize emissions by requiring that only

recycled HFCs be used in fire suppression equipment as well as ensuring that HFCs have been recovered and recycled from the equipment prior to the final step of the disposal of the equipment so that HFCs are not released during the disposal of the equipment. EPA understands that, in practice, recycled HFCs are required to meet applicable purity standards and function the same as their virgin counterparts when used in equipment in the fire suppression sector. Currently, recycled HFCs are primarily used for the servicing and recharge of existing fire suppression equipment. Comments by Halon Alternatives Research Corporation (HARC) on the October 2022 NODA indicate that it does not anticipate major barriers to using recycled HFCs in new fire suppression equipment. EPA understands while there may not be barriers to using recycled HFCs in new fire suppression equipment, commenters have stated that there may be uncertainty in the supply of recycled HFCs. EPA acknowledges the need for allowances to import recycled HFCs for fire suppression, however the Agency anticipates that as the HFC Phasedown progresses, HFCs no longer needed in larger uses such as refrigeration and air conditioning may become available for fire suppression applications. Informed by comments, EPA acknowledges that commenters expressed concerns regarding the supply of recycled HFCs and is extending the compliance dates for the use of recycled HFCs to ensure that the infrastructure and supply will be available for affected stakeholders to be able to comply with requirements, further described later in this section IV.F.2.b of this preamble.

With regards to the sourcing of used HFCs, the comments concerning the need for allowances are outside the scope of this rulemaking. In this section IV.F.2.b of the final rule, the comments regarding the RACA process, are also beyond the scope of this action and thus require no further response, as EPA has proposed no changes to the requirements of the RACA process.

Comment: One commenter stated that their support for the AIM Act was based on there being a phasedown of HFC production, not a complete phaseout. The commenter stated that EPA's proposal is equivalent to an HFC phaseout for fire protection in the United States, stating that they did not believe that it was appropriate or necessary for EPA to regulate initial fill of fire suppression equipment in this rule. The commenter also stated that it would put HFCs domestically in a more restrictive position than halons and

CFCs, as these chemicals can be imported without the expenditure of allowances. In addition, the commenter stated that due to the high-GWP nature of HFCs used for fire protection, the observed effect of the AIM Act has been to reduce the production and consumption of virgin HFCs in the sector, below the phasedown schedule, and that companies have obtained the required listings and approvals so that a transition to the use of recycled HFCs in new fire suppression systems is underway. The commenter expressed a view that they would expect this transition to occur naturally and expand as the phasedown proceeds and claimed that it was not environmentally justified to force this transition on the industry by regulation in what in their view is a short time frame.

Another commenter asserted that the proposed requirements for use of recycled HFCs for initial fill and recharge, would, in effect, ban the production of fire suppression HFCs as of January 1, 2025, and it would mean there would be no commercial market for virgin fire suppression HFCs, since any use of the agents (other than in extremely limited essential uses) would be illegal. The commenter contended that the AIM Act implements the phasedown under the Kigali Amendment to the Montreal Protocol and does not authorize EPA to issue a rule that results in a total ban on the production and consumption of HFCs, including fire suppression HFCs, and therefore that the proposed rule is not authorized by the AIM Act.

This commenter also stated that the proposed rule also violates the accelerated schedule provision of the AIM Act (42 U.S.C. 7675(f)). This commenter maintained that the proposed fire suppression requirements would result in a total ban on the production and consumption of virgin fire suppression HFCs as of January 1, 2025, which would be more stringent than the phasedown schedule under subsection (e)(2)(C) of the AIM Act. Thus, they asserted that establishing an effective total ban on the production and consumption of virgin fire suppression HFCs as of that date would require rulemaking following receipt of a petition as specified in subsection (f) of the AIM Act. The commenter also stated that the proposed requirement to use only recycled HFCs for initial fill is not supported based on the historical success of halon recycling, due to important differences between halons and HFCs and their use patterns. For example, the commenter stated that an important difference between HFCs and halons is their relative firefighting

effectiveness. The commenter stated that halons, bearing no blanket import restrictions, were successfully funneled into reuse under a production phaseout due to halon's uniquely effective fire extinguishing properties. The commenter further stated that market forces in critical applications like aerospace consistently supported a recycle market, maintaining sufficient value to drive recycling activity. The commenter maintained that HFCs do not have the same level of market pull to support recycling activity in a market that immediately accelerates the sunset of virgin material for initial fill versus the anticipated phasedown schedule supported by the AIM Act framework rule.

Response: EPA disagrees with the commenters' assertion that finalizing these requirements under subsection (h) regarding recycled fire suppression agents is a phaseout of HFCs or an acceleration of the phasedown under subsection (f) of the AIM Act. EPA further disagrees with the commenters' conclusion that these requirements are not authorized under the AIM Act.

While the AIM Act includes provisions related to the phasedown of production and consumption of HFCs, including the provisions in subsections (e) and (f) of the Act, it also includes separate and additional regulatory authorities, such as those in subsection (h) of the Act. As explained in detail throughout, this rule is promulgated under subsection (h) of the AIM Act, not subsections (e) or (f). Subsection (h) uses different language from subsections (e) and (f), and it is framed differently. EPA interprets Congress' direction under these subsections as different and as providing distinct authorities that are tailored to the respective areas of focus of these subsections, so that EPA can establish regulatory regimes that effectively achieve each subsection's purposes. For example, subsection (e)(1)(A) directs EPA to establish production and consumption baselines "for all regulated substances in the United States," and subsection (e)(2)(B) describes the methodology for determining the quantity of regulated substances that may be "produced or consumed in the United States" in a particular calendar year by multiplying the percentage listed for that year in subsection (e)(2)(C) by the production or consumption baseline. EPA's implementing regulations for these provisions establish limits on the "[t]otal production and consumption of regulated substances in the United States in each year" (40 CFR 84.7) that apply to HFC production and consumption in the United States on an

economy-wide basis. Subsection (f) addresses the EPA Administrator's authority to "promulgate regulations that establish a schedule for phasing down the production or consumption of regulated substances that is more stringent than the production and consumption levels of regulated substances required under subsection (e)(2)(C)" and the requirements for such regulations. The comment does not provide any data or analysis that indicates that the requirements to use recycled fire suppression agents in this rule would alter the phase down schedule established under subsection (e)(2)(C). EPA codified numeric levels of permissible production and consumption in 40 CFR 84.7(b)(3), Table 2. EPA did not propose and is not taking any action in this rulemaking that would change the economy-wide phasedown schedule established in subsection (e)(2)(C) or the numeric levels of permissible production and consumption codified in 40 CFR 84.7(b).¹²⁶ The production and consumption phasedown is implemented on an exchange value-weighted basis (rather than establishing caps for particular HFCs), and this rule does not alter the amount of HFC production and consumption allowed in any year on an exchange value-weighted basis, nor does it alter the number of allowances that EPA will allocate in a future year. Further, it does not prohibit any production or import of any HFC. HFCs affected by the rule's requirements to use recycled fire suppression agent are not exclusively used for fire suppression.

In contrast to the focus on the phasedown of production and consumption in subsections (e) and (f), subsection (h) is targeted at management of regulated substances. As relevant here, subsection (h)(1) directs EPA to "promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment" that involves a regulated substance, for purposes that include minimizing releases of HFCs from equipment. This final action is an appropriate use of EPA's authority under subsection (h), as requiring the servicing, repair, and installation of fire suppression equipment with recycled HFCs at a set date in the future is exactly the type of activity that the AIM

Act envisions in subsection (h) since the requirements are controlling practices, processes, and activities regarding the servicing, repair, disposal, and installation of fire suppression equipment that involves a regulated substance.

To the extent these commenters contend that these requirements would in effect ban the production or consumption of fire suppression HFCs, that is a mischaracterization of the requirements of the rule. These requirements involve the practice or activity of using recycled HFCs to service, repair, and install fire suppression equipment, with different compliance dates for existing and new equipment, and thus also control the practice or activity of using of virgin HFCs during these activities in fire suppression equipment. However, even if the requirements result in virgin HFCs no longer being used to service, repair, and install fire suppression equipment, that is not a ban on production or consumption of HFCs, as those are distinctly defined terms under the AIM Act. Requiring this practice or activity is appropriate under subsection (h). There is availability of recovered and reprocessed HFCs that can be used for this purpose. While opposing the time frame of the proposed rule, one commenter indicated that the transition to recycled HFCs in fire suppression is underway and would expand as the phasedown proceeds. Further, this provision will foster additional recycling of these HFCs and thus fewer emissions of HFCs from this equipment, consistent with the purposes identified in subsection (h).

EPA acknowledges that while there are numerous similarities, there may be certain market and efficacy differences between halons and HFCs, such as halons not requiring expenditure of allowances as described earlier in this section. Since 1994, with the phaseout of the production and consumption of halons, recycled halons have been available and are still available today, which demonstrates the important role recovery and recycling of fire suppression agents can play by providing an ongoing supply of HFCs in fire suppression applications, especially where substitutes may not be suitable. As discussed in the proposal, EPA understands that this model has already been carried over on a voluntary basis to the management of HFCs by many in the fire suppression sector. In 2002, the fire suppression industry developed a VCOP for the reduction of emissions of fire suppression agents including HFCs. The VCOP was developed by HARC, an industry organization, in partnership

with EPA, the Fire Suppression Systems Association (FSSA), the Fire Equipment Manufacturers Association (FEMA), and the National Association of Fire Equipment Distributors (NAFED). Many of the practices have already been voluntarily adopted by the fire suppression sector, such as equipment manufacturers or distributors. In EPA's view, the fire suppression requirements will benefit from and bolster these efforts. While EPA notes that the commenter did not think HFC extinguishants would have the same market demand that supports halon recycling, the Agency views VCOP as an example of this industry already significantly supporting HFC recycling and reuse of fire suppression agents and understands that with the extended compliance dates, it would provide the market time to adjust. EPA acknowledges that HFCs are not used in all of the same applications as halons for various reasons and for the near term those applications will continue to rely on the over 30-year practice of recycling and reusing halons. EPA considers the longstanding and highly successful use of recycled halons for both installation and servicing of fire suppression equipment in the United States to be a premier example of the effectiveness of relying on recycling.

The Agency responds to the comments regarding the compliance timelines to meet these requirements by noting that EPA is finalizing compliance dates for the initial installation with recycled HFCs (beginning January 1, 2030) and for servicing and/or repair with recycled HFCs (beginning January 1, 2026) of fire suppression equipment, as described in more detail in sections IV.F.2.b and IV.F.2.c of this preamble.

Comment: One commenter mentioned that the final rule should preserve the ability to use substitutes for initial installation and servicing/repair of fire suppression equipment. The commenter stated that the proposed regulatory language could be read to suggest that only recycled regulated substances, and not their substitutes, could be used to fill and/or service fire suppression equipment. The commenter stated that this result was likely unintended because it overlooks the potential use of HFC substitutes in fire suppression equipment, which in some cases may be more environmentally friendly than recycled HFCs. The commenter requested that EPA amend 40 CFR 84.110(c) to clarify that fire suppression equipment must be initially charged and serviced with recycled HFCs or allowable HFC substitutes, as such substitutes become available on the market.

¹²⁶ As this rule does not prohibit any production or consumption of HFCs, EPA need not and is not further addressing the comment's assertion that the AIM Act does not authorize EPA to issue a rule that results in a total ban on the production and consumption of HFCs, including fire suppression HFCs.

Response: EPA did not propose and is not finalizing requirements for the use of recycled HFC substitutes in fire suppression equipment at this time. EPA notes that nothing in this final rule impedes the use of fire suppression alternatives. EPA determined that it is prudent to limit the requirements to HFCs, noting that the consumption and production phasedown will create scarcity for certain HFCs and such demand should partly be addressed by the increased use of recycled HFCs. The Agency acknowledges the importance of HFC substitutes and encourages the development and deployment of HFC substitutes to the extent possible. EPA also recognizes that in the context of a phasedown, certain uses of HFCs will continue indefinitely.

Comment: A commenter mentioned that because the Federal Aviation Act and controlling case law interpreting the Act reserve to the FAA primary jurisdiction over matters related to aircraft safety and operations, requirements related to passenger aircraft air conditioning and fire suppression equipment necessarily falls within the purview of FAA's authority and therefore cannot be infringed upon by EPA. The commenter also states that more important than any jurisdictional considerations, any acknowledged threat to passenger safety is unacceptable as a regulatory requirement, and notes that a lack of meaningful coordination with the FAA could result in a failure to ensure that air safety is the top consideration when determining applicability of the proposed rule's requirements to the commercial aviation sector. The commenter expressed support for EPA's proposed exemption for onboard aerospace fire suppression systems from the requirement to use recycled HFCs and recommended that the exemption be expanded to hangar fire suppression systems. The commenter also requested the broadest application possible for this proposed exemption given the potentially lengthy process for FAA approval of such products and their potential to impact the safe operation of aircraft.

The commenter stated that the proposed rule does not appear to contain a similar exemption from the requirement to use recycled HFCs for fire suppression systems in hangars. The commenter stated that hangar fire suppression systems are highly specialized, and mandating that new and existing hangar fire suppression systems use recycled HFCs could be incredibly costly for their members and potentially disruptive to safe and smooth commercial aviation operations.

The commenter also stated that such a requirement for hangars must also go through the FAA consultation process to ensure that any final requirements that may apply to the commercial aviation sector and its ground facilities do not jeopardize safety or the smooth and efficient operation of the commercial aviation industry when planes are in the air and on the ground.

Response: EPA disagrees with the commenter's broad assertions that EPA does not have authority to issue regulations pertaining to HFCs in aircraft and aircraft operations. While EPA agrees that the FAA has jurisdiction over matters related to aircraft safety and operations consistent with its Congressionally mandated authorities, under CAA title VI and the AIM Act, EPA has issued numerous regulations that concern the use of ODS and HFCs in many applications including onboard aviation and flight operations. With respect to this action, the AIM Act does not exclude aircraft or aircraft operations from the scope of implementing regulations. As noted previously in this notice, the inclusion in the statute at subsection (e)(4)(b)(iv) of "on board aerospace fire suppression," which includes aircraft, indicates that Congress did not intend to exempt aircraft and aircraft operations from the AIM Act. In addition, the commenter does not address the provisions of subsection (h) itself. None of the text of subsection (h) indicates that Congress contemplated that these provisions would not apply to equipment used in commercial aviation. Congress expressly addressed inapplicability of regulations under (h) in subsection (h)(4), in which it provided that regulations under subsection (h) shall not apply to HFCs or their substitutes contained in foams. If Congress had intended to exclude equipment used in commercial aviation from regulations promulgated under subsection (h), it would be reasonable to expect that the statute would include similar language creating that exclusion. Although the commenter did not appear to base objections on the text of subsection (h), to the extent they intended to argue that this rulemaking exceeds EPA's authority under that provision, EPA notes that it is establishing the subsection (h) requirements in this final rule to control practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment that involves a regulated substance or a substitute for a regulated substance and to serve the statutory purposes identified in subsection (h). Thus, this

final rule is within the scope of EPA's authority under subsection (h)(1), including as it pertains to equipment used in commercial aviation. Further, as discussed above, EPA is not extending the requirements for recycled HFCs under this rule to on board aerospace fire suppression applications, as listed at previously finalized EPA regulations at 40 CFR 84.13, for a year or years for which that application receives an application-specific allowance as defined at § 84.3.

With regard to the commenters' assertions that finalizing the proposed rule would conflict with the Federal Aviation Act's statutory purpose and scheme and that this statute reserves to the FAA jurisdiction over matters related to aircraft safety and operations and broadly preempts the field of regulation with respect to commercial aviation, aircraft operations, and aircraft safety, EPA responds that the information presented in the comment letter does not indicate that EPA is generally precluded from including requirements related to the commercial aviation sector in this rulemaking. The comment cites and quotes cases that speak to the pervasive nature of Federal regulation in this area and address the preemption of State and local regulations. However, preemption of State and local laws is not relevant to EPA's authority to establish regulations.

In response to the commenter's assertions that EPA did not consult with the FAA on these regulations, particularly for any fire suppression requirements that may apply to the commercial aviation sector, the Agency notes that it reached out to FAA on certain topics in developing the draft final rule prior to interagency review.¹²⁷ Further, FAA and other Federal agencies had an opportunity to review a draft of the final rule during interagency review.

EPA also disagrees with the commenter that hangars or ground facilities are not subject to this rule and should be exempted. EPA is not requiring the initial installation or servicing and/or repair of fire suppression equipment with recycled HFCs in certain applications that receive application-specific allowances, including mission-critical military end uses and on board aerospace fire suppression. On board aerospace fire suppression is one of the six applications listed in the AIM Act that allows companies that use HFCs to receive application-specific allowances.

¹²⁷ See memo titled *EPA Questions to FAA*, which is available in the docket for this rulemaking, EPA-HQ-OAR-2022-0606.

Specifically, as defined in EPA's implementing regulations at 40 CFR 84.3, on board aerospace fire suppression means use of a regulated substance in fire suppression equipment used aboard commercial and general aviation aircraft, including commercial-derivative aircraft for military use; rotorcraft; and space vehicles. Onboard commercial aviation fire suppression systems are installed throughout mainline and regional passenger and freighter aircraft, including engine nacelles, auxiliary power units, lavatory trash receptacles, baggage/crew compartments, and handheld extinguishers. As such, hangars or ground facilities do not fall under this purview.

Comment: The Agency also received comments regarding the supply of recycled HFCs. One commenter stated that while they mentioned that there are no barriers to using recycled HFCs for initial fill, they provide no information that could be used to conclude that the supply of recycled HFCs is adequate to serve new and existing equipment. The commenter also stated that their concern is not currently when the supply of recycled HFCs may be high, but five to ten years in the future, when there may still be a significant installed base of HFC-containing equipment. Another commenter maintained that recycled HFCs have been used for years to recharge most fire systems in the event of discharge, and that historically the availability of recycled HFCs has balanced well with the nominal requirements for system service. The commenter stated that there are not sufficient recycled HFCs available to the market to confidently supply all domestic fire suppression needs for both service and new systems now and into the future. The commenter also stated that the lack of sufficient available fire suppressants to meet crucial fire suppression needs will put critical facilities, and the people who work in those facilities, at risk of harm from fire events and reduce market confidence in the use of fire suppression technologies for special hazard applications. The commenter also stated that the remaining need for HFCs in new systems in the United States is due to a lack of viable alternatives for meeting very challenging technical requirements for special hazard fire systems. The commenter maintained that implementing the rule as proposed will make providing effective fire suppression more difficult for these applications without providing a meaningful impact on emissions

associated with the use of HFCs in fire suppression.

Another commenter stated that while there is a robust recycling market in the fire suppression industry, there is concern that the availability of recycled HFCs would not always balance market demand under the proposed rule requirements. Instead, the commenter suggested that the availability of recycled HFCs would adjust to balance the required market needs given time under the current AIM Act rule structure. The commenter stated that the required use of recycled fire suppression agent would be unnecessary and counterproductive to the existing market-driven activities in the fire suppression industry.

One of the commenters expressed concern over whether the proposed requirements would ensure that there is a sufficient supply of recycled HFCs available for use in fire suppression systems, especially for hangars. The commenter stated that if EPA intends for hangars to be covered by the proposed fire suppression system requirements, it is imperative that the requirements ensure that a sufficient supply of recycled HFCs would be available so that industry sectors would have a sufficient supply of necessary materials to ensure safe operations while also complying with any applicable regulatory requirements.

Response: EPA acknowledges comments related to the supply of recycled HFCs to support the requirements for recycled HFCs in fire suppression equipment established in this rulemaking. EPA understands that the fire suppression industry has been generally using recycled HFCs for servicing (as shown in the HEEP data).

EPA acknowledges that the phasedown of production and consumption of HFCs under the AIM Act and Kigali Amendment to the Montreal Protocol will have broader impacts on HFC use and transition to HFC substitutes. In the context of the HFC phasedown, not establishing requirements to limit the release of HFCs will create supply issues as the phasedown progresses. As addressed elsewhere in this preamble, this final rule is being promulgated under subsection (h). EPA acknowledges the comments regarding the current market structure of the fire suppression industry with respect to the use of recycled HFCs. EPA notes that the provisions established in this rulemaking are intended to support increased recycling and further bolster the supply of recycled HFCs. As the phasedown progresses, other sectors that use certain HFCs may reduce their

use of certain HFCs or no longer use certain HFCs, which may become available for use in the fire suppression sector. After further consideration, EPA agrees that additional time is warranted, this will enable the fire suppression sector to build up additional stock of recycled HFCs to meet demand for the installation, servicing, and/or repair of fire suppression equipment and to adjust any relevant existing contracts. The date for the requirement for the initial installation of fire suppression equipment with recycled HFCs is after the next major phasedown step of production and consumption of virgin HFCs under the AIM Act, when recycled HFCs will play an even greater role in supporting the servicing and repair of existing equipment. The commenters pointed to the need for additional time for the market to further adjust supply and demand for recycled fire suppression agents. Thus, EPA is finalizing later compliance dates than proposed for the initial installation and the servicing and/or repair of fire suppression equipment with recycled HFCs, as described in more detail in sections IV.F.2.b and IV.F.2.c of this preamble. The Agency is also finalizing differentiated dates for servicing and initial installation, with the date for servicing earlier than initial installation based on commenters' information on current practices.

Comment: One commenter stated the proposed requirement to only use recycled HFCs for initial fill will disrupt the current market-driven balance of recycled agent supply and demand, impacting the AIM Act's important environmental goals. The commenter stated that the 2020 HEEP data show recycled HFCs currently support the preponderance of system service requirements (80 percent in 2020), providing a viable and responsible life cycle process and market-driven balance. The commenter claimed, however, that the proposal requiring the use of recycled HFCs for initial installation would have the effect of reinforcing the market perception that HFCs are being regulated out of existence. The commenter stated that the EU's 2000 regulation devalued halon 1301 and that the regulation correlated with the EU halon emissions. The commenter voiced concerns that the requirement to use only recycled HFCs for initial fill, by overriding current market forces, would have a similar effect of instigating a spike in emissions due to collapse of market confidence in HFCs. In such a market, the commenter maintained, where used HFC stocks are of low or negative value, owners and

service entities could be negatively incentivized to release stocks of HFCs to the atmosphere in anticipation of further regulations or to avoid storing a valueless commodity. The commenter also stated that with the termination of production of a potential fire suppression agent (*i.e.*, FK-5-1-12) from a manufacturer, there may likely be insufficient supply of a low-GWP alternative for HFCs, causing uncertainty about the long-term viability of fire suppression technologies. The commenter further stated that, as with the EU in 2000, they expected a rise in HFC emissions from the fire suppression sector if the requirement to use recycled HFCs for initial fill is promulgated. The commenter stated that the proposed rule, along with potential supply issues, would severely restrict market access to effective fire suppressants, further eroding customer confidence in clean agent protection and putting additional critical facilities and people at risk from a fire event.

Response: EPA disagrees with the commenter's assessment of the requirement for recycled HFCs in the fire suppression sector as disruptive or that it would be misinterpreted as regulating HFCs out of existence. The AIM Act directs EPA to implement an 85 percent phasedown of the production and consumption of HFCs from baseline by 2036. This is a phasedown and not a phaseout. The Agency foresees continued production and consumption of HFCs beyond 2036, albeit limited so as to not exceed the very restrictive cap. While this final rule has the effect of restricting the use of virgin HFCs for particular practices, processes, and activities related to servicing, repair, and installation of particular equipment, those requirements do not apply to all applications in which HFCs are used, and they do not limit the use of recycled or reclaimed HFCs that meet the regulatory criteria. In fact, as discussed throughout this final rule, the Agency expects that virgin production and consumption consistent with 40 CFR part 84, subpart A will continue and anticipates continued use of both virgin and reclaimed or recycled HFCs. Consistent with subsection (h), in developing this rule, the Agency explored options that would serve the purposes identified in subsection (h)(1), including minimizing emissions of HFCs from equipment and maximizing reclamation where appropriate. The Agency considers fire suppression, with its long and successful history of using recycled HFCs, an appropriate application for this requirement. As the phasedown continues, the availability of

virgin HFCs decreases while the market demand for recycled HFCs increases in the fire suppression sector; however, EPA anticipates there will be continued demand for and use of virgin HFCs for other applications for many years. Unlike halons, most of the HFCs used in fire suppression have other uses (*e.g.*, HFC-227ea is used as a propellant for metered dose inhalers). Halons generally have only been used for fire suppression. Contrary to the comment, recent updates to the EU regulation 2024/590 puts a high value on existing supply of halons by prohibiting the destruction of halons unless the purity of the recovered or recycled substance does not allow for reclamation and reuse.¹²⁸ As market demand increases for recycled HFCs in the fire suppression sector, the value of the recycled HFCs should also increase and lead to more incentive to recover and recycle HFCs rather than releasing them. One commenter noted that the termination of a potential fire suppression agent (*i.e.*, FK-5-1-12) production from a manufacturer would mean an insufficient supply of a low-GWP alternative for HFCs, causing uncertainty about the long-term viability of fire suppression technologies. EPA recognizes the loss of an alternative agent may limit one option, but with the limited use of FK-5-1-12 to date, the termination of this agent should not cause much disruption to the market as the search for suitable alternatives would continue in those applications. It is unclear that the end of production of one agent with current limited use would cause uncertainty with fire suppression technologies in general. One commenter stated that recycled HFCs support many service requirements, providing a viable and responsible life cycle process and market-driven balance. EPA views the requirements for recycled HFCs in fire suppression equipment as a bolster to this effort.

Comment: EPA received comments requesting the export of fire suppression systems containing virgin HFCs. One commenter interpreted the phrase "that is installed in the United States" in 40 CFR 84.110(c), to say that the requirement to use recycled HFCs for initial fill of fire suppression equipment does not pertain to equipment intended for export. The commenter stated that fire suppression equipment intended for export could continue to be installed

with virgin HFCs and that the expended allowances would continue to be refunded under the RACA process. The commenter asked for confirmation on the interpretation in the final rule.

Another commenter asserted that with the implementation of the AIM Act, the volume of HFCs placed in new fire systems in the United States has dramatically decreased. The commenter experienced more than 90 percent reduction in volume of HFCs in new systems, far exceeding the intent and goals of the AIM Act. The commenter further stated that the AIM Act has motivated fire system manufacturers to promote non-HFCs alternatives and initiate approvals for recycled HFC use in new fire systems. The commenter stated that there is no reasonable requirement for EPA to overreach its authority and require the use of recycled HFCs in the fire market, and that the market is responding and progressing in an accelerated manner without prescriptive forces. The commenter further stated if EPA believes it has the authority under the AIM Act and there is a need and benefit to requiring the use of recycled HFCs for fire suppression equipment, both new systems and service, in the United States, the export of fire systems containing virgin HFCs should continue to be allowed and qualify for the RACA process. The commenter stated that requiring U.S. fire system manufacturers to use only recycled agents for all global requirements would place them at a significant competitive disadvantage and appreciably reduce the available inventories of domestic recycled HFC fire extinguishing agents.

Response: In response to this comment, EPA first notes that it views the requirement in this final rule for recycled HFCs for fire suppression equipment to align with the purpose of minimizing the release of HFCs from that equipment under subsection (h) and to be consistent with its authority under that provision, as discussed in detail elsewhere in this section.¹²⁹ EPA notes that with certain limited

¹²⁹ The comment is not clear whether it intends to suggest that the commenter views these provisions as an overreach of EPA's authority or rather is simply stating that there would be no need to overreach EPA's authority in this context (without expressing any opinion as to whether the proposed provisions did so), the commenter fails to provide any reasoning or analysis that would support an argument that these provisions exceed EPA's authority and does not provide any explanation for why it disagrees with the discussion of authority for these provisions that EPA provided in the proposal. Accordingly, even if the comment does intend to challenge EPA's authority for the fire suppression provisions, those points are addressed by EPA's discussion of its authority elsewhere in this section and no further response is needed.

¹²⁸ Regulation (EU) 2024/590 of the European Parliament and of the Council of 7 February 2024 on substances that deplete the ozone layer, and repealing Regulation (EC) No 1005/2009. Available at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202400590.

exceptions discussed in section IV.F, fire suppression equipment installed in the United States will be required to meet the requirements the Agency is finalizing in this action. The comments regarding RACA are beyond the scope of this action and thus require no further response because EPA has proposed no changes to the RACA requirements of process. However, for purposes of providing information to regulated entities, EPA notes that whether fire suppression equipment may qualify for the RACA process depends on whether the equipment meets the definition of bulk in 40 CFR 84.3, which EPA is not reopening or revisiting through this rulemaking. For the purposes of 40 CFR part 84, subpart A, system cylinders, such as those used in total flooding systems are bulk substances and may be eligible for the RACA process. A portable fire extinguisher, in contrast, is not considered a bulk regulated substance because it contains a dispensing apparatus and may be used without transferring the contained regulated substance to another container. These portable fire extinguishers are products and are not eligible for the RACA process. Furthermore, RACAs are not limited to virgin HFCs—additional consumption allowances may be requested in general for verified exports of any bulk regulated substance.

EPA proposed a compliance date of January 1, 2025, for the initial installation of fire suppression equipment with recycled HFCs, and also considered other potential compliance dates. In this final rule, the Agency sets a compliance date of January 1, 2030, for the initial installation of fire suppression equipment with recycled HFCs.

Comment: One commenter stated that the compliance date of January 1, 2025, is feasible given the sector's overall comparatively small volumes of material, as well as existing infrastructure and practices regarding the use of reclaimed material, which already makes up a significant percentage of overall volumes. A few commenters expressed concern regarding the January 1, 2025, start date for the requirement for the use of recycled HFCs for the initial installation of fire suppression equipment.

One commenter stated that the time to implement the recycle requirement proposal is not sufficient for industry to adjust. The commenter stated that the proposed rule will likely leave stranded virgin HFCs already in the U.S. inventory, given the few alternative applications of fire suppression HFCs have for use in other market segments,

and claimed that the timeframe would damage responsible manufacturers and shake industry confidence in clean agent fire protection technologies. The commenter stated that the short enactment timeframe would create significant delays, contract disputes, and costly modifications for projects currently in process, since new fire system requirements are mostly for newly constructed facilities, fire systems are often the last item to be installed before occupancy, and construction agreements are executed in advance of the delivery of the specified fire system, with many subcontractor agreements. The commenter mentioned that this too will further destabilize and reduce confidence in the overall fire system industry and stall the current market driven shift to recycled HFCs and alternative protection options. Additionally, the commenter maintained that the fire suppression industry operates under existing long-term contracts that require commitments of certain volumes using specific agents and asserted that the rule as proposed will cause problems and irreparable financial harm to business and users with these contractual obligations. The commenter stated that an alternative to the initial fill rule proposed, which is a ban on the import of virgin HFCs for use in domestic fire protection (except for the critical end-uses) after a certain future date, could be considered. The commenter stated that this may help avoid the irreparable financial harm to entities that have, since September 23, 2021, acted in good faith under the framework rule. The commenter expressed concerns that the passage of the rule, with the recycled HFC initial fill requirement as proposed, will not reduce HFC emissions or improve the environmental impact of HFC fire systems to sufficiently offset the increased risk to property and people.

The same commenter claimed that EPA's 2025 enactment timeframe limits the ability to revise and adjust these agreements and would create confusion among entities who have entered into agreements in good faith under the AIM Act framework schedules and structures. The commenter stated that if EPA were to enact this requirement, they would recommend a start date of January 1, 2036, or after the AIM Act phasedown to 15 percent of baseline is complete, in order to allow equipment manufacturers to fulfill or modify existing contracts, and for potential low-GWP alternatives to be introduced in an orderly manner, supportive of the market balance the commenter

maintains is necessary for a viable, long-term, recycled HFC market. The commenter stated that if EPA believes enactment of this rule is required, an in-force date, no sooner than a 2030 through 2036 timeframe, must be considered to provide sufficient time to effectively prepare for such a ruling.

Another commenter requested that EPA extend the date of implementation to January 1, 2027, to allow proper time for fire suppression equipment manufacturers to assess any safety concerns or unexpected impacts of transitioning to recycled substances and development of the reclaimed HFC supply.

Another commenter stated that since the final rule will not be published until sometime in 2024, the industry would have less than a year to transition to using recycled HFCs for all first fills. The commenter stated that if EPA decides to maintain this requirement in the final rule, a start date of January 1, 2030, would be more appropriate. The commenter stated that this would provide time for equipment manufacturers to fulfill or modify existing contracts that specify newly produced agent and find alternative avenues of supply.

One commenter stated that the proposal provides a short window to perform the transition and, in their view, the most logical year would be to start the transition in 2029 when the next stepdown happens. The commenter stated that the fire suppression industry is project-based and often, projects are worked in phases over many years.

One commenter stated that the proposal does not provide sufficient time for the commercial aviation sector to safely comply with the proposed fire suppression system requirements at ground facilities such as hangars. The commenter requested that EPA extend the applicable compliance deadlines for using recycled HFCs in fire suppression systems.

Response: EPA acknowledges these comments both in support of and raising concerns with the timing of the requirements for recycled HFCs including sufficient availability of recycled HFCs for the initial installation of fire suppression equipment. EPA acknowledges the importance of the overall HFC phasedown and notes that comments on the phasedown's structure, including a ban on the import of virgin HFCs for use in fire suppression and use of consumption allowances to import virgin HFCs, are beyond the scope of this action and require no further response. The Agency does not agree that the provisions as

proposed will result in irreparable financial harm, given the adjustment made in this final rule to extend the compliance date. As noted previously, reliance on recovered and reusable HFCs will be increasingly important. Informed by comments and after further evaluation, EPA is finalizing the compliance date for the initial installation of fire suppression equipment with recycled HFCs of January 1, 2030, five years later than proposed and after the next phasedown in 2029. This will provide any companies using virgin HFCs for this purpose more time to transition to recycled HFCs. It will also allow industry time to adjust any relevant existing contracts concerning supply of recycled HFCs and provide more time to alleviate concern about inadequate supply of recycled HFCs.

Comment: A couple of commenters also mentioned that potential cross contamination continues to be an issue for recycled halon and that the requirements in 40 CFR 84.110(c)(1) and (2) should support the avoidance of this issue for HFCs in the fire suppression sector. One of the commenters commended EPA for the requirements intended to prevent cross-contamination of recycled fire suppression agents during transfer, recovery, and storage, stating that the cross-contamination of recycled halon 1301 is an ongoing problem, and that these requirements would enhance ongoing industry efforts and keep it from becoming a significant issue for HFCs.

Response: EPA acknowledges the comments that the requirements in 40 CFR 84.110(c)(1) and (2) should help to address potential cross-contamination issues with HFCs used for fire suppression.

Comment: One commenter stated that EPA's proffered options for the use of recycled HFCs for initial fill still come with difficult challenges: how far out to extend the requirement to ensure sufficient available recycled material, and how to report and manage a variable percent recycled content requirement. The commenter stated that existing AIM Act structure already presents a challenge to the use of virgin HFCs in fire suppression due to their high-GWP allowance opportunity cost. The commenter stated that this intent of the AIM Act is motivating industry towards low/no GWP options where available, promoting the general use of recycled material when possible, but leaving the flexibility of new, virgin material for those applications requiring the performance and safety of an HFC fire suppression agent when low/no GWP options are suitable and recycled

HFCs may be unavailable. The commenter suggested that this is the right way to manage the limited use of HFCs in fire suppression without putting critical facilities and people at risk of a fire.

Response: As described in the proposal, EPA sought comments from stakeholders on options that would be viable. The commenter does not cite any provision in the AIM Act to support its assertion that the Act's intent is to leave general flexibility to use new virgin material for fire suppression applications nor does it cite any information or data to support the implication that there are situations when performance and safety requirements would indicate use of an HFC fire suppressant but no low/no GWP options are suitable and recycled HFCs are unavailable. Thus, EPA cannot provide a more detailed response to these concerns. As explained in detail elsewhere in section IV.F.2.b of this preamble, the provisions finalized in this rule, including the requirements to use recycled HFCs in fire suppression equipment are consistent with EPA's interpretation of its authority under subsection (h) of the AIM Act and the direction in the statutory provision. Further, elsewhere in section IV.F.2.b of this preamble, EPA has made adjustments to the requirements in the final rule based on points raised in public comments by delaying the compliance dates to address possible concerns with the supply of recycle HFCs. To the extent this comment concerns aspects of the AIM Act or EPA's implementing regulations beyond the proposed rule under subsection (h)—such as the allowances, the structure of the phasedown, and tradeable allowances—it is outside the scope of this rulemaking. EPA has a long and successful history of working with the fire suppression industry to lead in the production phaseout of halons and transition to safe alternatives through testing and changes to industry standards. This has taken into consideration the needs and challenges in sectors such as the military, oil and gas, maritime, and aviation to protect critical facilities, equipment, and personnel. We look forward to managing the ER&R program in the same way.

c. Requirements for Servicing and/or Repair of Existing Equipment for Fire Suppression

EPA is requiring the servicing and/or repair of fire suppression equipment to be done with recycled HFCs, including both total flooding systems and streaming applications, starting on January 1, 2026. Covered entities are

required to evacuate, as applicable, all equipment used to recover, store, and/or transfer HFCs prior to each use to prevent contamination, arrange for destruction of the recovered HFCs as necessary (e.g., recovered HFCs that are too contaminated to be recycled), and collect and dispose of wastes from recycling process. If the recycling of HFCs is not practical, the disposal of HFCs will help to prevent releases of used HFCs into the atmosphere.

In 2015, data on recycling of HFC fire suppression agents were collected as part of the HEEP, which is a voluntary data collection effort implemented by the fire suppression industry. HEEP collects data on sales of fire suppression agents for recharge in order to estimate annual emissions of HFCs. These data showed that the HFC-227ea, HFC-125, HFC-236fa and HFC-23 were all recycled for fire suppression use.¹³⁰ In recent years, approximately 75 percent of HFCs sold for recharge came from recyclers, with 80 percent reported in 2020, based on data submitted voluntarily to HEEP, which may not include all entities in this sector.¹³¹

As part of servicing and/or repairing fire suppression equipment, recovery and recycling equipment is used to recover HFCs. EPA is also requiring that covered entities must (1) operate and maintain recovery and recycling equipment in accordance with manufacturer specifications to ensure that the equipment performs as specified; (2) repair leaks in HFC storage, recovery, recycling, or charging equipment before use; and (3) ensure that cross-contamination does not occur through the mixing of HFCs that may be contained in similar cylinders. Recovery equipment collects HFCs from equipment, and recycling equipment, which is used during servicing and/or repair, removes contaminants from HFCs. By ensuring that this equipment is functioning properly, HFC releases can be minimized during the recovery and recycling process. The requirements finalized in this rule will ensure that releases from fire suppression equipment are minimized when recycling HFCs during servicing and/or repairing fire suppression equipment.

Comment: One commenter stated that there is no need to require the fire suppression industry to migrate to a

¹³⁰ HARC comments on Notice of Data Availability Relevant to Management of Regulated Substances under the American Innovation and Manufacturing Act of 2020 are available in the docket (EPA-HQ-OAR-2022-0606) for this rulemaking at <https://www.regulations.gov>.

¹³¹ HARC Report of the HFC Emissions Estimating Program (HEEP) 2002–2020 Data Collection, October 2022.

recycled agent for servicing existing systems. The commenter stated that most important, protected assets require quick servicing, often within 24 hours, in order to maintain their critical functions. The commenter stated that sometimes, to maintain critical function in a timely manner, newly made HFCs are more expedient. The commenter stated that the high value risk and critical function requirements of many protected facilities supports the continued availability of both options, virgin and recycled, to best manage risk for these facilities.

Another commenter mentioned that the AIM Act has already effectively reduced the use of HFCs in new fire suppression systems beyond the statutory requirements of the Act, reinforcing the use of recycled HFCs for servicing existing systems. This comment is also covered in section IV.F.2.b of this final rule.

As mentioned in section IV.F.2.b of this final rule, one commenter expressed support for EPA's proposal to increase the use of reclaimed and recycled HFCs in new and existing HFC-containing fire suppression equipment. Another commenter also expressed support for the proposal to require the use of recycled HFCs to service existing fire suppression equipment. The commenter stated that as the HEEP data show, recycled HFCs already provide the vast majority of agent used for servicing in the United States. The commenter suggested that the requirement to use recycled HFCs for servicing should begin on January 1, 2028, in order to provide adequate time for any companies still using virgin HFCs for service to make the transition.

Response: As the HEEP data show, recycled HFCs are already extensively being used for servicing. EPA understands this to be already industry practice used by most entities. EPA also appreciates the need for flexibility in supporting critical function of fire suppression equipment and in particular for high value equipment. Therefore, EPA is finalizing a later compliance date than proposed for the use recycled HFCs in the service and/or repair of fire suppression equipment (*i.e.*, January 1, 2026) to provide industry time to adjust to the changes, make any necessary infrastructure changes, and make any necessary changes to existing business contracts. This delay of the compliance date will enable the fire suppression industry to build up additional stock of recycled HFCs to meet demand for servicing and/or repair of fire suppression equipment. While one commenter suggested a compliance date of 2028 for servicing,

EPA concludes that an earlier compliance date than 2028 is reasonable for these requirements, given the use of recycled HFCs is already common practice in the fire suppression industry for this application.

Comment: As covered in section IV.F.2.b of this final rule, one commenter mentioned that the final rule should preserve the ability to use substitutes for initial installation and servicing/repair of fire suppression equipment.

Response: As covered in section IV.F.2.b of this final rule, EPA acknowledges the comment. As responded to in section IV.F.2.b of this final rule, nothing in this final rule impedes the use of fire suppression alternatives.

d. Fire Suppression Technician Training

Starting as of January 1, 2026, EPA is requiring that all entities that employ fire suppression technicians who maintain, service, repair, install, or dispose of fire suppression equipment containing HFCs must provide training (as described in this section) and ensure that their fire suppression technicians complete this training. Fire suppression technicians must be trained by June 1, 2026. Fire suppression technicians hired after January 1, 2026, must be similarly trained within 30 days of hiring, or by June 1, 2026, whichever is later. EPA considers this a one-time training requirement. This requirement is intended to control practices, processes, or activities regarding servicing, repair, disposal, or installation of such fire suppression equipment by providing fire suppression technicians with knowledge and skills to minimize releases of HFCs during such practices, processes, or activities, and the requirements involve a regulated substance. Fire suppression technicians are an important part in any effort to control unnecessary HFC emissions from fire suppression equipment while servicing, repairing, installing, or disposing of such equipment. By training fire suppression technicians in the significance of minimizing unnecessary HFC releases from fire suppression equipment and providing information on applicable procedures such as the recovery and recycling or reclamation of HFCs from the fire suppression equipment, technician training supports EPA's effort to reduce HFC emissions from fire suppression equipment.

The HFC fire suppression technician training must be designed to include: (1) An explanation of the purpose of the training requirement, including the

significance of minimizing releases of HFCs and ensuring technician safety; (2) an overview of HFCs and environmental concerns with HFCs including discussion of other Federal, State, local, or Tribal fire, building, safety, and environmental codes and standards; (3) a review of relevant regulations concerning HFCs,¹³² including the requirements of this section that apply with respect to fire suppression equipment; and (4) specific technical instruction relevant to avoiding unnecessary HFC emissions during the servicing, repair, disposal, or installation of fire suppression equipment.

Comment: A few commenters expressed their support for EPA's proposed training requirement for fire suppression technicians. One of the commenters expressed support for the proposed training requirements for this sector to ensure higher rates of recovery and recycling of HFCs. The commenter stated that the proposed training requirements will be highly valuable to the fire suppression sector which has technicians skilled in the recovery and recycling of HFCs. Another commenter supported enhanced training for fire suppression technicians to facilitate the implementation of the fire protection requirements.

One commenter requested that EPA develop course content of the required training and make it available to the regulated community. The commenter stated that this would ensure consistent course content across the country and be far more cost-effective than having every regulated facility generate training for the technicians that service their regulated fire suppression systems.

Response: EPA acknowledges commenters' support of the training requirement for fire suppression technicians and is finalizing this requirement as proposed with only a change to the compliance date to January 1, 2026, to align with other changes such as the compliance date for the servicing and/repair of fire suppression equipment to be done with recycled HFCs. The Agency acknowledges the request for consistent course content across the country; however, the Agency considers the affected entities able to design effective training on their own taking into consideration their needs and practices, as relevant. That said, on a voluntary basis, EPA could review and provide

¹³² These may include, but are not limited to, other EPA regulations, DOT regulations, Occupational Safety and Health Administration (OSHA) regulations, codes and standards of NFPA, and other federal, state, or local fire, building, safety, and environmental codes and standards.

feedback on training programs and materials. The Agency has provided a list of the primary topics to be included in the training: (1) An explanation of the purpose of the training requirement, including the significance of minimizing releases of HFCs and ensuring fire suppression technician safety; (2) an overview of HFCs and environmental concerns with HFCs; (3) a review of relevant regulations concerning HFCs, including the requirements of the HFC emissions reduction program for fire suppression equipment; and (4) specific technical instruction relevant to avoiding unnecessary HFC emissions during the servicing, repair, disposal, or installation of fire suppression equipment at each individual facility. EPA may provide suggested resources to assist entities to develop the training as necessary.

e. Recycling of HFCs Prior to Disposal of Fire Suppression Equipment Containing HFCs

EPA proposed requirements related to the disposal of fire suppression equipment. The intent of these requirements is to ensure that HFCs have been recovered and recycled from the equipment prior to the final step of the disposal of the equipment so that HFCs are not released during the disposal of the equipment. EPA is requiring owners and operators of fire suppression equipment containing HFCs (including an HFC blend) to dispose of this equipment by recovering the HFCs themselves or by arranging for HFC recovery by a fire suppression equipment manufacturer or distributor, or a fire suppressant recycler. EPA is also requiring that owners and operators dispose of HFCs used as a fire suppression agent by sending them for recycling to a fire suppressant recycler or a reclaimer certified under 40 CFR 82.164 or by arranging for its destruction using one of the controlled processes listed in 40 CFR 84.29. Consistent with 40 CFR part 82, subpart H, disposal of HFCs used as a fire suppression agent means the process leading to and including discarding of HFC-containing equipment. The voluntary industry standards that apply to the uses of HFCs in fire suppression equipment, NFPA 2001 for fire suppression systems and NFPA 10 for fire extinguishers, contain no current requirement for the recovery and disposal of HFCs prior to disposal of equipment. Efforts by the industry to minimize emissions of HFCs used in the fire suppression sector have to date been on a voluntary basis. For example, the VCOP includes as part of its emission

reduction strategies during storage, handling, and transfer of HFCs, requirements to recover the agents after the end of the equipment's useful life and either recycle or destroy them. These requirements will minimize emissions of HFCs through recovery of the agent prior to disposal of the equipment and ensure that recycling or proper disposal of HFCs occurs broadly within this sector of use. Under the requirements, the owners and operators of this equipment (*e.g.*, specialized fire suppression systems containing HFCs that protect high value equipment, such as electronic server rooms or oil and gas production facilities) must ensure that HFCs are recovered from the fire suppression equipment before it is sent for disposal, either by recovering the HFCs themselves before sending the equipment for disposal or by leaving the HFCs in the equipment and sending it for disposal to a facility (*e.g.*, fire suppression equipment manufacturer, a distributor, or a fire suppressant recycler) operating in accordance with industry standards (*i.e.*, NFPA 10 and NFPA 2001 standards), as applicable. The owners or operators of fire suppression equipment also must recover any HFCs, as part of the disposal of such equipment, by sending them to a fire suppressant recycler operating in accordance with the relevant industry standards, which EPA understands to be the NFPA 10 and NFPA 2001 standards (depending on the type of equipment), by sending them to a reclaimer certified under 40 CFR 82.164, or by arranging for their destruction by a technology that is listed as an approved technology for destruction of the relevant regulated substance in the regulations at 40 CFR 84.29. As part of implementing subsection (h)(1) of the AIM Act, these requirements control practices, processes, or activities regarding the disposal of such fire suppression equipment by establishing certain requirements that must be met as part of the disposal process and involve a regulated substance.

Owners and operators of fire suppression equipment who recover HFCs prior to disposal may already be aware of the importance of HFC recycling given prior communication efforts by the industry and may already take steps to ensure recovery of HFCs prior to disposal. The recycling of HFCs plays an important role in providing the fire suppression sector with continued supply of HFCs for fire suppression equipment during servicing. Industry trade organizations have encouraged owners and operators of fire

suppression equipment and those disposing of HFCs to contact fire suppression equipment manufacturers, distributors, or fire suppressant recyclers to ensure that HFCs are safely recovered from equipment and recycled for future use. Therefore, the requirements finalized in this rule are likely consistent with current industry practices. Most fire suppression systems and extinguishers in use today are purchased, installed, and serviced by fire suppression equipment distributors. EPA is aware that there are established distribution channels within the commercial and industrial sectors where these specialized systems are used. Industry representatives have also indicated that the simplest way in their opinion to ensure proper recycling of HFCs is to encourage equipment owners to return equipment containing HFCs to distributors.¹³³ EPA values using established industry practices where such practices exist and can be used to meet the Agency's intended goals.

Comment: One commenter expressed support for the requirements in sections 84.110(e) and 84.110(f) on the disposal of fire suppression equipment and the disposal of HFCs used in fire suppression. Another commenter also supported the proper disposal of HFC fire suppression equipment and agents.

Response: EPA acknowledges the commenters' support for the requirement to recycle HFCs prior to disposal of fire suppression equipment containing HFCs and is finalizing as proposed requirements to recover and recycle HFCs prior to the final step of disposal of the fire suppression equipment.

f. Recordkeeping and Reporting

EPA is finalizing recordkeeping and reporting requirements on the fire suppression provisions under subsection (h) for HFCs used in the installation of new equipment and servicing and/or repair of existing equipment. EPA is finalizing these recordkeeping and reporting requirements mainly as proposed with some modifications to the requested information to clarify the intent of the regulatory text. As part of implementing subsection (h)(1) of the AIM Act, these provisions control practices, processes, or activities regarding servicing, repair, disposal, or installation of fire suppression equipment, and involve a regulated substance. For example, the

¹³³ HARC comments, dated November 7, 2022, to Notice of Data Availability Relevant to Management of Regulated Substances Under the American Innovation and Manufacturing Act of 2020 are available in the docket (EPA-HQ-OAR-2022-0606) for this rulemaking at <https://www.regulations.gov>.

requirements control recordkeeping and reporting practices, process, or activities for servicing and repair that involves HFCs.

EPA is requiring covered entities in the fire suppression sector to provide data on HFCs to the Agency. The fire suppression industry is familiar with data collection and reporting, as some of the entities in this industry are voluntarily reporting data to HEEP as mentioned in section IV.F.2.b of this preamble. Relevant reporting entities covered under this requirement include entities that perform first fill of equipment, service (e.g., recharge) equipment and/or recycle regulated substances. Relevant entities include companies, such as equipment manufacturers, distributors, agent suppliers, or installers that recycle regulated substances. Records related to the fire suppression sector must be maintained for three years. Specifically, the covered entities must submit a report to the Agency annually covering the prior year's activity from January 1 through December 31. The first annual report must be submitted to the Agency on February 14, 2027, and subsequent annual reports must be submitted by February 14 of each subsequent year. Each annual report must be submitted electronically, using the Agency's applicable reporting platform. Each annual report must contain basic identification information (i.e., owner name, facility name, facility address where equipment is located) and the following information for each regulated substance:

- The quantity of material (the combined mass of regulated substance and contaminants) sold for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment;
- The quantity of material (the combined mass of regulated substance and contaminants) in inventory onsite for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment broken out by recovered, recycled, and virgin;
- The total sold for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment;
- The total mass in inventory onsite for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment broken out by recovered, recycled, and virgin; and
- The total mass of waste products the reporting entity sent for disposal, along with information about the

disposal facility if waste is not processed by the reporting entity.

Covered entities must maintain an electronic or paper copy of the fire suppression technician training as discussed in section IV.F.2.d, and EPA can request to view a copy of the training on an as needed basis. EPA is also requiring facilities to document that they have provided training to personnel. For example, local personnel records could be annotated, indicating where and when the training occurred. Alternatively, records could be centralized. Where EPA established requirements for recordkeeping, the Agency is requiring that the records be maintained for three years in either electronic or paper format.

As discussed in section IV.F.2.e, EPA is requiring that covered entities maintain records documenting that HFCs are recovered from the fire suppression equipment before the equipment is sent for disposal, either by recovering the HFCs themselves before sending the equipment for disposal or by leaving the HFCs in the equipment and sending it for disposal to a facility (e.g., fire suppression equipment manufacturer, distributor, or a fire suppressant recycler). Such records must be maintained for three years.

The recordkeeping and reporting requirements in this action do not change any recordkeeping and reporting requirements for fire suppressant recycling per 40 CFR 84.31(j) (Subpart A) and EPA is not reopening or revisiting those requirements through this action. If any entity is reporting information to EPA under Subpart A that is also required under the reporting provisions established in this final rule at 84.110(g), EPA will consider the information reported under Subpart A in evaluating whether the corresponding reporting obligations under this final rule have been satisfied. There is one instance where there is overlap between 40 CFR 84.31(j) and in this final rule at 84.110(g). Under 40 CFR 84.31(j), each recycler of a regulated substance used as a fire suppressant must submit a report containing the quantity of each regulated substance held in inventory onsite broken out by recovered, recycled, and virgin. To the extent the information reported by an entity under Subpart A overlaps with the information that must be reported under provisions established in this final rule at 84.110(g), in lieu of reporting the same information twice, in completing the reporting under 84.110(g) the entity may refer to the corresponding information reported under Subpart A and explain how it satisfies the reporting requirements under 84.110(g).

Comment: A couple of commenters expressed concerns about the requirements for reporting and recordkeeping being onerous and unnecessary. The commenters stated that the current requirements under the Allocation Program provide sufficient information for EPA to track the amount of HFCs being used and recycled for fire suppression. The commenters also claimed that the domestic movement of halons or HCFCs used for fire suppression have had no history of illegal activity, while the high GWPs of fire suppression agents make it unlikely that fire suppression equipment would be used to illegally move HFCs. The commenters also claimed that existing reporting, recordkeeping, and testing requirements under 40 CFR 84.31(j) have been challenging for the industry, to a degree that companies in the sector who previously performed HFC recycling in-house no longer perform that service to avoid EPA reporting requirements. The commenters also stated that if the proposed reporting and recordkeeping requirements take effect, companies may choose to not to install or service HFC-based equipment, which they claimed would work against the stated goal of the AIM Act framework rule to stimulate HFC recycling and could lead to increased HFC emissions. Additionally, the commenters stated that the management of halons in the United States over the last several decades has demonstrated a model of collaboration between industry, government, and users, which the commenters maintained has been accomplished with the necessary reporting requirements on manufacture, import, and export. One of the commenters claimed that the degree of reporting and recordkeeping requirements in the existing requirements and the proposed action makes the regulation burdensome, while bringing no environmental benefit. The commenter claimed this burden would further disrupt the market balance currently allowing for environmentally responsible, circular economy, commercial options. The commenter stated that increasing the burden of recordkeeping and reporting beyond what is currently proven successful would provide no value to EPA or industry, and would add what they characterized as unnecessary complexity to an already challenging situation. The other commenter questioned why EPA needs a report of every HFC-based fire protection system or extinguisher that is sold or serviced in the United States.

Response: EPA acknowledges the time and resources that reporters dedicate to fulfilling reporting requirements. EPA considers these recordkeeping and reporting requirements to be a reasonable approach to assessing compliance with requirements under subsection (h) to help ensure the rules serve their intended purposes of minimizing releases of HFCs from fire suppression equipment. Additionally, the fire suppression industry is familiar with data collection and reporting under HEEP, which helps industry minimize emissions by setting benchmarks, among other things. HEEP supports successful implementation of the elements of the VCOP. EPA acknowledges that the fire suppression industry has been voluntarily reporting under HEEP, however because this reporting is voluntary and managed by a third party, EPA could not reasonably be expected to have complete information in order to accurately assess compliance by individual companies subject to this rule. EPA is not asking for information for every individual piece of equipment, but instead on the quantities of HFCs sold, the quantities in inventory onsite including virgin, recovered, and recycled HFCs, and virgin as well as quantities sent for disposal. This information is similar to information already reported by certain members of the industry on a voluntary basis to HEEP. The recordkeeping and reporting requirements will support compliance and improve the overall understanding of the availability of recycled HFCs used in the fire suppression sector. This information may provide data that is helpful in implementing the regulations and assessing compliance. This information may also help to inform future rulemakings under the AIM Act. Consistent with EPA's approach under other AIM Act programs, EPA intends to share data publicly. Additionally, these requirements are limited to entities that perform first fill of equipment, service (e.g., recharge) equipment and/or recycle regulated substances. Relevant entities include companies, such as equipment manufacturers, distributors, agent suppliers, or installers that recycle regulated substances. These covered entities are in the same categories as those that provide information on a voluntary basis to HEEP (i.e., in 2020, 16 companies reported to HEEP). As a result, the Agency disagrees with the commenters' assertion that recordkeeping and reporting would bring no environmental benefit. Under 40 CFR part 84, subpart A, information is collected for the purposes related to

the Allocation Program and requested from fire suppression recyclers only. EPA is requesting information from covered entities under this provision to account for the management of HFCs and to minimize releases in the fire suppression sector. EPA intends to limit to the extent practicable duplicative burden between part 84 subparts A and C by using the same reporting systems. If there are any duplicative requirements, entities would only report once. As noted in section II.B of this preamble, recordkeeping and reporting under the AIM Act are also supported by section 114 of the CAA, which applies to the AIM Act and rules promulgated under it as provided in subsection (k)(1)(C) of the AIM Act.

Comment: Another commenter stated that fire suppression systems can accidentally be triggered to release the regulated substance (e.g., electronic failure) and are not situations of intentional release or releases due to failure to maintain the system. The commenter suggested that EPA require, under 40 CFR 84.110(g), that the owner/operator maintain documentation for three years from the date of release of any accidental releases of a regulated substance from a fire suppression system that was not a result of failure to maintain the system. The commenter also requested that EPA specify the address or location where to send the report requested in 84.110(g).

Response: EPA acknowledges the suggestion for including the date of release of any accidental releases of a regulated substance from a fire suppression system that was not a result of failure to maintain the system. EPA understands that accidental releases in these fire suppression systems are relatively rare, and any releases are typically addressed quickly due to the nature of the specialty equipment these fire suppression systems are protecting. For these reasons, EPA is not finalizing such a requirement because the Agency does not plan to use this information at this time.

Reports requested in 84.110(g) must be submitted electronically using the Agency's applicable reporting platform.

G. What requirements is EPA establishing for handling disposable cylinders?

1. Requirements for Disposable Cylinders

EPA proposed to require that disposable cylinders containing HFCs and that have been used for the servicing, repair, or installation of refrigerant-containing equipment or fire suppression equipment must be sent to

an EPA-certified reclaimer or a fire suppressant recycler. EPA also proposed that these entities (i.e., reclaimers and fire suppressant recyclers) must remove all HFCs, including any remaining amount after the cylinders are considered empty for servicing, repair, and installation purposes (e.g., the heel), prior to discarding these cylinders. The Agency proposed a compliance date of January 1, 2025, for requiring that disposable cylinders be sent to a reclaimer or fire suppressant recycler and for the removal of HFCs from disposable cylinders. EPA also proposed that the remaining heel in containers that have been used in the servicing, repair, or installation of equipment would not be considered a virgin regulated substance. Additionally, EPA requested comment on an alternative approach that would involve requiring the final processor of a disposable cylinder to ensure that all regulated substances, including the remaining heel, have been recovered prior to final disposition of the cylinder; or a combination of the lead proposal and this alternate approach. Related to the alternative approach, EPA discussed the consideration of recordkeeping requirements that would be necessary for the alternative approach and requested comments on other relevant factors such as the level of vacuum needed to ensure proper evacuation of the heel and information on recovery machines available to perform the heel removal. EPA also requested comment broadly on the current channels by which disposable cylinders are transported to have the heels removed.

EPA is finalizing aspects of the proposal, with modifications, after consideration of the comments and information received on the proposed rule. First, EPA is requiring that disposable cylinders that contain HFCs and that have been used for the servicing, repair, or installation of refrigerant-containing equipment or fire suppression equipment must be sent to a reclaimer, fire suppressant recycler, final processor, or refrigerant supplier for removal of the heel. EPA is also requiring that the removed heel must be sent to an EPA-certified reclaimer for further processing. In the case where disposable cylinders contain a heel of an HFC refrigerant that has flammability characteristics (i.e., class 2 or class 2L), EPA is finalizing that final processors or wholesalers/distributors may remove these heels that would be considered ignitable spent refrigerant under 40 CFR part 266, subpart Q, as long as the recovered ignitable spent refrigerant is sent to an EPA-certified reclaimer

meeting the RCRA alternate standards, as described in section IV.H. The Agency is also delaying the proposed compliance date from January 1, 2025, to January 1, 2028, to allow additional time for implementation (as described in subsequent responses to comments).

Finally, the Agency is establishing an alternate approach informed by comments received on the proposed rule for appropriate levels of evacuation of the heel from disposable cylinders. As discussed in response to comments in this section, EPA received comments suggesting an evacuation level of 15 inches of mercury (in-Hg) for disposable cylinders. After consideration of the comments, EPA is establishing an alternate compliance method where a certified technician evacuates a disposable cylinder to a level of 15 in-Hg (relative to a standard atmospheric pressure of 29.9 in-Hg), certifies that they have done so, and provides a certification statement accompanying the evacuated disposable cylinder to the final processor. If these criteria are met, a certified technician may discard the cylinder to a final processor, and the cylinder would not need further processing or be sent to a reclaimer or fire suppressant recycler.¹³⁴ In establishing this alternate compliance method, the Agency does not intend for final processors to accept certification statements from a certified technician if the final processor knows or has reason to know that a certification statement contains falsified information (e.g., if there are clear indications that the heels within a disposable cylinder have not been evacuated properly, such as punctures in the cylinder that would suggest improper venting of the cylinder's heel), it would be inconsistent with the intent of this provision for the final processor to accept those cylinders and the accompanying certification. The certification statement must be signed by the certified technician who removed the heel and accompany each disposable cylinder discarded in this way. If all the disposable cylinders in a shipment were evacuated by the same technician, the technician may provide a single certification that covers each of the cylinders in the shipment. The

certification must include the statement and information as provided in 40 CFR 84.116(e). EPA is also finalizing that a final processor who receives a disposable cylinder being discarded in this way must maintain a record of the signed certification statement for three years.

Comment: Many commenters generally supported the proposed requirements to have disposable cylinders sent to certified reclaimers or fire suppressant recyclers for removal of the remaining heel. Some commenters stated that the requirements would support the goals of subsection (h) aimed at minimizing releases and maximizing reclamation. Many other commenters opposed the proposed requirements with a few commenters requesting that EPA eliminate the requirements from the final rule altogether.

Response: EPA acknowledges the comments in support of these provisions and responds that the Agency is finalizing these requirements with additional flexibilities and a later compliance date to ensure effective and efficient implementation. EPA agrees that these requirements are important for meeting the purposes identified in subsection (h) of the AIM Act and promote increased opportunities for reclamation. As discussed in the proposed rule, heels from used disposable cylinders provide an important source of material that can bolster the amount of refrigerant that can be reclaimed. HFC releases of heels are far more likely to occur from disposable cylinders than from other types of cylinders, and those amounts of HFCs released are not available for reclamation. Comments in opposition of the requirements that were proposed are discussed in more detail in this section.

Comment: Some commenters questioned EPA's authority to require that used disposable cylinders be sent to reclaimers or fire suppressant recyclers. One commenter stated that the proposed provision was outside the scope of the authority of subsection (h). The commenter opposed EPA's interpretation of "any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment . . ." to cover practices, processes, and activities that may occur before or after the servicing, repair, disposal, or installation of equipment, stating that the interpretation took a limited grant of authority in subsection (h) to an unlimited grant of authority over the entire HVACR supply chain. The commenter stated that the provisions for shipping disposable cylinders containing heels is beyond the

authority granted in subsection (h)(1), even it can increase refrigerant reclamation. Another commenter stated that the requirement for used disposable cylinders to be sent only to reclaimers or fire suppressant recyclers was arbitrary and capricious and not adequately justified and that EPA did not properly consider others in the supply chain that could remove the heel from disposable cylinders. Another commenter stated that the authority under subsection (h) does, in fact, allow EPA to establish this provision, as it aligns with the statutory language in subsection (h).

Response: EPA agrees with the commenter's conclusion that this provision aligns with EPA's authority under subsection (h) and disagrees with the comment asserting that EPA is interpreting an unlimited grant of authority of the HVACR supply chain under subsection (h). As described above in this notice and in the proposal, subsection (h) of the AIM Act directs EPA to promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment that involves regulated substances, among other things, for purposes of maximizing reclaiming and minimizing the release of a regulated substance from equipment and ensuring the safety of technicians and consumers. EPA interprets this authority to include the comprehensive practice, process, or activity regarding the servicing, repair, disposal, or installation, including aspects that may occur before or after the servicing, repair, disposal, or installation of the equipment. This interpretation is supported by both the text of the provision and the statutory context in which it appears. With respect to the text, Congress authorized EPA to regulate "any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment" (emphasis added). The term "regarding" is broad and indicates that Congress intended for EPA's authority to encompass not only the actions or events directly involved in the servicing, repair, disposal, or installation of equipment, but also practices, processes, or activities that relate to or concern the servicing, repair, disposal, or installation of equipment. This could include practices, processes, or activities that occur before or after the servicing, repair, disposal, or installation. Similarly, by authorizing regulations to control "any practice, process, or activity," Congress conveyed EPA authority to control actions or

¹³⁴ EPA clarifies that under 40 CFR 261.7(b)(2), a container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric. Where a disposable cylinder that contained a refrigerant with mild flammability characteristics (e.g., class 2 or 2L) is being discarded using the alternate compliance method, evacuating to a vacuum of 15-in Hg would also meet the requirements for an "empty container" under 40 CFR 261.7(b)(2), since the vacuum of 15 in-Hg would be an evacuation level beyond atmospheric pressure.

situations that occur throughout, or at any point, during the relevant practice, process, or activity. This interpretation is also consistent with ensuring that the regulations can fully serve the purposes identified in subsection (h)(1) (“maximizing” reclamation, “minimizing” release, and “ensuring” safety), as EPA may need to regulate actions or situations that occur before or after the servicing, repair, disposal, or installation to achieve these purposes. EPA acknowledges the statutory language to promulgate regulations “as appropriate” to control such practices, processes, and activities. Based on EPA’s interpretation of this provision, subsection (h)(1) authorizes the Agency to develop regulations that include provisions for the handling of HFCs in a disposable cylinder when the cylinder and a portion of the HFCs contained therein were used in the servicing, repair, disposal, or installation of equipment. The use of HFCs in these cylinders is a typical practice during servicing, repair, or installation of equipment and the associated disposal of the cylinder, and typically some HFCs remain in the cylinder after such use, unless steps have been taken to remove them from the cylinder. Accordingly, the disposition of the HFCs remaining in the cylinder is inherent to the use of HFCs in such cylinders in the servicing, repair, disposal, or installation of equipment. Thus, the Agency considers these requirements as establishing appropriate controls for a practice, process, or activity as related to the servicing, repair, or installation of equipment.

Comment: A number of commenters questioned the amount of HFC refrigerant that remains in the heel of disposable cylinders. Some commenters provided information on the amount left in the heels of disposable cylinders based on experience and data. Commenters provided various estimates, including (percentages based on a nominal 30-pound disposable cylinder): 0.1 pounds (~0.33%), 0.3 pounds (1%), 0.5 pounds (~1.67%), 1.25 pounds (~4.16%), and 1.5 pounds (5%). One commenter cited various other estimates including 1.85 percent from CARB, noting this was also corroborated by Heating, Air-conditioning and Refrigeration Distributors International (HARDI), and 0.2 percent to 4.4 percent from Chemours, an HFC producer. The commenter also cited National Refrigerants, a reclaimer, stating that 90 percent of cylinders have a remaining heel of 0.5 pounds (about two percent by weight) or less and that 60 percent have no discernible heel. One

commenter provided sample data from UL testing of an SAE J2788 AC Service Machine, noting the net remaining heel was around 50 grams (~0.1 pounds), and was typical of heels in disposable cylinders used in the MVAC industry. Another commenter stated that around two-thirds of used cylinders are completely empty. Other commenters stated that the remaining heel in disposable cylinders is minimal as contractors and technicians have a strong incentive to use as much refrigerant from disposable cylinders as possible. Another commenter provided data on remaining refrigerant in small cans of automotive refrigerant per CARB’s regulations, with a remaining amount of 4 percent.

One commenter stated that there were inconsistencies in the draft RIA and supporting draft Cylinder Analysis TSD.¹³⁵ Further, the commenter stated EPA did not clearly and consistently identify heel estimates used when assessing potential benefits of the cylinder management requirements. The commenter stated that the proposed rule preamble was not clear in how the heel estimate of 1.25 pounds was concluded, while relevant analyses assumed a heel of 0.96 pounds. The commenter stated that EPA referenced personal communications for the heel estimates but did not make clear the sources of the information or provide them or supporting documentation in the docket for the rulemaking and that other relevant studies are available and could have been used to provide information on concluding an accurate heel estimate. Such studies were provided to EPA in previous comments to the Allocation Framework Rule. The commenter provided studies and related data that they stated could be used to estimate the heel in a disposable cylinder. The commenter also stated that EPA’s assumption that 95 percent of all cylinders are vented is an extraordinary assumption, though 95 percent may be feasible if it is based on the number of cylinders that are not returned to companies after they are sold. The commenter continued to state that there is currently no nationally applicable cylinder take-back program, and licensed professionals who use the cylinders would not be expected to

¹³⁵ EPA further notes that this comment stated that it was incorporating the OMB Pass-Back records in EPA–HQ–OAR–2022–0606–0028 with the stated goal of ensuring that these records would be included within the administrative record for any subsequent judicial review of this rulemaking. EPA responds that section 307(d)(7)(A) of the CAA is clear that the record for judicial review does not contain interagency review materials as described in CAA 307(d)(4)(B)(ii).

return them but, rather, dispose of them properly without illegal venting, such as through recovery of heel with a vacuum pump in the field; in-house refrigerant recovery or recycling; or sending non-refillable cylinders to a reclamation facility. The commenter noted previously available information on rates of cylinder venting.

Response: EPA acknowledges these comments and understands that the estimate of a typical heel in a disposable cylinder may vary. Given the wide variety of estimates from commenters on the amount of heel in a typical disposable cylinder, EPA maintains its central estimate that a typical heel is 4 percent by weight of the cylinder. We have updated the Refrigerant Cylinders: Analysis of Use, Disposal, and Distribution of Refrigerants TSD to more clearly and consistently show this assumption as well as a low and high estimate. In the Economic Impact and Benefits TSD, the Agency also provides a sensitivity analysis using a value of 1.2 percent, as provided by a commenter, which EPA understands to be a possible estimate for the remaining heel in a cylinder. The amount (mass) of an HFC held in a full disposable cylinder varies by HFC, and hence the amount of the heel would vary. Although typical full sizes include 30 pounds (e.g., HFC–134a) and 25 pounds (e.g., R–410A), to be conservative EPA used 24 pounds (e.g., R–404A) as the cylinder size, thus leading to a heel of 0.96 pounds or 0.288 pounds in the sensitivity analysis. As one commenter pointed out, at proposal, EPA had estimated higher heel amounts; this was due to the higher estimates of the charge size of cylinders and has been updated in the Economic Impact and Benefits TSD. EPA further notes that the information on which it was relying for the analyses for the proposed rule was reflected in the draft Cylinder Analysis TSD, which was included in the docket for this rulemaking. As noted, EPA has updated the draft TSD and includes revisions to clarify the source of information that is presented in the TSD and used for relevant calculations. Thus, the relevant information that was considered in developing the proposed rule was available in the docket at the time of proposal. Likewise, the information and data on which the final rule is based is also included in the docket.

In addition to the above sensitivity analysis, EPA performed analyses assuming a much higher number of disposable cylinders, assuming full recovery of a large share of such cylinders, and a combination of all three assumptions. EPA refers to the

Economic Impact and Benefits TSD for additional details and results.

EPA responds to the commenter regarding the venting rate of refrigerant heels in disposable cylinders. EPA is not using the assumption that 95 percent of heels are vented as a basis for its analysis in either the preamble, the Economic Impact and Benefits TSD, or in any other supporting documents. In the Economic Impact and Benefits TSD, EPA provided a cost and emissions reduction analysis for disposable cylinder heels with two venting scenarios: a scenario in which 10 percent of cylinder heels are vented, and a control analysis in which 100 percent of refrigerant heels are vented. See Table K–5 of the TSD. Readers may estimate approximate costs and benefits at different venting scenarios by linearly interpolating between the results of the two scenarios conducted. EPA acknowledges that there are other publicly available estimates of refrigerant venting, including CARB's estimate that 70 percent of disposable cylinders are recycled or disposed of without heel evacuation.

Comment: One commenter expressed concern with the Agency's draft RIA addendum and conclusions regarding sufficiency of the infrastructure necessitated by the proposed new cylinder management and tracking requirements, as well as the time and costs associated with its implementation and broad application across multiple industry sectors; requiring thousands of businesses, including many small businesses, to comply with extensive new obligations on extremely short timelines. The commenter stated that EPA must use relevant data to develop a reasonable estimate of the number of refrigerant cylinders that these thousands of newly regulated entities will be required to manage and track, stating that the assumption that "4.5 million HFC cylinders will be sold in the United States in 2025" represents a substantial underestimation that is not based on, and in fact fails to consider, relevant and credible data in the Agency's possession, including comments on the proposed 2021 NRC Ban and confidential sales data provided to the Agency, as well as data from the United States International Trade Commission. The commenter further stated that the Agency's 4.5 million cylinder estimate only represents the number of 30-pound refrigerant cylinders used annually in the United States, and this estimate does not include 15-pound cylinders, 50-pound cylinders, or any other bulk refrigerant containers that would be subject to the proposed rule's cylinder

management and tracking requirements, noting that without a reasonable estimate of the universe of refrigerant cylinders potentially impacted, EPA cannot assess small business impacts as required by the Regulatory Flexibility Act (RFA) or the cost of the proposed rule's recordkeeping and reporting requirements under the Paperwork Reduction Act (PRA). The commenter urged EPA reevaluate its conclusions in light of the data provided to the Agency throughout the course of multiple cylinder-related rulemakings and to reconsider the cylinder management. The commenter stated that proposed requirements do not appear to be based on a complete and legally sufficient analysis of the best available data, and that EPA may have overstated the environmental benefits of the proposed cylinder management.

Response: EPA acknowledges this comment and reads it as referring to the proposed requirements for container tracking as well as the requirement to remove heels from disposable cylinders. In response to the former, EPA is not finalizing cylinder tracking requirements in this rule. In response to comments on managing the removal of heels from disposable cylinders, please see the response above related to additional considerations and estimates in the Economic Impact and Benefit TSD.

EPA also responds that the requirements for removing the heels from disposable cylinders before they are discarded are being modified from the proposal, based on comments received on the proposal and further considerations. EPA is finalizing additional flexibilities, including allowing the heels of disposable cylinders to be removed at different points in the reverse supply chain (e.g., by a final processor or a wholesaler/distributor). Further, EPA is delaying the compliance date for these requirements from January 1, 2025, to January 1, 2028, to allow for additional time for industry to become familiar with the regulations and secure necessary connections within the reverse supply chain. EPA is also establishing an alternative approach to allow disposable cylinders that are evacuated to a specified level of vacuum to be discarded with an accompanying certification. EPA provides additional details on these requirements in responses throughout this section. Overall, these modifications provide additional flexibilities as compared to the proposed requirements while also helping to achieve the purposes identified in subsection (h) of the AIM Act.

With respect to the number of cylinders that the requirement to remove heels covers, EPA notes that it has used data from the commenter to perform a sensitivity analysis. See the Economic Impact and Benefits TSD for additional details.

Comment: EPA received some comments related to the data collection and tracking of transporting disposable cylinders and the associate heel recovery. Some commenters were opposed and stated that the proposed tracking and data collection requirements were burdensome. Another commenter expressed concerns that the effectiveness of compliance with the requirements to remove heels from disposable cylinders would be lacking absent adequate tracking provisions. Another commenter expressed support for tracking the cylinders until they reach a reclaimer or fire suppressant recycler.

Response: EPA acknowledges these comments. The Agency is not finalizing, as part of this rulemaking under the AIM Act, the proposed provisions for container tracking of HFCs that could be used in the servicing, repair, and/or installation of refrigerant-containing or fire suppression equipment. However, as discussed in this section, the Agency is finalizing provisions to ensure that used disposable cylinders are properly handled and the removed heels are sent to reclaimers. EPA is including flexibilities, as discussed throughout this section, for the removal of the heel from used disposable cylinders. EPA understands that these flexibilities are, in some cases, consistent with current practices for the management of used disposable cylinders to remove the heel, such that entities in the reverse supply chain are capable of removing the heel and consolidating to a recovery cylinder to send to reclaimers. EPA is also requiring that heels removed from used disposable cylinders must be sent to reclaimers, where the used disposable cylinder is not already being directly sent to a reclaimer. Further, the Agency is establishing an alternate approach allowing certified technicians to certify that a disposable cylinder has been evacuated to a specified level of vacuum and the cylinder can be discarded with no further processing.

Comment: Multiple commenters voiced concerns regarding the ability and capacity of reclaimers to process the influx of many disposable cylinders and remove heels. One commenter requested that EPA consider allowing reclaimers to use a batch method of removing the heels from disposable cylinders and report as a net amount, rather than per cylinder. A couple of commenters noted

that reclaimers may not be prepared and have the capacity to handle the volume of incoming disposable cylinders and that the compliance timeline is inadequate. The commenters stated the need for additional storage space for the cylinders and potential investments in transfer, recovery, and crushing and disposal equipment. Some commenters further stated that the associated costs of these types of equipment may ultimately be passed down in the form of charging to accept disposable cylinders. Another commenter stated that the Agency confounded the distinct actions of removal and reclamation, and this requirement to be responsible for removal and reclaiming the material would be burdensome on reclaimers.

One commenter further expressed uncertainty as to whether EPA-certified refrigerant reclaimers have adequate capacity to manage the volume of HFCs that would be required to be reclaimed or whether that capacity can sufficiently increase within the proposed compliance deadline. The commenter cited that the Agency's solicitation of comments on whether to allow recovery by parties other than certified reclaimers suggests its concern that the current 63 EPA-certified refrigerant reclaimers may not be able to manage timely HFC recovery from 4.5 million estimated cylinders. The commenter further stated that the actual domestic refrigerant cylinder market of nearly twice this size will surely create a massive refrigerant recovery bottleneck that will cascade throughout the refrigeration and HVACR supply chain and could undermine the purpose and intent of the proposed rule.

Response: EPA acknowledges the comments related to logistical concerns with handling the influx of disposable cylinders with the proposed requirements. In response to comments stating concerns about reclaimers having capacity, storage space, and other resources to process the influx of disposable cylinders, the Agency notes it is finalizing modifications to the provisions for handling of used disposable cylinders. As explained in this section, EPA is finalizing flexibilities to these requirements that would achieve the goals of subsection (h) of the AIM Act. These flexibilities would also help alleviate the number of disposable cylinders that would be sent directly to a reclaimer to have the heel removed and processed. Among these provisions, EPA is finalizing that used disposable cylinders can be sent to a final processor or back through the reverse supply chain to have the heels removed and consolidated. EPA recognizes these current channels in the reverse supply chain or the waste

distribution chain that make for effective processing of used disposable cylinders and removal of heels for ultimate reclamation or, for fire suppressants, recycling. EPA anticipates that this would reduce the number of individual, used disposable cylinders that a reclaimer receives for heel removal and processing. Further, the Agency is establishing a compliance date of January 1, 2028, as compared to January 1, 2025, in the proposed rule to allow the industry to prepare effectively.

EPA acknowledges there is a value in disposable cylinders and estimates those benefits in the Economic Impact and Benefits TSD. This analysis includes estimated costs for transportation, assumed by truck, as compared to business-as-usual practices. Whether a wholesaler chooses to inventory disposable cylinders that are returned, remove the heels and consolidate them, or expeditiously send them to locations allowed under the final rule, is a business decision; therefore, any value lost due to occupying inventory space is not assessed as doing so is not a requirement in this final rule and EPA does not have information on how to place a value or cost estimate on such inventory space.

In response to the comment about processing removed heels in a batch method as compared to the single cylinder level, EPA views this comment as related to the proposed container tracking requirements. As explained in section I.B, the Agency, at this time, is not taking final action on container tracking requirements, and this rulemaking does not establish reporting requirements for the amount of heels removed by reclaimers at the single cylinder level. Additionally, reclaimers who receive disposable cylinders and remove the heels are not required to record data for each single cylinder received. Reclaimers will continue to report their totals of refrigerant received or reclaimed when reporting under the CAA section 608 programs (40 CFR part 82, subpart F) and the HFC Allocation Program (40 CFR part 84, subpart A).

EPA acknowledges comments related to current reclaimer capacity and meeting supply of reclaimed refrigerants as required to support provisions in this rulemaking. EPA addresses comments related to reclaimed refrigerant supply in section IV.E.2 of this rulemaking. Regarding comments related to uncertainty of reclaimers to process the influx of a volume of HFCs being sourced from heels of disposable cylinders, EPA responds that comments to the proposed rule describe that

reclaimers have the capacity to process the volume of HFCs. EPA is aware of reclaimers expanding capacity volume-wise and increasing capacity of advanced separation technologies to effectively process additional material. EPA notes that comments related to uncertainty of reclaimers' capacity received in this rulemaking were related to processing the influx of disposable cylinders and removing heels. The additional flexibilities being finalized related to the handling of used disposable cylinders help to address these concerns (as discussed in responses in this section).

Comment: EPA received multiple comments related to the distribution chains that would support the movement of disposable cylinders to reclaimers. Some commenters stated that the distribution chains for returning recovered materials, as EPA alluded to in the proposed rule, may have difficulty accommodating the increase in magnitude of disposable cylinders per the proposed requirements, since these distribution chains are typically used more for return of recovery cylinders. Other commenters noted that the existing distribution chains could be used to support the movement of disposable cylinders per the proposed requirements. One commenter stated that in current practices, contractors may already be consolidating recovered material into a recovery cylinder (including heels) before taking them to a distributor. Another commenter stated that there are multiple avenues for refrigerant recovery from cylinders, such as current practices to send disposable cylinders to reclaimers or wholesale distribution-operated cylinder recycling programs, and allowing contractors to recover the remaining refrigerant and be compensated for sending the recovered refrigerant to a certified reclaimer. The commenter noted that while programs for returning disposable cylinders to reclaimers exist, this method for recovery of the heel may be inefficient and rely on proximity to a reclaimer.

EPA received many comments on alternate approaches that shared features with the alternate approaches described in the proposed rule, one of which would allow final processors (e.g., landfill operators, scrap metal recyclers) to be the entity to recover heels from disposable cylinders prior to discarding, and another of which would have allowed more than just reclaimers to recover the heel, while still requiring that all the removed material be sent to reclaimers for further processing. Many commenters were supportive of aspects of the alternate approach in

combination with the proposed requirements. One commenter stated that EPA should consider alternatives to send near-empty disposable cylinders to a local appliance disposal outlet in addition to sending directly to a reclaimer. Another commenter supported the implementation of similar regulations to those for small appliance disposal under CAA section 608, such that a final processor is responsible for ensuring the remaining refrigerant is removed from a cylinder either by them or prior to them receiving the cylinder. Another commenter stated they supported alternative approaches to allowing others in the supply chain to remove heels from disposable cylinders provided the entities have associated reporting requirements for total amounts recovered annually. The commenter further noted that the benefits of the alternate approach could help address any increase in transportation emissions or costs related to shipping disposable cylinders. One commenter stated that the alternate approach matches practices that are already occurring effectively where disposable cylinders are collected by recycling companies, distributors, and appliance recyclers. The commenter further stated that there may be cases where entities send disposable cylinders that contained a unique refrigerant to reclaimers "as is" rather than recovering and mixing refrigerants in a common recovery cylinder. Another commenter stated that another consideration could be for the cylinders to be sent back to the refrigerant company for proper disposal or recycling.

One commenter stated that the alternate approach may also provide benefits for supermarkets, which may not have direct relationships with reclaimers, but rather rely on third-party service providers. The commenter noted the importance of using the existing channels to send disposable cylinders to distributors or suppliers to then be sent to a final processor or reclaimer.

Some commenters discussed other approaches to be considered for the recovery of heels from disposable cylinders. One commenter supported provisions to recover heels from disposable cylinders in general, but stated that certified technicians should be trained and able to recover heels from disposable cylinders before disposal of the cylinders. The commenter noted the efficiency and reduced transportation burden associated with allowing certified technicians or others (e.g., distributors) to remove and aggregate heels to a recovery cylinder for shipping, rather than shipping many individual

disposable cylinders. The commenter stated that EPA should at least conduct a lifecycle analysis of net GHG emissions in various scenarios to understand their environmental impacts. Other commenters stated that EPA could allow any certified technician to recover heels prior to disposal of the cylinder. One commenter also suggested considering associated recordkeeping that could be subject to auditing. The commenter described an approach that would involve contractors and technicians recovering the heels from disposable cylinders prior to disposal and includes suggestions for establishing programs for cylinder returns to wholesalers or distributors. The commenter stated that the approach described could be made less burdensome by extending the program to contractors and disposable cylinder users, in addition to certified technicians, and coordinating with wholesalers, reclaimers, and/or refrigerant suppliers.

One commenter was opposed to the approach to allow a final processor to recover the heel from disposable cylinders, noting this practice could lead to venting remaining heels by metal recyclers or waste disposal facilities. Another commenter, while not opposing the alternate approach, stated it is advantageous to have the disposable cylinders sent to reclaimers, enabling them to promptly remove and reclaim the heel and allowing EPA to gauge success through required reporting.

One commenter stated that establishing collection points, especially in areas with few EPA-certified reclaimers, could help mitigate concerns with costs and logistics, though there may still be some associated costs. Another commenter stated that requiring disposable cylinders to be sent to EPA-certified reclaimers or fire suppressant recyclers would compete for truck space with shipping recovery cylinders that are full of recovered material. Another commenter stated that the logistics and costs of being able to first aggregate heels from disposable cylinders into a larger recovery cylinder would be more efficient, and transporting one larger recovery cylinder would greatly reduce transport of many disposable cylinders.

Response: EPA acknowledges that the current reverse supply chain and waste distribution channels are varied. Many distribution channels for reclaimers are generally more limited to the processing of recovery cylinders to reclaimers, though not exclusively. EPA is also aware that many of these same channels are also currently being used for the transport of disposable cylinders with a

remaining heel. As commenters noted, the current channels are effective, as many contractors or technicians may rely on sending used disposable cylinders to a wholesaler or distributor that consolidates and then sends them for further processing to a reclaimer. EPA is finalizing that disposable cylinders with a heel may continue to be sent through these channels with their intermediate steps to ultimately reach a reclaimer, such as through distributors or wholesalers. EPA recognizes that these current practices can be effective and allowing their continued use for processing of used disposable cylinders provides flexibilities to manage the volume of disposable cylinders being transported for recovery of the heel. The Agency notes that it may be appropriate for the distributor or wholesaler to be the entity that recovers and consolidates the heels from disposable cylinders, recognizing the improved logistics of consolidating heels to a single recovery cylinder. Where this practice may be occurring, EPA anticipates that the distributor or wholesaler has demonstrated the capability to remove all of the heel from the disposable cylinder prior to discarding. EPA expects this is reasonable, as commenters have stated this is a common practice that is currently occurring for the processing of a used disposable cylinder. Further, EPA anticipates that distributors or wholesalers that are performing this practice recognize the value in the removed heel that can be sent to a reclaimer.

In this action, EPA is adopting portions of the alternative approach; specifically, EPA is finalizing an option for used disposable cylinders to be sent to final processors (e.g., landfill operators, scrap metal recyclers, etc.) for removal of the heel. As noted earlier in this response, EPA is also finalizing that the reverse supply chain may be utilized for the transport of used disposable cylinders to have the heel removed (e.g., sent to a distributor or wholesaler capable of removing the heel). EPA is establishing requirements that heels removed by final processors or distributors/wholesalers must be sent to a reclaimer or fire suppressant recycler. The added flexibilities should allow those with used disposable cylinders to have additional options for the proper handling of such cylinders. In general, the Agency anticipates that the added flexibility will provide access to discard used disposable cylinders at locations in closer proximity to contractors and

technicians, reducing transportation¹³⁶ costs and emissions associated with disposing the used cylinders. Final processors may already be receiving small appliances (e.g., less than five pounds of refrigerant) and consistent with the regulations promulgated under CAA section 608, may already be recovering these refrigerants per those requirements and sending them for reclamation per those requirements. Further, where used disposable cylinders have been sent for processing by a final processor or a distributor or wholesaler, the removed heels would be consolidated into a common recovery cylinder. As commenters stated, this practice could help to improve logistics related to truck space for shipping materials to a reclaimer or fire suppressant recycler for further processing. Therefore, EPA is finalizing these flexibilities for sending the disposable cylinders to the reclaimers, which are intended to result in the proper removal of the heel and to ensure that the HFCs from removed heels are sent to reclaimers or fire suppressant recyclers for further processing and reuse.

EPA acknowledges other comments that suggest that a certified technician be allowed to remove the heel from disposable cylinders. As described more fully in a response later in this section, EPA is finalizing an alternate approach where certified technicians may certify that a heel has been removed from a disposable cylinder to a vacuum level of 15 in-Hg, relative to standard atmospheric pressure of 29.9 in-Hg. In this case, a used disposable cylinder certified to have been evacuated to a vacuum level of 15 in-Hg may be discarded to a final processor without further processing. This alternate approach being finalized by the Agency helps to ensure the contents of disposable cylinders are effectively used and the remaining heel is negligible before the cylinder is discarded.

EPA acknowledges the comments suggesting establishment of collection points for used disposable cylinders to promote further organization for the recovery of heels. The Agency agrees that collection points could be an effective avenue for facilitating the return of disposable cylinders to entities capable of properly removing the heel and disposing of them. EPA is aware of reclaimers that offer services such as collection sites for returning recovered refrigerant, which may include

returning used disposable cylinders. The Agency sees these collection facilities and practices as appropriate avenues for discarding cylinders and proper heel removal, so long as they are in compliance with all regulatory requirements, including those being established in this rulemaking.

Finally, EPA is establishing a compliance date of January 1, 2028, which is three years later than the proposed compliance date. The later compliance date will allow additional time for the distribution networks to be established and allow industry to set up necessary contracts and logistics for the transport of used disposable cylinders and the recovery of the remaining heels.

Comment: Many commenters expressed concerns regarding the logistics related to the proposed requirements and consideration of the net benefits (costs and GHGs emissions avoided) when comparing the potential costs and emissions related to transporting the disposable cylinders to reclaimers or fire suppressant recyclers. Some commenters stated that the transportation of the disposable cylinders would incur costs and require complex logistics. The commenters stated that the contractors or technicians using the disposable cylinders may not be located near an EPA-certified reclaimer or a fire suppressant recycler and would be required to travel further than they normally do to dispose of a used cylinder. Further, the commenters stated that the logistics of transporting and handling the used disposable cylinders would require additional labor and coordinating with reclaimers or fire suppressant recyclers within their operating hours. One commenter noted that labor shortages are present in the industry and there may be a challenge in these requirements competing with other revenue-generating activities. Another commenter stated that shipping disposable cylinders to reclaimers is inefficient and noted that others in the supply chain are also capable of removing the heel properly per AHRI Guideline Q. Other commenters stated that the emissions associated with transporting disposable cylinders for heel recovery may exceed those avoided by recovering the heel, and the associated costs may outweigh the value of the recovered refrigerant. Further, other commenters stated that associated costs for collecting disposable cylinders could end up getting passed on to contractors or technicians and then further passed on to customers. Additional commenters expressed concerns about wholesalers' storage space for used disposable cylinders that

they would accept to then be sent to a reclaimer.

Response: EPA acknowledges these comments on the logistics of this provision and responds that the Agency is finalizing modifications that would allow for additional flexibilities for proper handling of used disposable cylinders. The final rule allows for additional avenues for the transport of used disposable cylinders and the removal of the heel; for example, as described in this section, sending used disposable cylinders to a final processor or through the reverse supply chain (e.g., distributors or wholesalers) for the removal of the heel to be sent to a reclaimer or fire suppressant recycler. EPA acknowledges the importance of the reverse supply chain and waste distribution chains and the capability of distributors and wholesalers to remove heels or otherwise facilitate the transport of the disposable cylinders to a reclaimer, fire suppressant recycler, or final processor for proper heel recovery and cylinder disposal. These additional avenues provide flexibility and improved logistics for returning disposable cylinders. The Economic Impact and Benefits TSD accompanying this rulemaking provides additional detail on costs and considerations of logistics described in these comments. While comments noted that a person may have limited access to returning a disposable cylinder to a reclaimer or fire suppressant recycler as proposed, it is likely that person would have access to a distributor, wholesaler, or final processor where they can transport the disposable cylinder. Further, this additional accessibility includes the consideration of proximity and other logistics, such as cutting down on the overall number of disposable cylinders that would be in transit. These considerations would reduce the overall transportation distance needed to bring these disposable cylinders to proper disposal and the number of trips, by allowing the consolidation of heels by other entities in the distribution chain. Thus, overall emissions associated with transportation of the disposable cylinders would be reduced. Further, EPA is aware that some reclaimers operate collection sites or offer services to pick up recovered refrigerant, which could be an additional avenue that provides a closer cylinder return option for returning disposable cylinders to reclaimers.

Allowing the use of the typical avenues for processing disposable cylinders (e.g., through distributors or wholesalers) and the inclusion of the alternate approach to allow final processors to recover heels and dispose

¹³⁶ EPA addressed transportation related costs in the draft Economic Impact and Benefits TSD and further addresses such costs in the Economic Impact and Benefits TSD accompanying this final rule.

cylinders would also alleviate concerns related to labor and coordination with reclaimers to accept cylinders. These flexibilities would make use of existing avenues to transport and process disposable cylinders and remove heels as they are sent along to reclaimers or fire suppressant recyclers for further reprocessing. EPA recognizes that factors such as available labor will be a consideration for covered entities as they decide among the expanded available compliance options on removal of heels and proper discarding of disposable cylinders. EPA is aware that reclaimers often buy back recovered refrigerant, and the Agency expects that this practice would also be relevant to returned disposable cylinders with remaining heels or with heels that have been recovered and consolidated from disposable cylinders. Others may choose to send cylinders to final disposal entities. Reclaimers may choose to expand the use of collection points or work with distributors. The final rule provides additional flexibility while still increasing the removal of heels from disposable cylinders for further reclamation.

Related to storage of flammable refrigerants at wholesaler facilities, as discussed in section IV.H, EPA is finalizing requirements that allow final processors or those in the reverse supply chain (e.g., distributors or wholesalers) to manage ignitable spent refrigerant removed from disposable cylinders under the finalized RCRA alternative standards, which include emergency preparedness and response requirements to address the risk of fire from the storage of flammable refrigerants. As part of compliance with the RCRA alternative standards, final processors or those in the reverse supply chain (e.g., distributors or wholesalers) that remove heels of ignitable spent refrigerants are required to send the materials to an EPA-certified reclaimer that is in compliance with the RCRA alternative standards. The criteria of the RCRA alternative standards are such that handling of these used cylinders is done so properly and safely.

Comment: One commenter recommended the Agency withdraw the proposed requirements for disposable cylinders and consider re-proposing in a separate action.

Response: EPA responds that the Agency is finalizing these requirements with a later compliance date and increased flexibility for achieving the outcome. The Agency notes that recovering the heels from disposable cylinders is an important opportunity to help achieve the guiding goals of subsection (h) to minimize releases and

maximize reclaim. The heels in disposable cylinders provide an important source of recovered refrigerant that will be necessary to help support the supply of reclaimed HFCs as the phasedown progresses and the required uses of reclaimed HFCs per this rulemaking become effective.

Comment: EPA received multiple comments about the proposed compliance dates for these requirements. Some commenters stated that the proposed compliance date of January 1, 2025, would be difficult to meet. One commenter stated that the compliance date should be no earlier than January 1, 2028, due to supply chain constraints and new processes and equipment needed in the supply chain. Another commenter stated that contracts that are already in place would need to be revised or established per this provision, but could not be done so until the regulation is final. Setting up these contracts would take longer than the anticipated time between the regulation being finalized and the proposed compliance date of January 1, 2025. The commenter suggested that the compliance date be 18 months from the final regulation being published in the **Federal Register**. Another commenter stated that these provisions should not be in effect until reclaimers are able to sufficiently secure the resources (e.g., recovery equipment, storage/warehouse space) and logistics (e.g., agreements with scrap metal recyclers to accept the empty disposable cylinders) needed for implementation. The commenter stated that this is not practical in terms of the proposed compliance date.

Response: EPA acknowledges these comments and considerations. Consistent with commenters' suggestions, the Agency is finalizing a later compliance date. The Agency is establishing a compliance date of January 1, 2028, with these logistical and implementation challenges in mind. The delayed compliance date should allow those affected in the transport of disposable cylinders and the reclaimers and fire suppressant recyclers that receive the cylinders to develop the infrastructure and business relationships needed to comply with the more flexible approach in the final rule.

Comment: One commenter expressed support for the Agency's proposal that the remaining heel in disposable cylinders not be treated as virgin material, noting that residual material may deviate from specifications and that recovered residual material should not be exempt from any current reclaimer reporting requirements. Another commenter stated that the remaining

heel seems as though it would still be virgin refrigerant. The commenter stated that a reclaimer could recover and verify the condition of the refrigerant. Further, the commenter stated that the recovered heels could be an additional stock of virgin material available to the market.

Response: EPA acknowledges these comments and, as explained in section IV.A.2, is revising the definition of "virgin regulated substance." EPA is not including an exclusion to the definition for recovered heels from containers. The Agency is, however, finalizing to not consider recovered heels towards the total virgin percentage in reclaimed HFCs, as described in section IV.E.2. As EPA understands, the removed heels from disposable cylinders may be recovered into recovery cylinders for consolidation. While best practices would dictate that the one type of HFC or HFC blend is recovered into a recovery cylinder, this may not always be the case. Removed heels may end up in a recovery cylinder containing one or more other substances. In the case reclaimers are the ones to remove the heels from used disposable cylinders, they will typically reprocess the recovered heels to ensure the recovered materials are brought to the required purity specifications for reclaimed refrigerants.

Further, the Agency notes that material recovered and reclaimed from disposable cylinders must be reported under current reclaimer reporting requirements (i.e., reporting per 40 CFR part 82, subpart F and 40 CFR part 84, subpart A). Heels directly removed by reclaimers, but not yet reclaimed, are considered as material received and should be reported as such under current reporting for material received by reclaimers. Likewise, for fire suppressant recyclers, any heels directly recovered, but not yet recycled, should be reported as recovered material per the reporting requirements established in this rulemaking (see section IV.F.2.f).

Comment: One commenter stated that a ban on disposable cylinders would have been more effective for reducing releases and maximizing the reclaim of regulated substances. Another commenter stated that EPA improperly alluded to having the statutory authority to reinstate a ban on non-refillable cylinders by stating in the proposed rule that the Agency is "not at this time proposing" to ban non-refillable cylinders.

Response: EPA acknowledges these comments. The Agency did not propose to ban the use of disposable cylinders in this rulemaking and reiterates that it is not establishing such a ban in this final rule. The statement in the proposed rule

that EPA was “not at this time proposing” to establish a prohibition like the one at issue in *HARDI v. EPA*, 71 F.4th 59, 68 (D.C. Cir. 2023) was intended to describe the Agency action under consideration and how it differed from the prohibition in the Allocation Framework Rule. In the proposal, the Agency acknowledged that the prohibition had been vacated in the *HARDI* decision, as the court found that EPA had not cited adequate authority to support it. Further, as noted in response to a comment below, the Agency is acting consistent with the *HARDI* decision. Because the Agency did not propose and is not finalizing such a ban as part of this action, it need not address whether it would have authority to do so here. EPA notes that the provisions to require removal and reclaim of heels from disposable cylinders are effective to help mitigate the release of the remaining heel to the atmosphere while providing a source of recovered refrigerant to be available for reclamation.

Comment: One commenter suggested that the requirements for disposable cylinders be expanded to refillable cylinders as well. The commenter noted potential issues of not requiring that refillable cylinders be handled by reclaimers or have required heel recovery, which included potential venting or discarding of the refillable cylinder improperly.

Response: EPA acknowledges this comment and understands the value of ensuring removal of the refrigerant left in heels of refillable cylinders. EPA notes that the risk of venting heels and improper management after use is more common to disposable cylinders, given they are discarded and not reused. Refillable cylinders are refilled and reused, so a requirement to remove refrigerant heels is unnecessary if the cylinder is being refilled with the same refrigerant. In cases where the refillable cylinder would be filled with a different refrigerant, the remaining refrigerant would need to be properly removed to ensure the cylinder was completely emptied before refilling with a different refrigerant, which EPA understands is a standard practice to avoid mixing refrigerants in a refillable cylinder. Thus, EPA notes these requirements are more appropriate for disposable cylinders.

Comment: One commenter mentioned that the proposal was unclear about who is responsible for sending the disposable cylinder to a reclaimer and asked if it was the equipment owner/operator or a contractor.

Response: EPA is establishing requirements based on the cylinders

that have been used in the servicing, repair, or installation of refrigerant-containing equipment or fire suppression equipment. Ultimately, the responsibility would likely fall on the person using or managing the disposable cylinder of refrigerant or fire suppressant. In most cases, the technician or contractor performing the process, practice, or activity related to servicing, repair, or installation is the user of the disposable cylinder. In other cases, the contractor or technician may report to the location (e.g., a supermarket) that manages its own supply of refrigerant in disposable cylinders. In this case, the responsibility of sending the disposable cylinder may fall on the equipment owner/operator; however, they may arrange agreements with the contractor or technician to be the person sending the disposable cylinder. The logistics of sending the disposable cylinder may depend on the different practices that are used. In the case one of these entities has a working business relationship with a reclaimer, it would be feasible for that entity to manage sending the disposable cylinders to a reclaimer. In other cases, it may be more logistical to have the person who purchases the refrigerant be responsible for the return of the disposable cylinder if they typically are already returning disposable cylinders to their wholesaler or distributor, who would then be responsible for returning the removed heels or disposable cylinders to a reclaimer. Finally, as described above, EPA is finalizing, in conjunction, aspects of the alternate approach to allow disposable cylinders to be sent to final processors for the heel removal, and EPA is also finalizing that used disposable cylinders may be transported through the reverse supply chain (e.g., a distributor or a wholesaler) for the removal of the heel. A contractor, technician, or an equipment owner/operator may wish to establish agreements with a final processor or utilize any existing business relationships they have with distributors or wholesalers to manage the disposable cylinders for heel removal and ultimately sending the removed heels to reclaimers or fire suppressant recyclers.

Comment: One commenter stated that when recovery machines are used for refrigerants, the refrigerant lubricates the machines; however, this lubrication will not occur in a machine strictly doing heel removal, and such a machine will have a shorter lifespan.

Response: EPA is aware that recovery machines are used in practice to remove refrigerant from equipment and can be used to remove heels from disposable

cylinders. EPA assumes that a recovery machine will be used for each of these practices, and not strictly one or the other. Further, the Agency anticipates that recovery machines will have proper maintenance to ensure that they are running efficiently and are properly operated throughout their useful lifetime.

Comment: One commenter stated that the proposed regulatory text contained conflicting language about the ownership of recovered refrigerant, surplus refrigerant, and disposable containers with heels. The commenter states that the language should be clarified to not exclude companies important to the supply chain that purchase or accept recovered gas or salvage and recycling companies.

Response: EPA acknowledges this comment. The Agency did not intend to propose to limit so that only one avenue (i.e., sending used disposable cylinders to reclaimers or fire suppressant recyclers) would be available to send disposable cylinders to reclaimers or fire suppressant recyclers. EPA is aware of and has reviewed comments on the significance of other components of the reverse supply chain (e.g., distributors or wholesalers) to the transport of disposable cylinders to reclaimers and fire suppressant recyclers. The Agency also notes that it is finalizing provisions to allow the used disposable cylinders to be sent to a final processor or through the reverse supply chain for removal of the heel and ultimately sending the recovered material to a reclaimer.

Comment: Two commenters stated that the Agency should define when a cylinder is considered empty and is considered to no longer contain a regulated substance, which could reduce the need to send all disposable cylinders for heel removal. One such commenter suggested that a disposable cylinder could be considered empty when the cylinder approaches atmospheric pressure, as consistent with RCRA regulations; and that the pressure of the cylinder would be documented. Further, the commenter stated that EPA should state in the regulation how a reclaimer would determine that all remaining contents of a disposable cylinder have been removed, and if there is a specified pressure level that should be met. The other commenter stated that EPA must be clear by what is meant to remove all substances from a cylinder, noting current requirements for removing refrigerants from equipment to acceptable levels.

Other commenters suggested requiring that heels from disposable cylinders be evacuated to a level of a minimum 15 in-Hg. One commenter

stated that EPA could require records be kept for anyone evacuating a cylinder, including quantity of cylinders evacuated and disposed of by refrigerant type.

Response: EPA acknowledges this comment and understands that the industry is seeking clarity on a finite specification of the required level of heel removal from a disposable cylinder. EPA notes that there are longstanding requirements under 40 CFR part 82, subpart F, for evacuation levels of refrigerants from appliances using certified recovery machines. These requirements include evacuating to various levels of vacuum on appliances depending on the types of appliances and range from 0 to 15 in-Hg. EPA is also aware of AHRI Guideline Q on recovery and proper recycling of refrigerant cylinders.¹³⁷ AHRI Guideline Q defines an empty state for disposable cylinders as being evacuated to a vacuum of 15 in-Hg (relative to a standard atmospheric pressure of 29.9 in-Hg). EPA is not establishing a specified level of evacuation for disposable cylinders in this rulemaking. However, EPA is establishing an alternate compliance option that makes use of the evacuation level described in AHRI Guideline Q. Where a used disposable cylinder is evacuated to a level of 15 in-Hg (relative to a standard atmospheric pressure of 29.9 in-Hg), a person may discard of the cylinder, and the cylinder does not require further processing or need to be sent to a reclaimer or fire suppressant recycler, if they provide a certification statement during transport to a final processor. EPA is aware that the certified recovery machines are capable of achieving the level of vacuum of 15 in-Hg to remove the heels from disposable cylinders. Where a cylinder is not evacuated to 15 in-Hg or a certification is not provided, the requirements for sending a disposable cylinder for heel removal to a reclaimer, fire suppressant recycler, or final processor or through the reverse supply chain apply. In addition, in the case of disposable cylinders containing ignitable refrigerant, such cylinders must meet the RCRA definition of empty container¹³⁸ in 40 CFR 261.7 or

be managed under the applicable RCRA standards. EPA is assessing these comments and considering a separate rulemaking as related to comments requested in the ANPRM for considerations for technicians.

Comment: While emphasizing *HARDI v. EPA*, one commenter expressed concern that EPA has yet to amend the CFR in accordance with the D.C. Circuit's binding vacatur, and indicated the absence of any conforming revisions to the CFR creates significant uncertainty throughout the industry.

Response: EPA responds that any action in response to *HARDI v. EPA* is outside the scope of this rulemaking, and thus comments related to such action require no response. For purposes of public awareness, the Agency notes that it is acting consistent with the *HARDI* decision and is not implementing or enforcing the QR code and tracking requirements for all cylinders containing HFCs found at 40 CFR 84.23. EPA has prepared a rulemaking (89 FR 73588, September 11, 2024) to remove this requirement from the CFR.

Comment: One commenter provided alternate considerations to address concerns of heel emissions from disposable cylinders. The commenter described their experience in cylinder design and adaptation for class A2L refrigerants, noting a resealable pressure relief valve and left-handed threads to avoid inadvertent connection to a refrigerant with flammability characteristics. Further, the commenter proposed equipping disposable cylinders with a resealable pressure relief valve to prevent fugitive emissions. The commenter also stated that disposable cylinders could be redesigned with a redundant pressure-tight seal to prevent venting by using a self-sealing valve that controls gas flow and could prevent venting. The self-sealing valve would be similar to that for small cans of automotive refrigerant. The commenter also suggested developing and deploying equipment for heel recovery and preparation of disposable cylinders for disposal. The commenter states that it may be possible to reduce venting of heels by making heel recovery and cylinder recovery easier and less time consuming. Beyond the cylinders, the commenter suggested other means of addressing venting heels, including the development of a disposable cylinder buyback program,

is being discarded using the alternate compliance method, evacuating to a vacuum of 15-in Hg would also meet the requirements for an "empty container" under 40 CFR 261.7(b)(2), since the vacuum of 15 in-Hg would be an evacuation level beyond atmospheric pressure.

which the commenter states could be more effective than the proposed requirements if left to be led by industry. The commenter also stated options such as heel recovery and recycling programs internal to companies, contractor-led programs where cylinders are evacuated to 15 in-Hg prior to disposal, or programs where refrigerant producers and packagers establish a seller take-back administered at local levels by wholesale customers. Finally, the commenter recommended that EPA consider labeling for disposable cylinders that includes a warning and disposal instructions.

Other commenters suggested that the disposable cylinders could be made of recyclable materials.

Response: The Agency appreciates the commenter's suggestions on considerations for alternative cylinder designs to minimize emissions. EPA intends to evaluate the information provided for any potential future rulemakings. While materials for the disposable cylinders are outside of the scope of this rulemaking, EPA notes that the cylinders are made of steel, which can be recycled.

Regarding alternate considerations beyond cylinder design, EPA appreciates these comments and suggestions. The Agency provided responses to similar suggestions in comment responses in this section. For example, EPA is addressing flexibilities of transporting used disposable cylinders to reclaimers and fire suppressant recyclers by including the alternate approach to allow final processors to accept disposable cylinders and recover the heel and establishing that the recovery of the heel may occur at other points in the reverse supply chain (e.g., wholesalers and distributors). These entities are those that are capable of removing the heel from disposable cylinders and thus have access to the proper recovery machines. EPA also notes that while establishing collection sites may improve logistics of returning disposable cylinders for recovery of the heel, the Agency is not the appropriate entity to establish such sites under a regulatory action. Further, EPA is establishing an alternate approach considering an evacuation level of 15 in-Hg, as described earlier in this section. The Agency appreciates the suggestion to establish a labeling requirement for disposable cylinders that would describe safe and proper disposal of the cylinder. EPA is not at this time establishing such labeling requirements, but may consider such a requirement in a future rulemaking. The Agency also notes that the manufacturers of these cylinders could

¹³⁷ Air-Conditioning, Heating, and Refrigeration Institute, Guideline Q: Content Recovery & Proper Recycling of Refrigerant Cylinders, 2016. Available at: https://www.ahrinet.org/system/files/2023-06/AHRI_Guideline_Q_2016_0.pdf.

¹³⁸ EPA clarifies that under 40 CFR 261.7(b)(2), a container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric. Where a disposable cylinder that contained a refrigerant that exhibits the hazardous characteristic of ignitability under 40 CFR 261.21 (generally expected to include all flammable refrigerants; i.e., Class 2, 2L, and 3)

provide additional information on their labels if they choose to do so, as long as that information is not counter to the requirements established by this final rule.

2. Small Cans of Refrigerant

EPA did not propose that small cans¹³⁹ of refrigerant with self-sealing valves (*i.e.*, those that qualify for exemption from the sales restriction under 40 CFR 82.154(c)(ix)) must be sent to a reclaimer for disposal after use. EPA did not receive adverse comments on this proposed approach and is finalizing as proposed. EPA is accordingly not applying the modified requirements for disposable cylinders as described in section IV.G.1 to small cans of refrigerant. EPA edited the regulatory text at section 84.116(g) to clarify that the requirements do not apply to small cans.

H. How is EPA establishing RCRA refrigerant recycling alternative standards?

EPA is finalizing standards under 40 CFR part 266, subpart Q, that apply instead of the full RCRA Subtitle C hazardous waste requirements to certain ignitable spent refrigerants that are recycled for reuse. The purpose of these standards is to help reduce emissions of ignitable spent refrigerants to the lowest achievable level by maximizing the recovery and safe recycling of such refrigerants during the service, repair, and disposal of appliances.

1. Nomenclature Used in This Section

This section uses the term “ignitable spent refrigerant” to describe the refrigerants that are potentially subject to RCRA hazardous waste regulation under the current rules, and that will now be subject to the applicable RCRA alternative standards for refrigerants when recycled for reuse under the final rule. “Ignitability” is one of the RCRA hazardous waste characteristics and is used to identify waste that may pose a risk to human health and the environment due to its potential to cause fires if improperly managed.¹⁴⁰ The characteristic of ignitability is defined in 40 CFR 261.21. As discussed in more detail below in this section, “ignitable” is similar, but not identical,

to the term “flammable” as used in ASHRAE Standard 34–2022. “Spent” is used in the same context as “spent material,” which is defined in 40 CFR 261.1(c)(1) as “any material that has been used and as a result of contamination can no longer serve the purpose for which it was produced without processing.” Thus, an “ignitable spent refrigerant” is a used refrigerant that cannot be reused without first being cleaned, and that exhibits the hazardous characteristic of ignitability per 40 CFR 261.21.

In addition, the terms “reclaim” and “recycle” have different regulatory purposes and definitions under RCRA than under the CAA and the AIM Act. Under RCRA, a material is “reclaimed” if it is processed to recover a usable product, or if it is regenerated. Examples are recovery of lead values from spent batteries and regeneration of spent solvents (see 40 CFR 261.1(c)(4)). Reclamation is one of the four types of “recycling” identified in 40 CFR 261.2(c) that can involve management of a solid waste under RCRA. Materials that are solid waste under RCRA are potentially subject to RCRA hazardous waste requirements.

In contrast, under title VI of the CAA and its implementing regulations, “reclaim” is a more precise term, requiring the reclaimed refrigerant to meet regulatory specifications based on AHRI Standard 700–2016, while “recycle” means to extract refrigerant from an appliance and clean it for reuse in equipment of the same owner without meeting all of the CAA requirements for reclamation. See those definitions in 40 CFR 82.152. Similarly, under the AIM Act, “reclaim; reclamation” is defined in subsection (b)(9) of the Act, and that definition refers to the purity standards under AHRI Standard 700–2016 (or an appropriate successor standard adopted by EPA Administrator) and the verification of purity using, at a minimum, the analytical methodology described in that standard. “Recycle” is not defined in the AIM Act.

To avoid confusion when discussing what regulatory requirements apply to ignitable spent refrigerant, for the purposes of the final RCRA alternative standards, EPA is using the term “recycle for reuse” as defined at 40 CFR 266.601 to mean to process an ignitable spent refrigerant to remove contamination and prepare it to be used again. This umbrella term includes reclaiming ignitable spent refrigerants as defined in the context of the RCRA regulations at 40 CFR 261.1(c), and either reclaiming or recycling refrigerants as defined in 40 CFR 82.152.

“Recycle for reuse” would not include recycling that involves burning for energy recovery or use in a manner constituting disposal (use in or on the land) as defined in 40 CFR 261.2(c), or sham recycling as defined in 40 CFR 261.2(g).

2. Background

On February 13, 1991, EPA promulgated an interim final rule excluding spent chlorofluorocarbon (CFC) refrigerants from the definition of hazardous waste under RCRA when recycled for reuse (56 FR 5910). EPA was concerned that subjecting used CFC refrigerants to RCRA hazardous waste regulations would result in increased venting of these refrigerants, resulting in increased levels of ODS in the stratosphere. As described above in section III.C, EPA promulgated a series of rules implementing provisions under CAA title VI to phase out class I and class II ODS, including CFCs used as refrigerants, and establishing standards applicable to the use, disposal, and recycling of ODS refrigerants and their substitutes. Some of these acceptable substitutes are flammable and likely to exhibit the hazardous waste characteristic of ignitability found in 40 CFR 261.21.¹⁴¹ As described in section I.B, ASHRAE Standard 34–2022 assigns a safety group classification for each refrigerant which consists of two alphanumeric characters (*e.g.*, A2 or B1). The capital letter indicates the toxicity class (“A” for lower toxicity), and the numeral denotes the flammability. ASHRAE recognizes three classifications and one subclass for refrigerant flammability. The three main flammability classifications are Class 1, for refrigerants that do not propagate a flame when tested as per the ASHRAE 34 standard, “Designation and Safety Classification of Refrigerants;” Class 2, for refrigerants of lower flammability; and Class 3, for highly flammable refrigerants, such as certain hydrocarbon refrigerants. ASHRAE recently updated the safety classification matrix to include a new flammability subclass 2L, for flammability Class 2 refrigerants that

¹³⁹ Small cans of refrigerant, that typically contain two pounds or less of regulated substances, are commonly used by individuals to service their own MVACs. This do-it-yourself (DIY) servicing practice is unique to the MVAC subsector within the RACHP sector.

¹⁴⁰ EPA 1980, *Background Document for the Hazardous Waste Characteristic of Ignitability*, May 2, 1980, p.7 <https://www.epa.gov/hw/background-document-hazardous-waste-characteristic-ignitability>.

¹⁴¹ “Flammability” as identified by the ASHRAE standards and “ignitability” as identified by the RCRA 40 CFR 261.21 standard are both intended to capture the potential for a substance to cause fires. However, since the methodology used under these two systems differs, EPA is using “flammability” when describing the ASHRAE standard and “ignitability” when describing wastes that are regulated under RCRA when they meet the ignitable characteristic in § 261.21 and therefore are subject to hazardous waste management requirements. In general, a flammable substance would be presumed to be also ignitable under RCRA unless testing were to demonstrate otherwise.

burn very slowly.¹⁴² Since 2010, EPA's SNAP program has listed a number of flammable substitute refrigerants that have ASHRAE safety classifications of A3 (higher flammability, lower toxicity refrigerants such as propane or isobutane) or A2L (lower flammability, lower toxicity refrigerants such as HFC-32 or HFO-1234yf).

The standard for flammability under ASHRAE Standard 34-2022 does not correspond precisely with the RCRA standards for ignitability found in 40 CFR 261.21, but in general, refrigerants with a flammability Class of 2 or 3 are expected to be ignitable under RCRA. Spent refrigerants with a flammability class of 2L may or may not be ignitable hazardous waste, depending on the specific chemical(s) used in the refrigerant and contamination of the refrigerant during use. Note that even refrigerants that do not exhibit the RCRA characteristic of ignitability as a virgin material could become ignitable with use, especially if contaminated with oil or other lubricants, posing a risk of fire if mismanaged.¹⁴³ Similarly, the flash point of a refrigerant that is a blend of two or more chemicals can change if there is a leak during operation or during recovery and storage, when the refrigerant from multiple appliances is combined, or if the recovery process is incomplete, potentially changing the hazardous waste characteristic of the spent refrigerant when collected.

It should be noted that these ignitable spent refrigerant substitutes do not fall under the 40 CFR 261.4(b)(12) RCRA exclusion for refrigerants, since that exclusion is limited to CFC refrigerants.¹⁴⁴ The applicability of RCRA to flammable refrigerants is also discussed in the 2016 SNAP final rule (81 FR 86799-86800, December 1, 2016). Consistent with that discussion, EPA does not consider incidental releases of spent refrigerant that occur during the service and repair of appliances subject to CAA section 608 to be disposal of a hazardous waste under RCRA. However, ignitable spent refrigerant from commercial and industrial appliances (*i.e.*, non-household appliances) will be classified as hazardous waste and will need to be

managed under the applicable RCRA regulations (40 CFR parts 260 through 270) when recovered (*i.e.*, removed from an appliance and stored in an external container) or disposed of. These requirements include RCRA hazardous waste generator notification and on-site accumulation standards, emergency preparedness and other requirements, hazardous waste manifest and transportation requirements for the ignitable spent refrigerant, and RCRA permit requirements for refrigerant recyclers that store the refrigerant prior to recycling, unless the refrigerants are recycled for reuse under 40 CFR part 266, subpart Q, as described later in this section.

3. Final Alternative RCRA Standards for Ignitable Spent Refrigerants Being Recycled for Reuse

Similar to EPA's concerns expressed in the 1991 rulemaking establishing the CFC refrigerant recycling exclusion, EPA is concerned that applying the full RCRA hazardous waste requirements to substitute refrigerants that exhibit the hazardous characteristic of ignitability would discourage recycling and could result in an increase in releases of ignitable refrigerants, including HFC ignitable refrigerants, contrary to the goals of RCRA. The Agency separately notes that such releases would also be contrary to one of the purposes of regulations under subsection (h)(1) of the AIM Act, which is to minimize releases of HFCs from equipment. Moreover, inadvertently incentivizing releases of refrigerants would be contrary to RCRA section 3004(n), which requires EPA to control air emissions from hazardous waste management, as may be necessary to protect human health and the environment. Finally, the current requirements for recovery of refrigerants under the CAA section 608 rules are more stringent than the recycling requirements under the RCRA 40 CFR 261.6, recyclable materials rules, and help ensure that ignitable spent refrigerants are legitimately recycled for reuse, as well as address the flammability risks posed by ignitable spent refrigerants.

For the reasons stated above, EPA is finalizing standards under 40 CFR part 266, subpart Q, applicable to certain ignitable spent refrigerants that are recycled for reuse that will apply instead of the full RCRA Subtitle C hazardous waste requirements. The purpose of these standards is to help reduce emissions of ignitable spent refrigerants to the lowest achievable level by maximizing the recovery and safe recycling of such refrigerants

during the service, repair, and disposal of appliances.

EPA proposed that 40 CFR part 266, subpart Q, RCRA alternative standards would apply to HFCs and substitutes that are lower flammability (*i.e.*, that do not belong to flammability Class 3). In this final action, consistent with the proposal, EPA is keeping the applicability of the alternative standards to the lower flammability substitutes because of the lower risk of fire from the collection and recycling for reuse of these refrigerants, and the greater market value of these refrigerants, which supports the conclusion that these spent refrigerants will be recycled for reuse and not stockpiled, mismanaged, or abandoned. In the context of hazardous secondary materials recycled under RCRA, EPA has found that a low market value for a reclaimed product can increase the likelihood of mismanagement and abandonment occurring during hazardous waste recycling activities.¹⁴⁵ Lower flammability spent refrigerant means a spent refrigerant that is not considered highly flammable. Highly flammable refrigerants include, but are not limited to the following chemicals: butane, isobutane, methane, propane, and/or propylene. EPA did not receive comments on the proposed definition of "lower flammability spent refrigerant." However, the Agency is modifying the definition in this final rule to provide examples of refrigerants that are considered highly flammable.

a. Comments on the RCRA Alternative Standards and Changes Made in Response to Comments

EPA received 17 public comments on the proposed RCRA alternative standards. All comments were supportive of EPA finalizing alternative standards that are specifically designed for ignitable spent refrigerant being recycled for reuse instead of imposing the standard RCRA Subtitle C hazardous waste requirements on these waste streams. Accordingly, EPA is finalizing these standards largely as proposed.

However, several comments raised concerns regarding applying the speculative accumulation limit to storage of ignitable spent refrigerants at reclamation facilities.¹⁴⁶ As noted in the

¹⁴² ASHRAE Fact Sheet *Update on New Refrigerants Designations and Safety Classification* November 2022. https://www.ashrae.org/file%20library/technical%20resources/bookstore/factsheet_ashrae_english_november2022.pdf.

¹⁴³ S N Kopylov et al 2019 IOP Conf. Ser.: Earth Environ. Sci. 272 022064; <https://iopscience.iop.org/article/10.1088/1755-1315/272/2/022064>.

¹⁴⁴ EPA did not reopen the original CFC refrigerant recycling exclusion and did not request comment on 40 CFR 261.4(b)(12).

¹⁴⁵ U.S. EPA, A Study of the Potential Effects of Market Forces on the Management of Hazardous Secondary Materials Intended for Recycling, November 2006, available at <https://www.regulations.gov/document/EPA-HQ-RCRA-2002-0031-0358>.

¹⁴⁶ See comment numbers EPA-HQ-OAR-2022-0606-0084, EPA-HQ-OAR-2022-0606-0085, EPA-HQ-OAR-2022-0606-0102, EPA-HQ-OAR-2022-0606-0109, EPA-HQ-OAR-2022-0606-0111, EPA-

proposal (88 FR 72275, October 19, 2023), restrictions on speculative accumulation have been an important element of the RCRA hazardous waste recycling regulations since they were originally promulgated on January 4, 1985 (50 FR 634 through 637). According to this regulatory provision, the person accumulating the hazardous secondary material must demonstrate that the material is recyclable and that during a calendar year (beginning January 1) the amount of such material that is recycled or transferred to a different site for recycling is at least 75 percent by weight or volume of the amount of the hazardous secondary material present at the beginning of the calendar year (January 1).

Comment: Commenters stated that requiring reclaimers to process 75 percent of these refrigerants within one year would be very challenging for most reclaimers. In particular, commenters noted that due to a very small initial installed equipment base and low equipment service rates in the first years of the HFC phasedown, limiting the accumulation period to a one-year maximum would require processing of extremely small quantities, which would be an inefficient use of reclaimer resources.

Response: EPA notes that there is an existing provision at 40 CFR 260.31(a) that allows facilities to petition EPA for an extension of the speculative accumulation time limit if the applicant demonstrates that sufficient amounts of the material will be recycled or transferred for recycling in the following year. Applicants must follow the procedures in 40 CFR 260.33.

However, given that the potential limitations in the quantities available to be processed would be an industry-wide issue during the first years of the HFC phasedown, EPA agrees with the commenters that a delayed compliance date for the speculative accumulation requirement is warranted. This delayed compliance date is a more efficient use of resources than requiring each affected facility to petition the Agency for an extension and would allow time to build up supply to make reclamation more economical for the reclamation facility.

Accordingly, EPA is delaying the compliance date for the speculative accumulation time limit until the calendar year 2029. Up until January 1, 2029, reclamation facilities may accumulate ignitable spent refrigerants without recycling them for reuse as long as the other requirements of the

alternative RCRA standards are met. The speculative accumulation limits would then begin to apply during calendar year 2029. In other words, by December 31, 2029, reclaimers must reclaim 75 percent of the inventory of ignitable spent refrigerant that was present on-site on January 1, 2029. If they will be unable to meet this deadline, they may submit a petition for an extension under 40 CFR 260.31 using the procedures in 40 CFR 260.33, or they must manage their inventory of ignitable spent refrigerant as hazardous waste.

Comment: One commenter requested clarification on how the new RCRA alternative standards would apply to persons who receive refrigerants from off-site but do not recycle them for reuse.¹⁴⁷

Response: EPA agrees that if a facility receives ignitable spent refrigerant but does not recycle it for reuse, then it should not be subject to the proposed standard that requires off-site facilities to maintain certification by EPA under 40 CFR 82.164. (See 88 FR 72275, October 19, 2023). However, if such a facility stores the ignitable spent refrigerant for more than 10 days in the normal course of transportation,¹⁴⁸ the same requirements regarding speculative accumulation and the risks of fire and explosions that EPA identified in the proposal concerning off-site facilities receiving and accumulating ignitable spent refrigerants would still apply (88 FR 72275–72276, October 19, 2023). Thus, in the final rule EPA is including clarifying language to explain that persons who receive ignitable spent refrigerants from off-site, and are not a transfer facility that stores the refrigerants for less than 10 days before sending the refrigerant to another site to be recycled for reuse must: (1) Meet the emergency preparedness and response requirements of 40 CFR part 261, subpart M; and (2) not speculatively accumulate the ignitable spent refrigerant per 40 CFR 261.1(c). This could include those in the reverse supply chain (e.g., distributors or wholesalers) or final processors who receive disposable cylinders and remove heels and consolidate them before discarding the cylinder (see section IV.G.1).

Comment: Finally, one commenter suggested a number of technical corrections and editorial clarifications

to the proposed regulatory language for the alternative RCRA standards including a suggestion that EPA remove the term “alternative,” since the new requirements are not optional.¹⁴⁹

Response: EPA has made revisions to the language in response to these suggestions. In regard to the comment requesting that EPA remove the description of the new RCRA standards as “alternative,” EPA agrees with the comment that they are not optional for persons who wish to recycle ignitable spent refrigerant for reuse. However, the new standards do provide an alternative to the requirements for hazardous waste disposal at 40 CFR parts 262 through 270, and the term was used extensively in the proposed rule and communications materials. Thus, EPA is maintaining the description of the new 40 CFR part 266, subpart Q, as “alternative standards” to distinguish them from the RCRA hazardous waste disposal standards, but has removed the term from the subpart Q standards themselves. For more information on public comments on the proposed RCRA alternative standards, and EPA’s responses, please see *RCRA Alternative Standards for Ignitable Spent Refrigerants: Response to Comments Document* available in the docket.

b. Scope of the Final RCRA Alternative Standards

The RCRA alternative standards at 40 CFR part 266, subpart Q, apply to HFCs and substitutes that do not belong to flammability Class 3. Class 3 refrigerants are highly flammable refrigerants that include, but are not limited to, any of the following chemicals: butane, isobutane, methane, propane, and/or propylene. The alternative standards are limited to lower flammability substitutes (Class 1, 2 and 2L)¹⁵⁰ because of the lower risk of fire from the collection and recycling for reuse of these refrigerants, and the greater market value of these refrigerants, which supports the conclusion that these spent refrigerants will be recycled for reuse and not stockpiled, mismanaged, or abandoned. In the context of hazardous waste recycled under RCRA, EPA has found that a low market value for a reclaimed product can increase the likelihood of mismanagement and abandonment

¹⁴⁹ See comment number EPA–HQ–OAR–2022–0606–0091 in the docket.

¹⁵⁰ Class 1 refrigerants are nonflammable and generally not expected to be ignitable, and therefore not subject to RCRA requirements. However, if a spent Class 1 refrigerant were ignitable due to contamination with oil or other lubricants, it would be subject to the alternative RCRA standards.

¹⁴⁷ See comment number EPA–HQ–OAR–2022–0606–0152 in the docket.

¹⁴⁸ Facilities that store less than ten days in the normal course of transportation are considered to be transfer facilities as defined in 40 CFR 260.10 and are generally not subject to RCRA requirements. See 40 CFR 263.12.

occurring during hazardous waste recycling activities.

EPA did not receive any comments on the proposed definition of “lower flammability spent refrigerant” but, in order to provide greater clarity and simplify implementation, in lieu of referring to the ANSI/ASHRAE standard, EPA is including in the regulatory definition the list of specific chemicals that are considered Class 3 “highly flammable” refrigerants and therefore are not lower flammability refrigerants.

c. Requirements of the RCRA Alternative Standards

The specific standards EPA is finalizing for ignitable spent refrigerants being recycled for reuse for further use in equipment of the same owner, or by the owner of the recovery equipment in compliance with MVAC standards in 40 CFR part 82, subpart B, are (1) the ignitable spent refrigerants are recovered (*i.e.*, removed from an appliance and stored in an external container) and/or recycled for reuse using equipment that is certified for that type of refrigerant under 40 CFR 82.36 or 40 CFR 82.158; and (2) the ignitable spent refrigerants are not speculatively accumulated as defined in 40 CFR 261.1(c).

The specific standards that EPA is finalizing for facilities receiving refrigerant from off-site to be recycled for reuse are (1) the reclaimer must maintain certification by EPA under 40 CFR 82.164; (2) the facility must meet the applicable emergency preparedness and response requirements of 40 CFR part 261, subpart M; and (3) the ignitable spent refrigerants must not be speculatively accumulated as defined in 40 CFR 261.1(c). These requirements are included as part of the RCRA alternative standard in order to ensure that the ignitable spent refrigerants are legitimately recycled for reuse in a way that is protective of human health and the environment. For facilities that receive ignitable spent refrigerant from off-site and store the refrigerant for more than 10 days and then send the refrigerant on to a reclaimer to be recycled for reuse: (1) The facility must meet the applicable emergency preparedness and response requirements of 40 CFR part 261, subpart M; and (2) the ignitable spent refrigerants must not be speculatively accumulated as defined in 40 CFR 261.1(c).

The requirement that the recovery and/or recycling equipment be certified for that type of refrigerant and appliance under 40 CFR 82.36 (for MVAC systems), or 40 CFR 82.158 (for

recycling for reuse in appliances by the same owner) specifically addresses the ignitability hazard during refrigerant recovery and recycling for reuse at MVAC recycling operations in compliance with 40 CFR part 82, subpart B, or for recycling for reuse in appliances by the same owner. In particular, appendix B4 to subpart F of 40 CFR part 82—Performance and Safety of Flammable Refrigerant Recovery and/or Recycling Equipment—requires all recovery and/or recycling equipment to be tested to meet standards for the test apparatus, test gas mixtures, sampling procedures, analytical techniques, and equipment construction that will be used to determine the performance and safety of refrigerant recovery.

The requirement that the spent refrigerant regulated under the new alternative standards not be speculatively accumulated per 40 CFR 261.1(c) will help prevent over-accumulation, mismanagement, and abandonment of the spent refrigerant. Restrictions on speculative accumulation have been an important element of the RCRA hazardous waste recycling regulations since they were originally promulgated on January 4, 1985 (50 FR 634 through 637). According to this regulatory provision, hazardous secondary materials as defined in 40 CFR 260.10 (which would include ignitable spent refrigerants) are accumulated speculatively if the person accumulating them cannot demonstrate that the material is potentially recyclable. Further, the person accumulating the hazardous secondary material must demonstrate that during a calendar year (beginning January 1), the amount of such material that is recycled or transferred to a different site for recycling is at least 75 percent by weight or volume of the amount of the hazardous secondary material present at the beginning of the calendar year (January 1). Hazardous secondary materials to be recycled must be placed in a storage unit with a label indicating the first date that the material began to be accumulated, or the accumulation period must be documented through an inventory log or other appropriate method. Otherwise, the hazardous secondary material is considered to be speculatively accumulated and not eligible for the alternative standards in 40 CFR part 266, subpart Q.

Facilities that are unable to comply with the speculative accumulation time limits do have the option of petitioning EPA for a variance per 40 CFR 260.31(a), using the procedures in 40 CFR 260.33, to extend the timeframe for one year. However, as noted in the discussion of

public comments in section IV.H.3.a of this preamble, EPA is aware that the availability of ignitable spent refrigerants may be limited during the early years of the HFC phasedown, and accordingly is delaying the compliance date for speculative accumulation at reclamation facilities until calendar year 2029. Therefore, up until January 1, 2029, reclamation facilities may accumulate ignitable spent refrigerants without recycling them for reuse as long as the other requirements of the RCRA alternative standards are met. The speculative accumulation limits would then begin to apply during calendar year 2029. In other words, by December 31, 2029, reclaimers must reclaim 75 percent of the inventory of ignitable spent refrigerants that was present on January 1, 2029. If they will be unable to meet this deadline, they may submit a petition for an extension under 40 CFR 260.31 using the procedures in 40 CFR 260.33, or they must manage their inventory of ignitable spent refrigerants as RCRA hazardous waste.

The requirement that facilities receiving refrigerant from off-site to be recycled for reuse maintain certification by EPA under 40 CFR 82.164 helps ensure that the recycler is experienced in proper refrigerant reclamation techniques and will manage the spent refrigerant in a manner that minimizes releases, with an explicit limit under the CAA section 608 rules of no more than 1.5 percent of the refrigerant released during the reclamation process (see 40 CFR 82.164(a)(3)). The certification requirement also helps with the transparency of the RCRA alternative standards since the list of EPA-certified refrigerant reclaimers is publicly available on EPA’s website.¹⁵¹ In addition, these facilities are certified reclaimers under CAA section 608 and must follow recordkeeping and reporting requirements per 40 CFR 82.164(d) including (1) maintaining records of the names and addresses of persons sending them material for reclamation and the quantity of the material (the combined mass of refrigerant and contaminants) sent to them for reclamation; and (2) reporting annually the quantity of material sent to them for reclamation by refrigerant type, the mass of refrigerant reclaimed by refrigerant type, and the mass of waste products. Finally, EPA-certified refrigerant reclaimers must verify that each batch of reclaimed refrigerant meets the specifications in the regulations (40 CFR 82.164(a)(2)), which

¹⁵¹ EPA-Certified Refrigerant Reclaimers <https://www.epa.gov/section608/epa-certified-refrigerant-reclaimers>. Last updated June 13, 2024.

helps ensure that the reclamation process is legitimate recycling under the RCRA regulations.

EPA notes that reclaimed refrigerant that does not meet the required specifications would be considered an off-specification ("off-spec") commercial chemical product under 40 CFR 261.2(c). If there is an allowable use for the off-spec reclaimed refrigerant and the material is used as an effective substitute for commercial product, it may be exempt from RCRA under the use/reuse provisions of 40 CFR 261.2(e). If the off-spec reclaimed refrigerant goes to further legitimate reclamation, it could also be exempt from RCRA under 40 CFR 261.2(c)(3). If the ignitable, off-spec reclaimed refrigerant cannot be either legitimately reused or further reclaimed, it would need to be managed as a hazardous waste.

EPA further notes that persons who reclaim HFCs that are listed as regulated substances under the AIM Act must meet the recordkeeping and reporting requirements as set forth in 40 CFR 84.31(a) and 84.31(i).

Finally, including the requirement that facilities receiving refrigerant to be recycled for reuse, or that store the refrigerant for more than 10 days before sending it on to be recycled for reuse, must meet the RCRA standards under 40 CFR part 261, subpart M, Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials, addresses the risks posed specifically by ignitable spent refrigerants, which are a subset of hazardous secondary materials.¹⁵² Facilities receiving ignitable spent refrigerants from other parties for recycling for reuse will be subject to this additional emergency preparedness requirement because these third-party recyclers will receive ignitable spent refrigerants from multiple sources and are likely to store greater volumes for longer time periods than companies that recycle for reuse in appliances by the same owner or as part of an MVAC refrigerant recovery and recycling system in compliance with 40 CFR part 82, subpart B. These emergency preparedness and response requirements include maintaining appropriate emergency equipment on-site, having access to alarm systems, maintaining needed aisle space, making arrangements with local emergency authorities, and having a designated emergency coordinator who is

responsible for responding in the event of an emergency. This requirement will help protect human health and the environment in the event of a fire or other emergency at the facility. Under the final rule, all facilities receiving ignitable spent refrigerant from off-site, except for 10-day transfer facilities, must meet the emergency preparedness and response requirements under 40 CFR 261.410 and 40 CFR 261.420, which include general personnel training requirements for facilities (40 CFR 261.420(g)).

4. RCRA Very Small Quantity Generator Wastes

Very Small Quantity Generators (VSQGs) generate less than 100 kilograms of hazardous waste per month and one kilogram or less per month of acutely hazardous waste and are subject to a limited set of Federal RCRA Subtitle C hazardous waste regulations, provided that they comply with the conditions set forth in 40 CFR 262.14. Among those conditions is that the VSQG must either treat and dispose of its hazardous waste in an on-site facility or ensure delivery to an off-site facility listed in 40 CFR 262.14(a)(5). Included in this list is a facility that (1) beneficially uses or reuses, or legitimately recycles or reclaims, its waste; or (2) treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation.

For ignitable spent refrigerant regulated under the new RCRA alternative standards, EPA is finalizing a conforming change to 40 CFR 262.14(a)(5) to require that these refrigerants be sent to a facility that meets the requirements of 40 CFR part 266, subpart Q if sent off-site for recycling. This revision incorporates into the RCRA regulations that VSQGs' ability to send ignitable spent refrigerants for recycling for reuse is limited to facilities that meet EPA's certification requirements in 40 CFR 82.164. This revision does not affect refrigerants not subject to the new RCRA alternative standards (e.g., ignitable spent refrigerants that are not sent off-site to be recycled for reuse).

EPA notes that while this change is more stringent than the current RCRA regulations, VSQGs would experience no additional burden since under the CAA section 608 rules, all reclaimers receiving used ODS refrigerants or non-exempt substitute refrigerants from off-site for reclamation must meet EPA's certification requirements in 40 CFR 82.164.

5. RCRA Regulation of Exports and Imports of Certain Ignitable Spent Refrigerants

The RCRA alternative standards are limited to ignitable spent refrigerants that are recycled for reuse in the United States, and they require that off-site recycling for reuse be performed at an EPA-certified reclaimer per 40 CFR 82.164. Therefore, ignitable spent refrigerants intended for export would not qualify for the RCRA alternative standards, and would instead be regulated under the full RCRA Subtitle C requirements, including the relevant hazardous waste export requirements in 40 CFR part 262, subpart H.

Ignitable spent refrigerants that are imported would qualify for alternative RCRA standards, as long as the imported refrigerants meet the requirements of the RCRA alternative standards, including being recycled for reuse at an EPA-certified reclaimer per 40 CFR 82.164. This provision does not amend, reopen or otherwise affect any of the requirements for regulated substances established under the AIM Act that are codified at 40 CFR part 84, subpart A.

6. Applicability of Alternative Standard in RCRA-Authorized States

Under section 3006 of RCRA, EPA may authorize a State hazardous waste program to operate in lieu of the Federal program within the State. Following authorization, EPA maintains its enforcement authorities, although authorized States have primary enforcement responsibility for their authorized programs. The standards and requirements for state authorization are found in 40 CFR part 271.

Prior to the enactment of the HSWA, an authorized state hazardous waste program operated entirely in lieu of the Federal program in that state. The Federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state. When new, more stringent, or broader Federal requirements were promulgated, the state was obligated to adopt equivalent authorities under state law within specified time-frames. However, new requirements did not take effect in an authorized state until the state adopted such equivalent authorities, and these requirements did not become part of the authorized program enforceable by EPA until EPA authorized them.

In contrast, with the enactment of RCRA section 3006(g), which was added by HSWA, new Federal requirements and prohibitions imposed pursuant to HSWA authority take effect in

¹⁵² Per 40 CFR 260.10, "hazardous secondary materials" means a secondary material (e.g., spent material, by-product, or sludge) that, when discarded, would be identified as hazardous waste under 40 CFR part 261. Ignitable spent refrigerant meets this definition.

authorized states at the same time that they take effect in unauthorized States. EPA is directed by section 3006(g) to implement HSWA-based requirements and prohibitions in authorized States until EPA authorizes equivalent State authorities. While States must still adopt state-law equivalents to HSWA-based requirements and prohibitions to retain final authorization, until the States do so, and EPA authorizes the state-law equivalents, EPA implements and enforces these provisions in authorized States.

Authorized states are required to modify their programs when EPA promulgates Federal requirements that are more stringent or broader in scope than existing Federal requirements. RCRA section 3009 allows the States to impose standards more stringent than those in the Federal program (see also 40 CFR 271.1). If EPA promulgates a Federal requirement that is less stringent or narrower in scope than an existing requirement or of equivalent stringency, authorized States may, but are not required to, adopt a new equivalent requirement regardless of whether or not it is promulgated under HSWA authority.

7. Effect on State Authorization

The RCRA regulations described in this final rule are promulgated under the authority of HSWA and are more stringent than the existing Federal regulations. Thus, the standards will be applicable on the rule's effective date in all States and will be implemented and enforced by EPA until the States receive authorization. These RCRA regulations add a new subpart, Q, to 40 CFR part 266, *Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities*, and are being finalized under the authority of HSWA due to their purpose of reducing air emissions from the management of ignitable spent refrigerants, in accordance with EPA's mandate to control air emissions from hazardous waste management, as may be necessary to protect human health and the environment, per RCRA section 3004(n), which was promulgated under HSWA. In addition, the changes to the VSQG Regulations in 40 CFR 262.14 are being promulgated under RCRA section 3001(d)(4), also a HSWA provision.

The final alternative standard establishes a "cradle-to-cradle" management system for ignitable spent refrigerants being recycled for reuse and includes requirements that are more stringent than the current applicable RCRA recycling requirements in 40 CFR 261.6(c), which exempts the recycling process itself from RCRA regulation.

This final management system includes the requirement that refrigerant be recovered and/or recycled for reuse in appliances by the same owner using equipment that is certified for that type of refrigerant and appliance under 40 CFR 82.36 or 82.158, and that the recovered refrigerant be sent off-site to be recycled for reuse at a facility certified by EPA under 40 CFR 82.164. Both of these provisions are more stringent than the existing RCRA recycling requirements. In addition, the revisions to the VSQG regulations in 40 CFR 262.14 specify that VSQGs' ability to send ignitable spent refrigerant for recycling for reuse is limited to facilities that meet EPA's certification requirements in 40 CFR 82.164 and are more stringent than the current standard. These certifications in 40 CFR 82.164 involve a number of requirements for reclamation that are more stringent than those under the RCRA hazardous waste program, including an explicit limit of no more than 1.5 percent of the refrigerant released during the reclamation process (see 40 CFR 82.164(a)(3)). In addition, these certified reclaimers must follow recordkeeping and reporting requirements per 40 CFR 82.164(d), including (1) maintaining records of the names and addresses of persons sending them material for reclamation and the quantity of the material (the combined mass of refrigerant and contaminants) sent to them for reclamation and (2) reporting annually the quantity of material sent to them for reclamation by refrigerant type, the mass of refrigerant reclaimed by refrigerant type, and the mass of waste products. Finally, EPA-certified refrigerant reclaimers must verify that each batch of reclaimed refrigerant meets the specifications in the regulations (40 CFR 82.164(a)(2)), which helps ensure that the reclamation process is legitimate recycling under the RCRA regulations. These alternative standards are designed to function as a system that is better tailored to the reclamation of ignitable spent refrigerants than the RCRA requirements in 40 CFR 262–270, and when considered as a whole are more stringent when compared to the previously applicable RCRA recycling requirements.

Moreover, as stated above, authorized States are required to modify their programs when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized State regulations. Because the revisions in this rule are considered to be more stringent than the existing Federal requirements, authorized States

must modify their programs to adopt regulations equivalent to the provisions contained in this final RCRA rule.

I. MVAC Servicing and Reprocessed Material

EPA did not propose, and therefore is not establishing requirements focused on implementing subsection (h)(2)(B) for MVAC servicing facilities that currently reclaim or recycle recovered MVAC refrigerant in this action. As stated at proposal, EPA understands that under current industry practices, a variety of things might occur once refrigerant has been recovered from an MVAC system. For example, in some situations, MVAC servicing facilities recover refrigerant from the MVAC, recycle it consistent with EPA's regulations under CAA section 609, and return the recycled refrigerant to the same MVAC for continued use by the same owner.¹⁵³ In other circumstances, however, EPA understands that the recovered MVAC refrigerant is recycled and used in servicing a different MVAC system with a different owner (e.g., to charge or recharge such a system), thereby in effect selling or transferring the refrigerant to a new owner. See 40 CFR 82.34(d)(2). Additionally, the Agency understands that there are circumstances where refrigerant recovered from MVAC systems is reclaimed before it is reused, sold, or transferred to a new owner.

The servicing and repair of MVAC systems with HFCs and HFC substitutes (e.g., HFO–1234yf and R–744 (CO₂)) have long been subject to certain requirements that are separate from those that apply for the servicing and repair of stationary appliances. Regulations under CAA section 609 require that section 609-certified technicians use equipment approved pursuant to the standards at 40 CFR 82.36 to service and repair MVAC systems. Under those existing regulations, recovered refrigerant can either be recycled on-site or off-site using approved equipment designed to both recover and recycle refrigerant certified to meet SAE J2099.¹⁵⁴ SAE J2099 establishes the minimum level of refrigerant purity (e.g., 98 percent for HFO–1234yf) required for the certification of on-site recovery and recycling machines per SAE J2843 and SAE J2788. Refrigerant from reclamation

¹⁵³ Another example of an instance where there is no change in ownership is the off-site servicing and recharge of MVAC systems for a fleet of trucks that are owned by the same company.

¹⁵⁴ SAE International, 2012. SAE J2099: Standard of Purity for Recycled R–134a (HFC–134a) and R–1234yf (HFO–1234yf) for Use in Mobile Air-conditioning Systems.

facilities that is used for the purpose of recharging MVACs must be at or above the standard of purity (*i.e.*, 99.5 percent) level defined in AHRI Standard 700, and EPA understands that such reclamation typically occurs off-site. See 40 CFR 82.32(e)(2).

Due to the longstanding practice of on-site recycling of single-component MVAC refrigerants, some industry stakeholders¹⁵⁵ questioned the need to reclaim recovered MVAC refrigerant to meet the purity level described in AHRI Standard 700–2016 as specified in the definition of the terms “reclaim” and “reclamation” in subsection (b)(9) of the Act. They noted that equipment certified to meet SAE J2099 is rated to clean and separate material in contaminated refrigerant to a 98 percent purity level, which provides the same level of performance and durability as virgin refrigerant for purposes of use in MVACs. They also pointed out the ambiguity in the phrase “(or an appropriate successor standard adopted by the Administrator)” in the definition of “reclaim” and “reclamation” in the AIM Act. While there may be a variety of situations that could lead to the adoption of a successor standard by the Administrator within the meaning of subsection (b)(9), in EPA’s view one such circumstance would be if AHRI published a subsequent standard or addendum regarding the reprocessing of a recovered regulated substance to a specified purity standard and the analytical methodology to verify the purity of that regulated substance, and that standard were adopted by the Administrator as a successor standard.

EPA is aware that AHRI is in consultations with SAE International, the Mobile Air Climate Systems Association (MACS), and other industry stakeholders to develop a standard (or update an existing standard) that may be more appropriate for MVAC servicing than AHRI Standard 700–2016.¹⁵⁶ If such a standard is finalized, EPA intends to review it, and any supporting information, and consider what implications it might have for potential approaches that the Agency might consider in future rulemakings to implement subsection (h)(2)(B) for MVAC systems. Additionally, the Agency could consider establishing its

own purity standard and analytical methodology for verification of the purity of recovered regulated substances, as well as specifying minimum equipment requirements for MVAC systems under subsection (h). Among other things, such a standard could be based on consideration of input from stakeholders and consensus standards bodies. EPA could consider adopting any such standard in a future rulemaking. In light of the time needed to develop such standards (whether developed by EPA or standard-setting organizations) and for EPA to consider whether they are appropriate for the Agency to adopt as successor standards in the context of subsection (h), as well as the implications that such standards might have on the regulations that EPA might propose to implement subsection (h)(2)(B) for MVAC systems, EPA did not propose such regulations. Instead, EPA intends to issue proposed regulations for this sector at a later date, once it has additional clarity on the development of such a successor standard and its likely content. Additionally, the Agency may need to consider potential approaches for the recycling and/or reclaiming of MVAC refrigerant blends, which may include regulated substances and/or substitutes for regulated substances, particularly given use of blends would be a significant departure from industry past practice for MVAC systems.

Comment: One commenter stated that they support the AIM Act and engaged early with EPA to share their ongoing process for “phasing out HFCs.” The commenter stated that their members fully support the goals of phasing HFCs out of their vehicles sold in the United States, and that their member companies have been undergoing this transition for many years.

Response: EPA acknowledges these comments and their support of the AIM Act. To the extent that these comments relate to EPA actions under other provisions of the AIM Act, such as the HFC phasedown or restrictions under subsection (i) of the AIM Act, they are beyond the scope of this rulemaking and thus require no further response.

Comment: Three commenters supported the Agency’s decision to not issue requirements under subsection (h)(2)(B) for MVAC servicing facilities. One commenter noted that the MVAC sector is unique, with regulations under 40 CFR part 82, subpart B, allowing recovered and recycled refrigerant to be returned to the same MVAC for continued use by the same owner or used to service a different MVAC system. Another commenter stated that implementing requirements under the

AIM Act for the MVAC sector or requiring the return of refrigerant heel in disposable cylinders to reclaimers would have a significant cost impact with limited environmental benefits. The commenter further stated that SAE standards already require section 609-certified technicians to recover the refrigerant heel in disposable cylinders and that refrigerant heel amounts are less than one pound under SAE J2788 standards specifications performed in laboratory testing.

Response: EPA acknowledges these comments. EPA did not propose and is not finalizing requirements in this rulemaking under subsection (h)(2)(B) of the AIM Act for MVAC servicing facilities that currently reclaim or recycle recovered MVAC refrigerant. Thus, EPA need not further address the points in these comments related to such requirements.

Comment: A few commenters expressed support of EPA’s decision to give time for SAE, AHRI, MACS, other industry stakeholders, and/or other entities to consider a new purity standard for MVAC systems. One commenter noted that the “appropriate successor standard” provision under the AIM Act would allow the current practice of on-site recycling of MVAC refrigerant prior to transfer of ownership to continue through either a modified version of AHRI 700 or, preferably, an updated version of SAE J2099. Another commenter stated that they supported the Agency’s decision to defer to AHRI and SAE to develop an updated standard or standards and mentioned that AHRI has a long track record of developing robust industry standards and is best poised to update Standard 700–2016. One commenter stated that SAE is currently reviewing and revising SAE J2099 to address concerns in the auto sector about using purity-based refrigerant compositions rather than performance-based metrics as a basis for decisions on whether a vehicle must be recovered, or if the material can be recycled.

Response: EPA acknowledges these comments. As noted previously, EPA did not propose and is not finalizing requirements under subsection (h)(2)(B) of the AIM Act for MVAC servicing facilities that currently reclaim or recycle recovered MVAC refrigerant in this rulemaking. Thus, EPA need not further address the points in these comments related to such requirements. Further, as explained earlier in this section, EPA intends to consider issuing such proposed regulations for this sector at a later date. The Agency reminds stakeholders that the regulatory provisions under CAA sections 608 and

¹⁵⁵ March 6, 2023, EPA meeting with Mobile Air Climate Systems (MACS) Association and SAE International. Meeting materials available in the docket (EPA–HQ–OAR–2022–0606) for this rulemaking at <https://www.regulations.gov>.

¹⁵⁶ Letter to EPA from AHRI, Alliance for Automotive Innovation, Alliance for Responsible Atmospheric Policy, and MACS dated June 9, 2023. Available in the docket (EPA–HQ–OAR–2022–0606) for this rulemaking at <https://www.regulations.gov>.

609 continue to apply and cover both servicing and end-of-life for MVAC systems.

Comment: One commenter stated that EPA should require 100 percent reclaimed refrigerant in all small containers of MVAC refrigerant by 2027, consistent with CARB's Small Container of Automotive Refrigerant regulation. The commenter stated that after conversations with stakeholders, they anticipate that there will be enough supply of reclaimed HFC-134a to meet demand for the refrigerant.

Response: EPA responds that the Agency did not propose and is not finalizing use of 100 percent reclaimed refrigerant in small containers of MVAC refrigerant. For reasons explained in section IV.E, the requirements related to the servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs in the final rule are limited to stationary equipment.

V. How is EPA treating data reported under this rule?

Consistent with EPA's commitment to transparency in program implementation, as well as to proactively encourage compliance, support enforcement of program requirements and enable third-party engagement to complement EPA's enforcement efforts, The Agency is finalizing requirements for the treatment and release of data that it will collect. EPA is finalizing certain categorical emission data and confidentiality determinations for individual reported data elements that EPA will collect through this rulemaking. This action identifies certain information categories that must be submitted to EPA and will be subject to disclosure to the public without further notice because the information has been determined to be either "emission data" under 40 CFR 2.301(a), or the Agency has found that the information does not meet the standard for confidential treatment under Exemption 4 of the Freedom of Information Act (FOIA). EPA has also identified certain other categories of information that may be entitled to confidential treatment. For information EPA is not determining in this rulemaking to be emission data or not otherwise entitled to confidential treatment, EPA will apply the 40 CFR part 2 process for establishing case-by-case confidentiality determinations. As explained further in the following discussion, the emission data and confidentiality determinations in this action are intended to increase the efficiency with which the Agency responds to FOIA requests and to provide consistency in the treatment of

the same or similar information. Establishing these determinations through this rulemaking provides predictability for both information requesters and submitters. The emission data and confidentiality determinations in this rule will also increase transparency, as well as supporting compliance with, and enforcement of, the program's requirements.

A. Background on Determinations of Whether Information Is Entitled to Treatment as Confidential Information

1. Confidential Treatment of Reported Information

Regulated entities that must submit information to EPA frequently claim that some or all of that information is entitled to confidential treatment and therefore exempt from disclosure under Exemption 4 of the FOIA.¹⁵⁷ Exemption 4 exempts from disclosure "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."¹⁵⁸ In order for information to meet the requirements of Exemption 4, EPA must find that the information is either: (1) A trade secret, or (2) commercial or financial information that is: (a) Obtained from a person, and (b) privileged or confidential.

Generally, when the Agency has information that it intends to disclose publicly that is covered by a claim of confidentiality under FOIA Exemption 4, EPA has a process to make case-by-case or class determinations under 40 CFR part 2 to evaluate whether such information qualifies for confidential treatment under the exemption.¹⁵⁹ ¹⁶⁰ In this action, EPA is providing clarity concerning certain categorical emission data and confidentiality determinations for some information that must be submitted to EPA under these requirements. For those determinations, that information would be subject to disclosure to the public without further notice.

The U.S. Supreme Court decision in *Food Marketing Institute v. Argus*

Leader Media, 139 S. Ct. 2356 (2019) (*Argus Leader*) addresses the meaning of "confidential" within the context of FOIA Exemption 4. The Court held that "[a]t least where commercial or financial information is both customarily and actually treated as private by its owner and provided to the government under an assurance of privacy, the information is 'confidential' within the meaning of Exemption 4."¹⁶¹ The Court identified two conditions "that might be required for information communicated to another to be considered confidential."¹⁶² Under the first condition, "information communicated to another remains confidential whenever it is customarily kept private, or at least closely held, by the person imparting it."¹⁶³ The second condition provides that "information might be considered confidential only if the party receiving it provides some assurance that it will remain secret."¹⁶⁴ The Court found the first condition necessary for information to be considered confidential within the meaning of Exemption 4, but did not address whether the second condition must also be met.

Following the issuance of the Court's opinion in *Argus Leader*, the U.S. Department of Justice (DOJ) issued guidance concerning the confidentiality prong of Exemption 4, articulating "the newly defined contours of Exemption 4" post-*Argus Leader*.¹⁶⁵ Where the government provides an express or implied indication to the submitter prior to or at the time the information is submitted to the government that the government would publicly disclose the information, then the submitter generally cannot reasonably expect confidentiality of the information upon submission, and the information is not entitled to confidential treatment under Exemption 4.¹⁶⁶ Information will not be kept confidential and will be disclosed publicly if it is determined to not be entitled to confidential treatment in this rule. This is aligned with the Supreme

¹⁶¹ *Argus Leader*, 139 S. Ct. at 2366.

¹⁶² *Id.* at 2363.

¹⁶³ *Id.* (internal citations omitted).

¹⁶⁴ *Id.* (internal citations omitted).

¹⁶⁵ "Exemption 4 After the Supreme Court's Ruling in *Food Marketing Institute v. Argus Leader Media* and Accompanying Step-by-Step Guide," Office of Information Policy, U.S. DOJ, (October 4, 2019). Available at: <https://www.justice.gov/oip/exemption-4-after-supreme-courts-ruling-food-marketing-institute-v-argus-leader-media>.

¹⁶⁶ See *id.*; see also "Step-by-Step Guide for Determining if Commercial or Financial Information Obtained from a Person is Confidential under Exemption 4 of the FOIA," Office of Information Policy, U.S. DOJ, (updated October 7, 2019). Available at: <https://www.justice.gov/oip/step-by-step-guide-determining-if-commercial-or-financial-information-obtained-person-confidential>.

¹⁵⁷ 5 U.S.C. 552(b)(4).

¹⁵⁸ 5 U.S.C. 552(b)(4).

¹⁵⁹ 40 CFR 2.205.

¹⁶⁰ This approach of making categorical determinations for a class of information is a well-established Agency practice. Prior examples of rules where EPA has made such categorical determinations include *Confidentiality Determinations for Data Required Under the Mandatory Greenhouse Gas Reporting Rule and Amendments to Special Rules Governing Certain Information Obtained Under the Clean Air Act* (76 FR 30817) (May 26, 2011); *Control of Air Pollution From New Motor Vehicles: Heavy-Duty Engine and Vehicle Standards* (88 FR 4296) (January 24, 2023); and *Renewable Fuel Standard (RFS) Program: RFS Annual Rules* (87 FR 39600) (July 1, 2002).

Court's decision, and the subsequent DOJ guidance that the government's assurances that a submission will be treated as *not* confidential should dictate the expectations of submitters. Based on the finalized determinations, submitters are on notice before they submit any information that EPA has determined that the identified data elements outlined in Tables 2, 3, and 4 below, as well as in the memorandum provided in the docket for this action titled *Confidentiality Determinations and Emission Data Designations for Data Elements in the Final Rule*, will not be entitled to confidential treatment upon submission and may be released by the Agency without further notice. As a result, submitters do not have a reasonable expectation that the information will be treated as confidential; rather, they have the reasonable expectation that the information will be disclosed.

As described further below, EPA is making categorical confidentiality determinations for some of the data that will be submitted to EPA because these data contain information that is not entitled to confidential treatment. The reason this information is not entitled to confidential treatment is that either it is not the type of information that submitters customarily keep private or closely held, it is already publicly available, or it is discernible information that is self-evident or readily observable through reverse engineering by a third party.

Comment: One commenter stated that EPA's requirements with respect to confidential data are responsible and appropriate. Another commenter recommended that EPA consider the scope, cost, and effort for the Agency to publish and maintain such information and that EPA consider modifying its publications to be on an annual or other basis if the burden of publication becomes too great to maintain.

Response: EPA acknowledges the general support for the proposal. The Agency did consider scope and cost for data collection in the information collection request (ICR) available in the docket of this final rulemaking. As noted above, the Agency is committed to data transparency and intends to maintain and publish (e.g., post on EPA's website) with an appropriate frequency.

Comment: A few commenters discussed the proposed container tracking data elements. One commenter stated that EPA peremptorily proposed to find that certain categorical information is either "emission data" and should be treated as such pursuant to 40 CFR 2.301(a) or that this type of

information does not qualify for confidential treatment under Exemption 4 of the FOIA. The commenter further stated that this would treat the covered information as releasable without further notification to the submitter. This commenter disagreed with these proposed determinations and with EPA's proposed conclusion that data elements associated with the proposed tracking system were not the type of information that is customarily closely held or kept private by companies. The commenter also disagreed with EPA's proposed conclusion that this information meets the regulatory definition of "emissions data" within 40 CFR 2.301(a)(2)(i). Another commenter supported the proposed rule's data collection requirements and encouraged EPA to expand the public availability of data on the composition and volumes of refrigerants on the U.S. market, including expanded transparency requirements for virgin producers in order to facilitate EOL fractionation and reclamation.

Response: EPA interprets the first comment to relate to the proposed confidentiality determinations for the data elements related to the container tracking requirements that were included in section V.C of the proposal. As discussed in section I.B, the Agency is not finalizing container tracking requirements at this time and thus is not making final determinations on the confidential treatment of those data elements in this rulemaking.

Accordingly, the Agency need not respond to comments regarding the proposed confidentiality determinations for the container tracking system in this rulemaking. However, EPA notes that the commenter has presented only general objections to EPA's proposed determinations that these data elements were emissions data or did not qualify for confidential treatment, and the comment did not identify which particular data elements it views as entitled to confidential treatment or not qualifying as emissions data. The commenter also did not provide any information to support their assertions that the proposed determinations would result in the "disclosure of much information that is not public" ¹⁶⁷ and that would result in harm; moreover, the commenter provided no substantiation to show that this information is customarily treated as confidential. This lack of specificity would impede EPA's effort to evaluate the commenter's concerns with respect to any particular data elements. Insofar as commenters

disagree with proposed determinations that information is not entitled to confidential treatment, they should highlight the particular data element or elements where they disagree with the proposed determination and provide information regarding how that data element is customarily and actually treated by them and by their industry sector to support their assertions. Without such information, EPA is unable to fully assess the commenters' concerns, particularly when the data elements include information where EPA can discern no apparent reason for thinking that the information would typically be treated as confidential by the submitter (e.g., information that is already publicly available or is not generally claimed as confidential by the industry sector). Further, the fact that only one commenter objected to the proposed determinations may indicate that the information is not customarily closely held or kept private.

EPA acknowledges the other commenter's support of the data collection requirements and availability of public data to extent that it is covered in this final rule. Data regarding production is outside the scope of this rule but may already be available at the HFC data hub.¹⁶⁸

2. Emission Data Under Section 114 of the Clean Air Act

The AIM Act provides that, "[s]ections 113, 114, 304, and 307 of the CAA (42 U.S.C. 7413, 7414, 7604, 7607) shall apply to this section and any rule, rulemaking, or regulation promulgated by the Administrator pursuant to this section as though this section were expressly included in title VI of that Act (42 U.S.C. 7671 *et seq.*)." The CAA states that "[a]ny records, reports or information obtained under [section 114] shall be available to the public." ¹⁶⁹ Thus, the CAA begins with a presumption that information submitted to EPA will be available to be disclosed to the public. It then provides a narrow exception to that presumption for information that "would divulge methods or processes entitled to protection as trade secrets." The CAA further narrows this exception by excluding "emission data" from the category of information eligible for confidential treatment. While the CAA does not define "emission data," EPA has done so by regulation at 40 CFR 2.301(a)(2)(i).

EPA releases, on occasion, some of the information submitted under CAA

¹⁶⁷ See comment number EPA-HQ-OAR-2022-0606-0085 at 25.

¹⁶⁸ Available at: <https://www.epa.gov/climate-hfcs-reduction/hfc-data-hub>.

¹⁶⁹ CAA section 114(c); 42 U.S.C. 7414(c).

section 114 to parties outside of the Agency of its own volition, through responses to requests submitted under the FOIA,¹⁷⁰ or through civil litigation. Generally, when the Agency has information that it intends to disclose publicly and that is covered by a claim of confidentiality under FOIA Exemption 4, EPA has a process to make case-by-case or class determinations under 40 CFR part 2. This process includes an evaluation of whether such information is or is not emission data, and whether it otherwise qualifies for confidential treatment under FOIA Exemption 4.¹⁷¹ The regulations at 40 CFR 2.301 define emission data.

In this action, EPA is applying the regulatory definition of “emission data” in 40 CFR 2.301(a)(2)(i) and finding that certain categories of source information are not entitled to confidential treatment because they qualify as emission data. By finalizing these determinations, that information is subject to disclosure to the public without further notice. As relevant to the determinations that are being finalized in this action, a “source” for purposes of the definition in 40 CFR

2.301 is generally the equipment covered by a regulatory requirement, such as a refrigerant-containing appliance or fire suppression equipment. EPA’s broad general definitions of emission data also exclude certain information related to products still in the research and development phase or products not yet on the market except for limited purposes. Thus, for example, 40 CFR 2.301(a)(2)(ii) excludes information related to “any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.” This specific exclusion from the definition of emission data is limited in time. Data related to this exclusion are not implicated in this rulemaking because data reported under this rule relate to equipment currently in use.

B. Data Elements Reported to EPA Under the Leak Repair Provisions

Consistent with EPA’s commitment to transparency in program implementation, EPA has reviewed the data elements in the chronically leaking

appliance report and the other ad hoc reports required under the leak repair requirements to see if information under the umbrella of those data elements could be considered entitled to confidential treatment. EPA is treating certain data elements under the leak repair provisions as not entitled to confidential treatment. Tables 2 and 3 outline individual data elements that will not be handled as confidential, emission data, or otherwise not entitled to confidential treatment. Additional information on these determinations is provided in the memorandum titled *Confidentiality Determinations and Emission Data Designations for Data Elements in the Final Rule*, which is available in the docket for this action. There may be additional reasons not to release individual data elements determined to not be entitled to confidential treatment, for example if it is personally identifiable information (PII). The Agency will separately determine whether any data should be withheld from release for reasons other than business confidentiality before data are released.

TABLE 2—DETERMINATION OF CONFIDENTIALITY STATUS FOR DATA ELEMENTS RELATED TO REPORTS ON CHRONICALLY LEAKING APPLIANCES

Description of data element	Confidentiality status and rationale ^a
Identification information (owner or operator, facility name, facility address where appliance is located).	No confidential treatment/Emission data.
Appliance ID or description (for facilities with multiple appliances)	No confidential treatment/Emission data.
Refrigerant-containing appliance type (comfort cooling or other, IPR, or commercial refrigeration).	No confidential treatment/Emission data.
Refrigerant type	No confidential treatment/Emission data.
Full charge of appliance (pounds)	No confidential treatment/Emission data.
Annual percent refrigerant loss	No confidential treatment/Emission data.
Dates of refrigerant addition	No confidential treatment/Emission data.
Amounts of refrigerant added	No confidential treatment/Emission data.
Date of last successful follow-up verification test	No confidential treatment/Emission data.
Explanation of cause of refrigerant losses (Narrative)	No confidential treatment/Emission data.
Description of the repair actions taken (Narrative)	No confidential treatment/Emission data.
Whether a retrofit or retirement plan has been developed for the appliance, and, if so, the anticipated date of retrofit or retirement.	No confidential treatment/Emission data.

^a EPA provides rationale of the confidentiality determination in the memorandum titled *Confidentiality Determinations and Emission Data Designations for Data Elements in the Final Rule* entitled “Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes under Subsection (h) of the American Innovation and Manufacturing Act of 2020”, which is available in the docket (EPA-HQ-OAR-2022-0606) of this rulemaking at <https://www.regulations.gov>.

TABLE 3—DETERMINATION OF CONFIDENTIALITY STATUS FOR DATA ELEMENTS RELATED TO OTHER LEAK REPAIR NOTIFICATIONS AND EXTENSION REQUESTS

Description of data element	Confidentiality status and rationale ^a
<i>Extension of time to complete repairs:</i> Identification and address of the facility; the name of the owner or operator of the refrigerant-containing appliance; the leak rate; the method used to determine the leak rate and full charge; the date the refrigerant-containing appliance exceeded the applicable leak rate; the location of leak(s) to the extent determined to date; any repairs that have been performed thus far, including the date that repairs were completed; the reasons why more than 30 days (or 120 days if an industrial process shutdown is required) are needed to complete the repairs; and an estimate of when the repairs will be completed. If the estimated completion date is to be extended, a new estimated date of completion and documentation of the reason for that change must be submitted to EPA within 30 days of identifying that the completion date must be extended.	No confidential treatment/Emission data.

¹⁷⁰ 5 U.S.C. 552.

¹⁷¹ 40 CFR 2.301(a)(2)(i).

TABLE 3—DETERMINATION OF CONFIDENTIALITY STATUS FOR DATA ELEMENTS RELATED TO OTHER LEAK REPAIR NOTIFICATIONS AND EXTENSION REQUESTS—Continued

Description of data element	Confidentiality status and rationale ^a
<i>Relief from the obligation to retrofit or retire a refrigerant-containing appliance:</i> The date that the requirement to develop a retrofit or retirement plan was triggered; the leak rate; the method used to determine the leak rate and full charge; the location of the leak(s) identified in the leak inspection; a description of repair work that has been completed; a description of the repairs that have not been completed; a description of why repairs were not conducted within the applicable time frame; and a statement signed by an authorized company official that all identified leaks will be repaired and an estimate of when those repairs will be completed (not to exceed one year from date of the plan).	No confidential treatment/Emission data.
<i>Extension of time to complete the retrofit or retirement of a refrigerant-containing appliance:</i> Identification of the refrigerant-containing appliance; name of the owner or operator; the leak rate; the method used to determine the leak rate and full charge; the date the refrigerant-containing appliance exceeded the applicable leak rate; the location of leak(s) to the extent determined to date; any repairs that have been finished thus far, including the date that repairs were finished; a plan to finish the retrofit or retirement of the refrigerant-containing appliance; the reasons why more than one year is necessary to retrofit or retire the refrigerant-containing appliance; the date of notification to EPA; and an estimate of when retrofit or retirement work will be finished.	No confidential treatment/Emission data.
<i>Notification of exclusion of purged refrigerants that are destroyed from annual leak rate calculations:</i> The identification of the facility and a contact person, including the address and telephone number; a description of the refrigerant-containing appliance, focusing on aspects relevant to the purging of refrigerant and subsequent destruction; a description of the methods used to determine the quantity of refrigerant sent for destruction and type of records that are being kept by the owners or operators where the appliance is located; the frequency of monitoring and data-recording; and a description of the control device, and its destruction efficiency.	No confidential treatment/Emission data.

^aEPA provides the rationale for the confidentiality determination in the memorandum titled *Confidentiality Determinations and Emission Data Designations for Data Elements in the Final Rule entitled “Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes under Subsection (h) of the American Innovation and Manufacturing Act of 2020”*, which is available in the docket (EPA-HQ-OAR-2022-0606) of this rulemaking at <https://www.regulations.gov>.

Information contained within these data elements would categorically not be eligible for confidential treatment because it is either readily apparent or easily ascertainable by an outsider (e.g., owner name, facility name, facility address where appliance is located, appliance ID or description, and appliance type (comfort cooling, IPR, or commercial refrigeration)) or it is considered emission data under 40 CFR 2.301 (e.g., refrigerant type, full charge of appliance, annual percent refrigerant loss, dates of refrigerant addition, amounts of refrigerant added, date of last successful follow-up verification test, explanation of cause of refrigerant losses, repair actions taken, and whether a retrofit or retirement plan been developed for the appliance, and, if so, the anticipated date of retrofit or retirement); or it fits into both categories. Similarly, the items included in a request for an extension for leak repair, request for relief from the obligation to retrofit or retire an appliance, request for an extension of time to complete the retrofit or retirement of an appliance, and notification of exclusion of purged refrigerants that are destroyed from annual leak rate calculations are likewise not eligible for confidential treatment because this information is readily ascertainable or easily observable by an outside entity, or is considered emission data under 40 CFR 2.301, or both. EPA notes that in these

provisions, the source of the emissions would be the regulated equipment, and in the case of all of these notifications these data are necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any emission that has been emitted by the source and/or information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of the emissions which, under the leak repair provisions, the source was authorized to emit; and 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).

C. Data Elements Related to Fire Suppression

As described in section IV.F of this document, EPA is finalizing reporting requirements related to the use of regulated substances in the fire suppression sector. These reporting requirements allow for the monitoring of program implementation and of compliance with the requirements.

EPA is requiring that certain entities in the fire suppression sector provide data to EPA that are similar to the data they already voluntarily collect and

report to HEEP as mentioned in section IV.F. Relevant reporting entities covered under this requirement include entities that perform first fill of equipment, service (e.g., recharge) equipment, and/or recycle regulated substances. Relevant entities include companies, such as equipment manufacturers, distributors, agent suppliers, or installers. EPA is finalizing that the covered entities report annually: (1) The quantity of each regulated substance held in inventory on-site broken out by recovered, recycled, and virgin; (2) the quantity of material (the combined mass of regulated substance and contaminants) by regulated substance sold and/or recycled for the purpose of installation of new equipment and servicing (e.g., recharge) of fire suppression equipment; (3) the total mass of each regulated substance sold and/or recycled; and (4) the total mass of waste products sent for disposal, along with information about the disposal facility if waste is not processed by the reporting entity. Table 4 presents a more granular description of these data elements, together with their confidentiality status. There may be additional reasons not to release individual data elements determined to not be entitled to confidential treatment, for example if they are PII. The Agency will separately determine whether any data should be withheld from release for reasons other than business confidentiality before data are released.

EPA has determined that these data are emission data as described at 40 CFR 2.301 because they provide 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. As a separate alternative basis, EPA has determined that these data are not entitled to confidential treatment because they are not closely held as confidential by the submitter. Additional information on

the rationale for these determinations is provided in a memorandum entitled *Confidentiality Determinations and Emission Data Designations for Data Elements in the Final Rule*, available in the docket for this action.

TABLE 4—DETERMINATION OF CONFIDENTIALITY STATUS FOR DATA ELEMENTS RELATED TO REPORTS ON FIRE SUPPRESSION

Description of data element	Confidentiality status and rationale ^a
Identification information (owner name, facility name, facility address where equipment is located)	No confidential treatment/Emission data.
For each regulated substance, quantity of material (the combined mass of regulated substance and contaminants) sold for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment.	No confidential treatment/Emission data.
For each regulated substance, quantity of material (the combined mass of regulated substance and contaminants) in inventory onsite for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment broken out by recovered, recycled, and virgin.	No confidential treatment/Emission data.
Total mass of each regulated substance sold for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment.	No confidential treatment/Emission data.
Total mass of each regulated substance in inventory onsite for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment broken out by recovered, recycled, and virgin.	No confidential treatment/Emission data.
Total mass of waste products the reporting entity sent for disposal, along with information about the disposal facility if waste is not processed by the reporting entity.	No confidential treatment/Emission data.

^a EPA provides rationale of the confidentiality determination in the memorandum titled *Confidentiality Determinations and Emission Data Designations for Data Elements in the Final Rule* entitled “Phasedown of Hydrofluorocarbons: Management of Certain Hydrofluorocarbons and Substitutes under Subsection (h) of the American Innovation and Manufacturing Act of 2020”, which is available in the docket (EPA-HQ-OAR-2022-0606) of this rulemaking at <https://www.regulations.gov>.

VI. What are the costs and benefits of this action?

A. Background

EPA is providing information on the costs and benefits for the provisions related to managing regulated substances and their substitutes in this rule. The analyses, presented in the Economic Impact and Benefits TSD and the RIA addendum, are contained in the docket to this rule and are intended to provide the public with information on the relevant costs and benefits of this action and to comply with Executive Orders. The RIA addendum includes estimates of the SC-HFCs in order to quantify climate benefits, for the purpose of providing useful information to the public and to comply with E.O. 12866. Although EPA is using the SC of HFCs for purposes of that assessment, this action does not rely on those estimates as a record basis for the Agency action, and EPA would reach the conclusions made in this final rule even in the absence of the social costs of HFCs.

The climate benefits and compliance costs stemming from this final rule include those related to:

(1) the provisions on leak repair, leak detection, ALD systems, and recordkeeping and reporting related to these provisions;

(2) the amendments to the RCRA hazardous waste regulations;

(3) requirements regarding the management of disposable cylinders for HFCs;

(4) requiring the servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs, along with recordkeeping requirements verifying that reclaimed refrigerant contains no more than 15 percent, by weight, virgin HFCs; and

(5) minimizing emissions of HFCs from certain types of fire suppression equipment including the service, repair, or initial charging of such equipment with recycled HFCs.

As detailed in the RIA addendum, EPA finds that in some cases specific provisions of the rule would result in compliance costs for industry, while in other cases they may result in cost savings. Provisions that result in a net cost savings may still be considered part of the economic benefits attributable to this rule, under the assumption that these activities would not otherwise be undertaken at the same scale or rate of adoption in the absence of regulation. More discussion of these assumptions and supporting literature may be found in section 3.2.2 of the Allocation Framework Rule RIA.

From the Agency’s analyses, EPA provides the costs and benefits associated with the management of regulated substances and their substitutes under the AIM Act as well as those associated with the RCRA alternative standard requirements for

hazardous waste. These analyses—as summarized below—highlight economic cost and benefits, including benefits from leak repair and emissions reductions.

Given that the provisions EPA is finalizing concern HFCs, which are subject to the overall phasedown of production and consumption under the AIM Act, EPA relied on its previous estimates of the impacts of already finalized AIM Act rules as a starting point for the assessment of costs and benefits of this rule. Specifically, the Allocation Framework Rule (86 FR 55116, October 5, 2021), the 2024 Allocation Rule (88 FR 46836, July 20, 2023), and the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023) are assumed as a baseline for this rule. In this way, EPA analyzed the incremental impacts of this rule, attributing benefits only insofar as they are additional to those already assessed in the Allocation Framework Rule RIA, the 2024 Allocation Rule RIA Addendum, and the 2023 Technology Transitions Rule RIA Addendum (collectively referred to as “Allocation and 2023 Technology Transitions Rules” in this discussion). Climate benefits presented in the RIA addendum are based on changes (increases or reductions) in HFC emissions compared to the 2023 Technology Transitions Rule

compliance case¹⁷² (*i.e.*, after consideration of the Allocation Framework Rule, the 2024 Allocation Rule, and the 2023 Technology Transitions Rule).

EPA estimated the climate benefits for this rule using a set of estimates of the social cost of each HFC (SC-HFC, or collectively referred to as SC-HFCs) that is affected by the rule. The SC-HFCs is the monetary value of the net harm to society associated with a marginal increase in HFC emissions in a given year, or the net benefit of avoiding that increase. In principle, the SC-HFC includes the value of all climate change impacts (both negative and positive), including (but not limited to) changes in net agricultural productivity, human health effects, property damage from increased flood risk and natural disasters, disruption of energy systems, risk of conflict, environmental migration, and the value of ecosystem services. The SC-HFC, therefore, reflects the societal value of reducing emissions of the gas in question by one metric ton and is the appropriate value to use in conducting benefit-cost analyses of policies that affect HFC emissions. In practice, data and modeling limitations restrain the ability of SC-HFC estimates to include all physical, ecological, and economic impacts of climate change, implicitly assigning a value of zero to the omitted climate damages. The estimates are, therefore, a partial accounting of climate change impacts and likely underestimate the marginal benefits of abatement.

The monetization of climate benefits in this analysis uses the same HFC-specific SC-HFC estimates as used in the proposal RIA and in the estimation of the benefits in prior AIM Act analyses including the Allocation Framework Rule RIA. That is, for the primary benefits analysis in the final RIA addendum, EPA uses SC-HFC estimates that are consistent with the methodology underlying estimates of the social cost of other GHGs (carbon dioxide (SC-CO₂), methane (SC-CH₄), and nitrous oxide (SC-N₂O)), collectively referred to as SC-GHG, presented in the *Technical Support Document: Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates* under Executive Order 13990

published in February 2021 by the Interagency Working Group on the Social Cost of Greenhouse Gases (IWG).¹⁷³ These SC-GHG estimates were recommended for use until updated estimates are available that reflect recent advances in the scientific literature on climate change and its economic impacts and incorporate recommendations made by the National Academies of Science, Engineering, and Medicine.¹⁷⁴ As a member of the IWG involved in the development of the February 2021 SC-GHG TSD, EPA agrees with the explanation in the TSD that it is appropriate for agencies to use the same set of four values drawn from the SC-GHG distributions based on three discount rates as were used in regulatory analyses between 2010 and 2016 and subject to public comment (2.5 percent, three percent, and five percent), plus a fourth value, selected as the 95th percentile of estimates based on a three percent discount rate. EPA also agrees with the explanation provided in the February 2021 TSD that the use of the social rate of return on capital (seven percent under the 2003 Office of Management and Budget (OMB) Circular A-4 guidance) to discount the future benefits of reducing GHG emissions inappropriately underestimates the impacts of climate change for the purposes of estimating the social cost of GHGs. For purposes of capturing uncertainty around the SC-HFC estimates applied in this analysis, we emphasize the importance of all four values for each HFC affected by the rule.

In addition, in an Appendix to the final RIA addendum, EPA presents the monetized climate benefits of the final rule using a new set of SC-HFC estimates that reflects recent advances in the scientific literature and addresses the National Academies' updating recommendations. The methodology underlying these updated SC-HFC estimates is consistent with the SC-GHG estimates used in EPA's 2023 RIA for the Final Oil and Gas New Source Performance Standards (NSPS)/Emissions Guidelines (EG) Rulemaking, "Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review." Specifically, the draft

updated methodology incorporates new literature and research consistent with the National Academies' near-term recommendations on socioeconomic and emissions inputs, climate modeling components, discounting approaches, and treatment of uncertainty, and an enhanced representation of how physical impacts of climate change translate to economic damages in the modeling framework based on the best and readily adaptable damage functions available in the peer reviewed literature. As EPA noted in the proposal for this rule, EPA presented and solicited public comment on this updated methodology within a sensitivity analysis in the regulatory impact analysis of EPA's November 2022 supplemental proposal for oil and natural gas emissions standards.¹⁷⁵ EPA also conducted an external peer review of the accompanying technical report that explains the methodology underlying the new set of estimates. Complete information about the public comments and external peer review, including the peer reviewer selection process, the final report with individual recommendations from peer reviewers, and EPA's response to both public comments and peer reviewer recommendations is available on EPA's website,¹⁷⁶ as well as in the RIA addendum for this rule.

B. Estimated Costs and Benefits of the Final Rule

1. Total Incremental Costs and Benefits of the Final Rule

As discussed above, the HFC Allocation and 2023 Technology Transitions Rules serve as the status quo from which incremental impacts of this final rule are evaluated. As detailed in the RIA and subsequent RIA addenda for these previous rules, EPA modeled multiple potential compliance pathways to meeting the requirements of these rulemakings. In one scenario, EPA assumed that industry would comply with previous AIM Act regulations as outlined in the 2023 Technology Transitions Rule RIA Addendum¹⁷⁷ without undertaking some improvements to leak repair and refrigerant recovery practices in

¹⁷² As detailed in the 2023 Technology Transitions RIA Addendum, EPA analyzed both a base case and high additionality scenario towards compliance with that rule. The discussion here utilizes the 2023 Technology Transitions high additionality case for comparison purposes to provide a conservative assessment. Further details are provided in the RIA addendum for this rule and the Economic Impact and Benefits TSD.

¹⁷³ Interagency Working Group on Social Cost of Greenhouse Gases, United States Government (IWG 2021), 86FR 24669, available at https://www.whitehouse.gov/wp-content/uploads/2021/02/TechnicalSupportDocument_SocialCostofCarbonMethaneNitrousOxide.pdf.

¹⁷⁴ National Academies of Sciences, Engineering, and Medicine. Valuing Climate Damages: Updating Estimation of the Social Cost of Carbon Dioxide. The National Academies Press, 2017, doi: 10.17226/24651.

¹⁷⁵ Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review (87 FR 74702, December 6, 2022).

¹⁷⁶ Available at: <https://www.epa.gov/environmental-economics/scghg>.

¹⁷⁷ In the 2023 Technology Transitions RIA Addendum, EPA analyzed a "base case" and a "high additionality" scenario. The former is used to analyze the base case scenario for this rule. See the RIA addendum and the Economic Impact and Benefits TSD for additional details.

response to these previous rulemakings and as a means of achieving the overall HFC phasedown cap. Because these improvements are not required to meet previous AIM Act regulations, in the Agency's base case scenario for the estimated incremental impacts of the ER&R rule, EPA has also included them in the baseline. However, since whether industry undertakes such improvements is ultimately uncertain, EPA has also provided an alternative scenario in the RIA addendum where some improved leak repair and refrigerant recovery practices are included in the baseline, thus illustrating a potential lower bound of incremental impacts.

The present value of the net benefits of the final ER&R rule is equal to the sum of the net costs or benefits of the various provisions in each year from 2026 through 2050, discounted to 2024 (the year in which this rule is being finalized). In the base case, EPA estimates the provisions of this rule will result in cumulative incremental emissions reductions of approximately 120 MMTCO₂e from 2026 through 2050, and the present value of economic benefits of avoiding the damages associated with those emissions is estimated at \$8.4 billion (discounted to 2024 using a three percent discount rate).¹⁷⁸ EPA estimates the present value

of compliance costs associated with this rulemaking to be \$1.5 billion at a two percent discount rate, \$1.3 billion at a three percent discount rate, or \$0.9 billion at a seven percent discount rate. When including the economic benefits of avoided climate damages, the net benefits of the rule are therefore estimated to range from \$6.9 billion (two percent discount rate for compliance costs) to \$7.5 billion (seven percent discount rate for compliance costs). These estimates are summarized in Table 5 below along with annual, undiscounted values for select years.

TABLE 5—SUMMARY OF UNDISCOUNTED ANNUAL VALUES, PRESENT VALUES, AND EQUIVALENT ANNUALIZED VALUES SELECT YEARS FOR THE 2026 THROUGH 2050 TIMEFRAME FOR ESTIMATED COMPLIANCE COSTS, BENEFITS, AND NET BENEFITS FOR THE ER&R RULE (MILLIONS OF 2022\$, DISCOUNTED TO 2024)—BASE CASE SCENARIO^{a b c d e f g}

Year	Climate benefits	Costs			Net benefits		
2026	\$428	\$92			\$336		
2030	676	102			574		
2035	613	86			526		
2040	466	67			399		
2045	315	51			264		
2050	263	52			211		
Discount rate	3%	2%	3%	7%	2%	3%	7%
Present value ^f	\$8,356	\$1,499	\$1,335	\$884	\$6,857	\$7,021	\$7,471
Equivalent annualized value (EAV) ^f	480	77	77	76	403	403	404

^a Benefits include only those related to climate. Climate benefits are based on changes (reductions) in HFC emissions and are calculated using four different estimates of the social cost of HFCs (SC-HFCs): model average at 2.5 percent, three percent, and five percent discount rates; 95th percentile at three percent discount rate. For presentational purposes of this table, the benefits associated with the average SC-HFC are shown at a three percent discount rate. More details can be found in the RIA addendum for the final rule.

^b Rows may not appear to add correctly due to rounding.

^c The annualized present value of costs and benefits are calculated as if they occur over a 25-year period.

^d The present value (PV) for the net benefits column is found by taking the difference between the PV of climate benefits at three percent and the PV of costs discounted at seven percent, three percent or two percent. Because the SC-HFC estimates reflect net climate change damages in terms of reduced consumption (or monetary consumption equivalents), the use of the social rate of return on capital (seven percent under OMB Circular A-4 (2003)) to discount damages estimated in terms of reduced consumption would inappropriately underestimate the impacts of climate change for the purposes of estimating the SC-HFC.

^e Costs represent compliance with the regulations and include potential savings from reducing refrigerant purchases. See the RIA addendum and the Economic Impact and Benefits TSD for additional information.

^f Present value and EAV are for the years 2026 through 2050.

^g Benefits presented in this table do not include potential savings from amended RCRA regulations, which are separate from the regulations under subsection (h)(1) of the AIM Act. See Table 6 below for an estimate of combined AIM Act and RCRA net benefits.

The provisions that contribute to the total net benefits of the final rule are those covering leak inspections, leak repair, installation of ALD systems, reduced emissions and use of recycled

HFCs in the fire suppression sector, management and ultimate evacuation of disposable cylinders, and the required servicing and/or repair of certain refrigerant-containing equipment with

reclaimed HFCs, and all associated recordkeeping and reporting requirements. Estimated costs, benefits, and resulting net benefits are provided by type of provision in Table 6 below.

TABLE 6—SUMMARY OF PRESENT VALUE COSTS, BENEFITS, AND NET BENEFITS BY REGULATORY PROVISION (MILLIONS OF 2022\$, DISCOUNTED TO 2024)—BASE CASE SCENARIO

Provision	Climate benefits (3%)	Costs (savings) (2%)	Costs (savings) (3%)	Costs (savings) (7%)	Net benefits (3% benefits, 2% costs)	Net benefits (3% benefits, 3% costs)	Net benefits (3% benefits, 7% costs)
Leak Repair And ALD	\$6,176	\$1,285	\$1,146	\$760	\$4,891	\$5,031	\$5,417.
Fire Suppression	14	\$15	\$13	\$7	(\$1)	\$1	\$7.
Cylinder Management	2,165	(\$195)	(\$169)	(\$101)	\$2,360	\$2,335	\$2,266.
Use of Reclaimed HFCs for Servicing ^a		\$43	\$38	\$23	(\$43)	(\$38)	(\$23).
Recordkeeping & Reporting		\$350	\$308	\$195	(\$350)	(\$308)	(\$195).
Total (AIM Act) ^b	8,356	\$1,499	\$1,335	\$884	\$6,857	\$7,021	\$7,471.

¹⁷⁸ Unless stated otherwise, costs and benefits in this section are presented in 2022 dollars.

TABLE 6—SUMMARY OF PRESENT VALUE COSTS, BENEFITS, AND NET BENEFITS BY REGULATORY PROVISION (MILLIONS OF 2022\$, DISCOUNTED TO 2024)—BASE CASE SCENARIO—Continued

Provision	Climate benefits (3%)	Costs (savings) (2%)	Costs (savings) (3%)	Costs (savings) (7%)	Net benefits (3% benefits, 2% costs)	Net benefits (3% benefits, 3% costs)	Net benefits (3% benefits, 7% costs)
RCRA Alternative Standard Requirements ^a .		\$0 to (\$40)	\$0 to (\$35)	\$0 to (\$22)	\$0 to \$40	\$0 to \$35	\$0 to \$22.
Total (AIM Act + RCRA) ^b		\$1,459 to \$1,499	\$1,300 to \$1,335	\$863 to \$884	\$6,857 to \$6,897	\$7,021 to \$7,056	\$7,471 to \$7,493.

^a As detailed in the RIA addendum, reclaim requirements may lead to additional emissions reductions by inducing increased recovery of refrigerant at servicing and disposal that may otherwise be released or vented. In the base case scenario, EPA does not estimate an increase in these avoided emissions beyond baseline assumptions. See the RIA addendum for additional analysis related to this assumption.

^b Rows may not appear to add correctly due to rounding.

^c RCRA alternative standard requirements are part of the RCRA regulations, which are separate from the regulations under subsection (h)(1) of the AIM Act. Potential RCRA-related benefits presented in this table are included here for informational purposes.

2. Estimating Costs and Benefits Based on Affected Equipment and Appliances

As detailed in the RIA addendum, the number, charge sizes, leak rates, and other characteristics of affected RACHP and fire suppression equipment, and the benefits realized through the requirements of this rulemaking, were estimated using EPA's Vintaging Model.¹⁷⁹ For example, for RACHP equipment covered by the rule's leak repair and ALD system provisions, the requirements are assumed to lead to leaking systems being repaired earlier than they otherwise would have been, leading to reduced emissions of HFCs. The reduction in HFC emissions results in climate benefits due to reduced climate forcing as calculated by multiplying avoided emissions by the social cost of each SC-HFC.

In the years 2026 through 2050, the final rule's leak repair and ALD system provisions in particular would prevent an estimated 88.5 MMTCO_{2e} in HFC emissions, and the present value of the economic benefit of avoiding the damages associated with those emissions is estimated at \$6.2 billion (in 2022 dollars, discounted to 2024 using a three percent discount rate). These benefits, as well as those resulting from other provisions contained in the final ER&R rule, are estimated to decrease over time due to the HFC phasedown and the transition out of the higher-GWP HFCs, lowering the average GWP of avoided future emissions. For example, it is estimated that the leak repair and ALD system provisions would prevent approximately 5.6 MMTCO_{2e} of HFC emissions in 2030, which decreases to approximately 3 MMTCO_{2e} of HFC emissions in 2040.

Some provisions contained in the final rule are also estimated to yield cost

savings.¹⁸⁰ For example, reducing HFC emissions due to fixing leaks earlier would also be anticipated to lead to savings for system owner/operators, as less new refrigerant would need to be purchased to replace leaked refrigerant. In 2026, it is estimated that the proposed leak repair and ALD system provisions would lead to savings of approximately \$19.5 million (in 2022 dollars).

The compliance costs of the leak repair and inspection requirements in particular include the costs of purchasing and operating ALD systems, costs of required inspections, and the costs of repairing leaks earlier than would have been necessary without the provisions. When combined with the refrigerant savings, in the years 2026 through 2050, these provisions would result in net compliance costs with a present value estimated at \$1.15 billion (2022 dollars, discounted to 2024 at a three percent discount rate). More details on underlying assumptions for these estimates can be found in the RIA addendum for the final rule and its accompanying appendices.

Comment: One commenter stated that the regulations put in place by EPA will provide health benefits to technicians and their consumers. The commenter also stated that there will be environmental benefits since the HFC Phasedown Program encourages recycling HFCs to reduce GHG production rates.

The commenter also noted that for this transition, States are providing incentive programs to help companies

¹⁸⁰ As discussed in section I.C. of this preamble, the RIA addendum for this rule assumes that in some cases cost savings may accrue to industry as a result of regulatory measures. In some cases, measures are assumed to result in a net cost to regulated entities, while in other cases, measures are assumed to result in a net savings. More details on these assumptions are included in the RIA addendum. For additional discussion on market failures that may lead to forgone savings to industry in the absence of regulatory measures, please see section I.C. of this preamble as well as section 3.2.2 of the Allocation Rule RIA.

adjust to the new standards proposed by EPA. The commenter mentioned that California and Delaware have programs to increase the use of low-GWP refrigerants. The commenter stated that this is a great way to show support for the proposed rule because it is evident that businesses will lose a significant portion of funding with the transition to eco-friendly refrigerants.

The commenter further stated that they wished the proposed rule had more data on the environmental and health impacts of not switching to more eco-friendly HFCs instead of "briefly" discussing it.

Response: EPA acknowledges the commenter's support for this rule. EPA's modeling for this rule focused on how the rule would impact GHG emissions and the HFC marketplace. The Agency acknowledges the comments on the environmental benefits of the HFC Phasedown Program and moreover the global HFC phasedown under the Montreal Protocol's Kigali Amendment but notes that this is outside the scope for this rulemaking, as EPA did not propose to revise regulations to phase down HFCs in this rulemaking. In response to comments on State HFC-management programs, EPA acknowledges the presence of state-level HFC management programs and has referenced some of those programs at various points in this rulemaking, for informational purposes and additional context. For example, EPA cited CARB's refrigerant management program when discussing charge-size thresholds for ALD systems in section IV.D.1. EPA further notes that requirements and incentives of such State programs are also outside the scope of this rulemaking, as those are developed and implemented by State regulators rather than EPA.

Comment: One commenter stated that the costs in EPA's costs and benefits analysis for entering records is grossly underestimated, and a more accurate estimate would be 10 minutes. The commenter asserted that the 10-minute

¹⁷⁹ EPA. 2024. EPA's Vintaging Model representing the Allocation Framework Rule as modified by the 2024 Allocation Rule RIA Addendum. VM IO file_v4.4_02.04.16_Final TT Rule 2023 High Addition.xls.

estimate includes the assumption that the service contractor is recording entries correctly the first time and the record-keeping software loads immediately. The commenter additionally stated that due to the number of small appliances that will be added to the recordkeeping burden, recordkeeping burden will increase by 50 to 100 percent.

Response: EPA notes that the commenter is not specific in regard to which particular record entry cost assumption they claim is an underestimate. EPA has included estimated recordkeeping and reporting costs as a part of total estimated compliance costs in the RIA addendum. These estimates include cost burden assumptions derived from the ICR (EPA ICR Number 2778.01, <https://www.regulations.gov/document/EPA-HQ-OAR-2022-0606-0025>), which estimated labor hours ranging from minutes to up to 40 hours per requirement, depending on the specific recordkeeping or reporting requirement. EPA has not received specific data or information indicating that any of these assumptions need to be revised upward in any particular case, and the comment does not provide any information or data to support the assertion that 10 minutes would be a more accurate assumption for the estimate with which they disagree with. Nonetheless, based on the provisions EPA is finalizing in this rule, the Agency has adjusted the ICR for the final rule accordingly (EPA ICR Number 2778.02), available in the docket for this rulemaking. Regarding the recordkeeping burden for small appliances, EPA acknowledges that the inclusion of refrigerant-containing appliances with charge sizes of 15 pounds or more for the leak repair provisions in this rulemaking may increase recordkeeping burden compared to the recordkeeping burden if the ER&R regulations were to only cover equipment with charge sizes of 50 pounds or more. EPA's rationale for the 15-pound charge size is discussed in section IV.C.2 of the preamble.

Comment: Another commenter expressed concern that if finalized in its current form, the proposed rule would place significant and disproportionate burdens on the grocery industry and other retailers, and that new compliance and administrative burdens created by the proposed rule would lead to increased costs of doing business, which would ultimately be passed on to consumers. The commenter stated that the proposed new requirements would have significant costs that are not accounted for in the Economic Impact and Benefits TSD or in the RIA

addendum to the Allocation Framework Rule RIA. The commenter noted several drivers of compliance costs:

- Tight compliance timeframes that will necessitate allocation of personnel and financial resources.
- Increased demand for and limited supply of reclaimed and/or recycled HFCs.
- Increased demand for and limited supply of ALD systems.
- The installation, training, and maintenance costs associated with ALD installation.
- The need to re-train technicians and maintenance personnel.
- Required retrofit or retirement of appliances with leaks that cannot be repaired in accordance with the proposed repair standard.

The commenter further stated that the Technology Transitions regulatory program will place a significant strain on supply chains and technicians, driving up costs, and that EPA's proposal to impose additional sweeping, mandatory system repair requirements in the near future will further drive a surge in demand for technicians, equipment, and refrigerants. The commenter added that the proposed new requirements, and their varying compliance timeframes, applicability thresholds, recordkeeping, and reporting requirements, will introduce administrative complexity, and that this additional burden is particularly pronounced for the commenter's members which are managing compliance for different sites in multiple States, each with different types of regulated appliances.

The commenter further asserted that the requirements in the proposed rule were unnecessary and would add significant regulatory burdens for little practical gain. The commenter suggested that as the phasedown will create a limited supply of HFCs in future years, businesses will already be well-incentivized to conduct repairs, minimize leaks, and use reclaimed HFCs, meaning that the regulatory mandates proposed are unnecessary. The commenter claimed that the costs and administrative burdens associated with the proposed rule are not justified for equipment that will be obsolete by the end of the HFC phasedown mandated in the AIM Act.

Response: Congress directed the Agency in subsection (h)(1) of the AIM Act to promulgate certain regulations, and that the authority conveyed under subsection (h) is separate from, but in addition to, authority Congress conveyed under other provisions of the Act. EPA is establishing the ER&R program to implement subsection (h),

consistent with the directive given by Congress. Further, as discussed in greater detail throughout this preamble, this rulemaking is designed to serve the purposes identified in subsection (h)(1) of the AIM Act of maximizing reclamation, minimizing the release of regulated substances from equipment, and ensuring the safety of technicians and consumers. EPA did not propose and is not making any changes to the 2023 Technology Transitions Rule; comments with respect to the costs of that rule are out of scope for this rule and require no further response. However, EPA notes that the updated analysis of the costs of the ER&R Rule incorporated the effects of the 2023 Technology Transitions Rule as the baseline from which incremental costs and benefits were estimated.

While EPA has included estimates of the costs and benefits of this rulemaking in the RIA addendum (and reevaluated the costs and benefits of the final rule under two principal scenarios and provided sensitivity analyses around these estimates), to provide the public with information on the relevant costs and benefits of this action and to comply with Executive Orders, that analysis does not form a basis or rationale for any of the provisions promulgated in this rulemaking. To the extent that EPA has considered the results of analyses of the impacts of the provisions of the ER&R program in this rulemaking, those results are reflected in the Economic Impact and Benefits TSD. Further, while certain provisions of the AIM Act do expressly mention the consideration of certain costs, such as subsections (i)(4)(B) and (i)(4)(C), in this rulemaking, the Agency is neither addressing those provisions nor reopening regulations already promulgated under that separate authority. Nothing in the AIM Act requires EPA to consider costs or identify any particular cost-based metric or analytical approach for use in evaluating and establishing regulations to implement subsection (h). Subsection (h)(1) does, however, identify particular purposes that the regulations promulgated under that subsection are to serve, and EPA has focused on serving those purposes in adopting the requirements in this rulemaking. EPA further responds that many of the potential drivers of compliance costs cited by the commenter are uncertain; however, EPA has nonetheless endeavored to include such drivers in its assessment of compliance costs to the extent practicable and based on best available data as detailed in the Economic Impact and Benefits TSD. For

example, regarding costs associated with ALD systems, as noted in the RIA addendum, EPA has included the capital expenditure to purchase the hardware (e.g., detector, sensors), plus installation costs and operations and maintenance costs associated with annual system maintenance, certification, and data tracking/storage. EPA has also included potential costs associated with retrofit or retirement of equipment with leaks that cannot be repaired, as detailed in the RIA addendum and Economic Impact and Benefits TSD. Finally, regarding the need to re-train technicians and personnel, EPA has included labor costs associated with ALD, leak inspection and repair, cylinder management, and fire suppression activities required by this rule. EPA acknowledges that regular training is an integral part of the job requirements of affected technicians and personnel. The comments did not provide, and EPA is not aware of, data indicating that training requirements contained in this rule would translate into increased labor hours or labor rate assumptions beyond those already included in the analysis contained in the RIA addendum and Economic Impact and Benefits TSD.

Regarding compliance timeframes, EPA notes that for many of the provisions contained in the final rule they have been extended relative to those contained in the proposed rulemaking, which has the effect of partially mitigating potential fast cash outlays related to compliance deadlines, allowing such costs to be spread over additional time, and allowing additional time for identifying suppliers, obtaining equipment, adjusting supply chains, or acquiring technicians and other personnel training as needed, as well as other steps that are necessary for compliance.

Regarding supply of reclaimed HFCs, EPA has provided data based on results from its Vintaging Model in both the proposed and final rule RIA addendum on the amount of reclaimed refrigerant that would be required to meet the requirements of the rule. EPA notes that this amount is significantly lower in the final rule, principally because the Agency is not finalizing, at this time, requirements for the initial charge of refrigerant-containing equipment with reclaimed HFCs and also because EPA is not finalizing, at this time, the servicing and/or repair of refrigerant-containing equipment in one of the four proposed RACHP subsectors. Although EPA responds to one comment providing analysis on supply of reclaimed refrigerants in section IV.E.1, this commenter did not provide data to

EPA indicating that there would be a shortfall in supply of reclaimed refrigerant, nor does EPA anticipate such a shortfall based on estimated supply and demand of refrigerant using the Vintaging Model. For more information regarding supply of reclaimed HFCs, see responses to comments in section IV.E.1 and IV.E.2.

Regarding supply of ALD systems, EPA has extended the compliance deadline for the installation and use of ALD systems for both new and existing IPR and commercial refrigeration appliances above 1,500 pounds. EPA has also narrowed the scope of affected existing IPR and commercial refrigeration refrigerant-containing appliances to such appliances that were installed after January 1, 2017. This will ensure that there is an adequate supply of ALD systems for entities affected by the ALD installation and use requirements in this final rule. Further discussion on the supply of ALD systems can be found in section IV.D.1.

Although the 2023 Technology Transitions Rule is not addressed or reopened in this final rule, as the commenter claimed, provisions of that rule may lead retailers in the future to use alternatives that would not be subject to the provision of this rule. (e.g., alternatives that do not include a regulated substance or otherwise have a GWP equal to or below 53). Based on its analysis, EPA finds that the 2023 Technology Transitions Rule has the effect of reducing estimated compliance costs associated with the final ER&R Rule. As industry transitions away from higher-GWP HFCs in response to the 2023 Technology Transitions Rule it is expected to reduce the overall amount of equipment effected by the final ER&R Rule requirements (*i.e.*, appliances that use an HFC or substitute for an HFC with a GWP greater than 53). However, EPA disagrees with the commenter's assertion that the requirements are unnecessary and notes that the justification for the requirements are explained in the sections of the preamble discussing the respective requirements, as well as in the relevant sections of the proposal. EPA also disagrees with the commenters' assertions that the requirements will result in little practical gain. EPA's analysis describing the benefits of these requirements can be found in the RIA addendum and the Economic Impact and Benefits TSD for this rule.

EPA also disagrees with the commenter's assertions that equipment covered under this rule's provisions will become obsolete due to the HFC phasedown under the AIM Act, and that the rule's provisions are therefore

adding unnecessary regulatory burden without providing additional benefits. Provisions promulgated in this rulemaking have compliance dates beginning between 2026–2030 and cover a broad range of new and existing equipment that will use regulated substances or substitutes for a regulated substance with GWPs greater than 53 after the last phasedown step is scheduled to occur in 2036. While these compliance dates overlap with the compliance timelines established for new equipment under the 2023 Technology Transitions Rule, some new refrigerant-containing equipment purchased after the applicable compliance date for the sector or subsector in the 2023 Technology Transitions Rule will still use regulated substances or substitutes with GWPs greater than 53 and thus will be subject to the regulations established under the ER&R program. Additionally, existing equipment that is not subject to requirements under the 2023 Technology Transitions Rule will still be subject to the ER&R program's provisions until the end of its useful life. Thus, by promulgating regulations intended to maximize reclamation and minimize release of HFCs from equipment in this rulemaking, EPA is addressing equipment, practices, and activities that are not specifically addressed under other AIM Act programs.

Comment: Two commenters opposed EPA's use of climate benefits in the analysis. The commenters claimed that the purpose of the AIM Act is to promote American manufacturing, not to regulate GHGs, and stated that the statute itself never mentions GHGs or climate change, which the commenters stated was for good reason, since the divisiveness of climate change policy prevented Congress and the Executive from reaching consensus on any policy explicitly directed at climate change. Instead, the commenters asserted that the law (as evident in the title “‘Innovation and Manufacturing’”) focused on the economic benefits to certain U.S. chemical manufacturers, including fostering innovation in the chemicals industry. The commenters further pointed to EPA's statement that the social cost of carbon is not a record basis for the Agency action, which they alleged to be an acknowledgement that EPA cannot legally take climate benefits into account. One of the commenters stated that EPA expressly disclaims any reliance on the “High Additionality” scenario as the legal basis of the proposed rule.

This commenter further claimed that there is zero benefit from mandating the

use of reclaim gas in various RACHP subsectors, citing Table 8 of the proposed rule, and that EPA glosses over the lack of any benefit in its cost-benefit analysis for the reclaim provisions. The commenter further claimed that contrary to its duty to use reasoned decision making, EPA fails to engage in any substantive discussion of why an agency would adopt a rule (such as the reclaim mandate) that has no benefits that the government can legally promote. The commenter claimed that the AIM Act is not a climate law, that climate change is not part of the AIM Act, and that climate change cannot be considered as a justification for implementing regulations under the statute. The commenter concluded that EPA has failed to explain why a regulation with no economic or environmental benefit should be added to the regulatory burden on the refrigerant sector, and that the rule is arbitrary and capricious.

The other commenter stated that EPA's cost-benefit analysis improperly considers assumed climate benefits and foreign benefits while failing to consider overwhelming cost-benefit imbalances to U.S. manufacturers, and that adequate data was not gathered from impacted industries. The commenter asserted that climate benefits were not Congress' goal, that climate change is not part of the AIM Act and may not be considered as a justification for implementing regulations under the statute, and that given the statutes [sic] sole focus on American manufacturing, EPA's use of cost-benefit analysis of climate change benefits to justify the refrigerant management requirements is based on improper considerations. Accordingly, the commenter stated EPA should remove the discussion of climate benefits from the rulemaking record and rely solely on the core cost-benefit considerations, which they asserted overwhelmingly militate against the proposed rulemaking. The commenter stated that the rulemaking proposal makes clear that the costly burden on refrigeration users would not be justified, except if EPA uses the asserted benefits of climate change as a justification for the rule. Further, the commenter claimed that EPA may not use supposed climate benefits for foreign countries or residents of foreign countries as a basis for regulation of domestic industries, citing *E.E.O.C. v. Arabian Am. Oil Co.*, 499 U.S. 244, 254 (1991).

The commenter also claimed that EPA's cost-benefit analysis is incomplete, and that since the purpose of the AIM Act, and therefore EPA's rulemaking, is focused solely on

American innovation and manufacturing, EPA must assess the costs and benefits of the proposed HFC management rule in relation to the proposed rule's potential impact on the U.S. manufacturing sector. The commenter stated that this analysis should include an assessment of how certain chemical producers of HFC substitutes are benefiting from the AIM Act in general and the management rule in particular, and that EPA's analysis should disclose how the chemical industry that produces substitute chemicals as replacements for HFCs currently used in IPR and other refrigeration equipment might benefit as a result of the government's intervention into the refrigerant sector through product bans. A third commenter stated that the value proposition of implementing the proposed rule is significant but suggested that a further analysis of the \$3.7 billion that EPA estimated in total costs is needed.

Response: With regard to reasons explained in greater detail in the prior response and elsewhere in this rulemaking, the Agency has included estimates of the costs and benefits of this rulemaking in the RIA addendum (and reevaluated the costs and benefits of the final rule under two principal scenarios and provided sensitivity analyses around these estimates), to provide the public with information on the relevant costs and benefits of this action and to comply with Executive Orders, that analysis does not form a basis or rationale for any of the provisions EPA is promulgating in this rulemaking. The Agency did not rely on the "High Additionality" scenario performed for the proposed rule, just as it did not rely on any other scenario performed, as a basis or rationale for this rulemaking. Likewise, we are not relying on any scenario performed for the final rule to justify the regulations finalized in this rule. To the extent these comments assume that this rule is based on the monetized climate benefits reflected in the RIA addendum, those assumptions are based on a mistaken premise. As explained in the proposal and in section I.C of this preamble, while EPA included estimated climate benefits in the RIA addendum that were calculated using SC-HFCs, EPA did not rely on those estimates of the monetized climate benefits of the estimated HFC emissions reductions as a record basis for the Agency's action and would reach the conclusions in this rule even in the absence of the SC-HFCs. In clarifying the role of these analyses in the decision making for this rule, EPA is not taking any position on what SC-HFC benefits

it could or could not take into account as a legal matter, but rather is simply describing, as a factual matter, its approach in this rule. In addition, as explained throughout this preamble, this rulemaking is designed to serve the purposes identified in subsection (h)(1) of the AIM Act of maximizing reclamation and minimizing the release of regulated substances and ensuring the safety of technicians and consumers. To the extent that these comments are intended to suggest that EPA cannot consider effects on GHG emissions in promulgating regulations under subsection (h), that position is at odds with the plain text of the Act. For example, as explained previously, HFCs are potent GHGs and subsection (h)(1) directs EPA to establish certain regulations for purposes which include minimizing releases of HFCs from equipment.¹⁸¹ Thus, subsection (h)(1) on its face authorizes EPA to regulate certain GHGs and to focus on minimizing certain sources of emissions of those GHGs, indicating that Congress intended for EPA to address these GHG emissions under subsection (h).

With respect to the commenter's assertion that EPA may not rely on climate benefits for foreign countries or residents of foreign countries as a basis for regulating domestic industries, EPA responds that it is not clear what relevance this assertion has to this rulemaking. As noted previously, EPA is not relying on the quantification of climate benefits in the RIA addendum as a record basis for this rulemaking. Further, while the commenter cites *E.E.O.C. v. Arabian Am. Oil Co.*, 499 U.S. 244, 254 (1991), it is unclear what bearing that decision is to convey with respect to this rule, as it addresses whether Title VII of the Civil Rights Act of 1964 applies extraterritorially to regulate the employment practices of United States employers who employ United States citizens abroad, and the commenters have offered no further explanation. To the extent the commenter was indicating that EPA may not use the global SC-HFC estimates in the RIA addendum, EPA addressed accounting for global damages in EPA's "Report on the Social Cost of Greenhouse Gases: Estimates Incorporating Recent Scientific

¹⁸¹ The comments emphasize the appearance of the terms "innovation" and "manufacturing" in the title of the AIM Act, but "headings and titles are not meant to take the place of the detailed provisions of the text." *Bhd. of R.R. Trainmen v. Balt. & O.R. Co.*, 331 U.S. 519, 528 (1947).

Advances” (Nov. 2023).¹⁸² For additional discussion on this issue, EPA also refers the commenter to Appendix A of the response to public comments document available in the docket for “Standards of Performance for New, Reconstructed, and Modified Sources and Emissions Guidelines for Existing Sources: Oil and Natural Gas Sector Climate Review.”¹⁸³ With respect to the commenter’s position that there are “zero benefits” from reclaim, EPA disagrees. In the RIA addendum and Economic Impact and Benefits TSD, while we conservatively do not attribute emission reductions from such provisions, we do estimate a reduction in consumption of HFCs. Regardless, the purpose of these provisions is not to provide a specific benefit; rather, as already explained, the purpose is to help fulfill in a reasonable manner the purposes identified in subsection (h)(1), including the purpose of maximizing reclamation.

Furthermore, the Agency refers the reader to some publicly available information which may be of interest to these commenters. Information on the production and consumption of HFCs is provided on EPA’s HFC Data Hub.¹⁸⁴ While information on chemical producers’ “benefits” are not reportable under AIM Act regulations, EPA invites the commenter to refer to company reports including filings with the U.S. Securities and Exchange Commission. For the manufacturing sector, EPA also directs the commenters to a 2018 industry-commissioned study titled *Economic Ratification of the Kigali Amendment*,¹⁸⁵ which found significant economic benefits in terms of increased manufacturing output and job creation.

Lastly, regarding one commenter’s request for the Agency to conduct further analysis of the \$3.7 billion in estimated costs, EPA has reevaluated the final rule and included information on the costs and benefits in the Economic Impact and Benefits TSD. Although the commenter was not specific on what costs a further analysis should include, EPA has provided further information to comply with Executive Orders and has also included the RIA addendum in the docket, though the Agency is not relying on that

as a fact basis for the decisions in the final rule.

Comment: One commenter stated that they did not carefully reproduce the estimated savings and benefits as would have been done if there had been more time for comments, but claimed that the estimated savings assumption “would not be expected to decrease over time, as the cost of refrigerant would not decrease with the average GWP.” The commenter suggested that it is possible that the cost of refrigerant will decrease over time as it has in the past and as there is more extensive use of non-fluorinated alternatives.

Response: EPA agrees that the cost of refrigerants may decrease over time, but also notes it may increase over time as HFCs are phased down. In light of this uncertainty and for consistency and comparability with prior analyses, in the RIA addendum and Economic Impact and Benefits TSD EPA has applied a constant cost for new refrigerant (of \$4 per pound) equal to that used in previous analyses under the AIM Act. EPA further notes that a slightly higher cost (of \$4.40 per pound) was applied for reclaimed refrigerant. More details on these assumptions and resulting estimated costs and benefits, and a sensitivity study of the cost of reclaimed refrigerant, can be found in the RIA addendum and Economic Impact and Benefits TSD, which are available in the docket for this rule.

Comment: One commenter stated that they are a champion of LRM, a climate change mitigation strategy aimed at detecting and repairing refrigerant leaks; recovering, reclaiming, and destroying refrigerant; and designing and installing equipment with high energy efficiency and lower-GWP refrigerants. The commenter shared that LRM can have a profound climate impact, with the potential to mitigate 91 gigatons of CO₂e globally by 2100, with a tenth of those emissions reductions happening in the United States.

Response: EPA acknowledges the commenter’s perspective. The Agency notes that several of the strategies mentioned by the commenter are similar to requirements being finalized in this rule. While outside the scope of this rulemaking, EPA also notes that the Agency has restricted the use of higher GWP substances in multiple RACHP, foams, and aerosol subsectors in the 2023 Technology Transitions Rule (88 FR 73098, October 24, 2023).

Comment: One commenter requested that EPA confirm the impacts of the technology transitions mandates that were considered in the proposed rule, and if they were not considered, the commenter requests that EPA reconsider

the impacts of technology transitions in a supplemental rulemaking.

Response: EPA responds that the 2023 Technology Transitions Rule was not final at the time of the proposed rulemaking and thus was not included in the baseline for the costs and benefits analysis completed for the proposal. However, given the 2023 Technology Transitions Rule has since been finalized, the impacts of that rule are assumed in the baseline for the costs and benefits analysis conducted for this final rule. These assumptions are detailed in the RIA addendum that is available in the docket for this rulemaking.

Comment: Several commenters, in broad support of the proposal, stated that the rule’s requirements enhance LRM and implement activities and practices which assist in preventing leaks and encourage the recovery and reclamation of HFCs. The commenters highlighted their joint report “The 90 Billion Ton Opportunity: Lifecycle Refrigerant Management.” One of the commenter’s stated that minimizing leaks from appliances and ensuring the recovery, reclamation, and destruction of refrigerants at EOL could avoid the emissions of 9.2 billion MTCO₂e by 2100 in the United States alone. The commenter stated that the widespread adoption of LRM globally could avoid emissions up to 91 billion MTCO₂e by 2100.

Response: EPA acknowledges the commenters’ broad support for the rule. As described elsewhere in this preamble, this rule is designed to serve the purposes identified in subsection (h)(1) of the AIM Act, including minimizing releases of HFC from equipment and maximizing reclamation.

Comment: One commenter stated that owners and operators of systems of all sizes will incur economic benefits from promptly repairing leaks. The commenter stated that better maintenance of systems through leak repair will save owners and operators money by reducing the amount of HFC needed to service existing systems and ensure the viability of refrigerated products.

Response: As it is consistent with the analysis that EPA prepared for the final rule, EPA agrees that owners and operators of equipment subject to this final rule may incur economic benefits through prompt leak repair. EPA provided an analysis of different charge size thresholds for leak repair in the draft TSD, *Analysis of Economic Impact and Benefits of the Proposed Rule* (see Appendix F of docket item number EPA-HQ-OAR-0606-0023 attachment 2). Further discussion of the rationale

¹⁸² Available at: https://www.epa.gov/system/files/documents/2023-12/epa_scghg_2023_report_final.pdf.

¹⁸³ Available at: <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0317-4009>.

¹⁸⁴ Available at: <https://www.epa.gov/climate-hfcs-reduction/hfc-data-hub>.

¹⁸⁵ Inforum and JMS Consulting, 2018. *Economic Impacts of U.S. Ratification of the Kigali Amendment*. Available at: https://www.alliancepolicy.org/site/usermedia/application/6/Kigali_Economic_Report.pdf.

for the 15-pound charge size threshold is explained in section IV.C.2. of this preamble.

Comment: Another commenter expressed support for EPA's proposed leak detection and repair requirements. The commenter noted that these proposed requirements will have positive benefits for the atmosphere and climate and will help ease demand for servicing gas.

Response: As it is consistent with the analysis that EPA prepared for the final rule, EPA agrees with these statements.

Comment: One commenter in support of the leak repair and ALD provisions in the proposal stated that many New York businesses would experience savings upwards of \$13 million by 2025 by lowering overall refrigerant and energy costs.

Response: EPA acknowledges the commenter's support for the leak repair and ALD requirements and agrees that refrigerant management will lead to savings on refrigerant and energy costs. Although EPA did not analyze the effects on New York or any other State individually, please see the Economic Impact and Benefits TSD for an analysis of the country as a whole.

Comment: One commenter asserted that lowering the charge threshold to five pounds would yield significant additional avoided GHG emissions. The commenter mentioned that most of the additional reductions are estimated to come from road transport refrigeration units, which, under the 2023 Technology Transitions Rule, are not yet required to transition to low-GWP refrigerant alternatives and have high estimated annual leak rates. The commenter noted that road transport refrigeration units merit being subject to additional leak management requirements. Another commenter similarly stated that lowering the charge size threshold would provide additional emissions benefits from the road transport sector. The commenter further stated that a five-pound threshold would avoid emissions totaling 86 MMTCO₂e by 2050 with annual refrigerant savings of \$1,080,000.

Response: EPA explains the Agency's decision to set a leak repair charge size threshold of 15 pounds rather than 5 pounds in section IV.C.2 in this final rule. EPA provided estimates of the compliance costs and emissions reductions of the proposed leak repair and inspection requirements using various charge size thresholds in the RIA addendum and Economic Impact and Benefits TSD associated with the proposed rule for informational purposes and to comply with Executive Orders. EPA notes that in these

documents as updated for this final rule the Agency assessed the impacts of road transportation refrigeration units using reclaimed refrigerant for servicing or repair. Additionally, as a point of clarification, EPA notes that while the 2023 Technology Transitions Rule did not set a GWP limit for all refrigerated transport, it did ban many high-GWP blends containing regulated substances, including R-404A, which was the primary blend previously used, in certain refrigerated transport subsectors, beginning January 1, 2025.

Comment: Three commenters expressed concern that lowering the applicability threshold for the leak repair requirements would significantly increase costs for sources. One of the commenters mentioned that even EPA's analysis indicated that lowering the threshold to 15 pounds, or even 30 pounds, would not be cost-effective. Another commenter stated that with the 15-pound threshold that EPA proposed, the number of covered appliances for one of its' members' enterprises would increase more than ten-fold (from 600 to 6,100 individual units). The commenter claimed that such a dramatic increase in the number of covered appliances could result in approximately \$1 billion in additional capital costs to the company over the next 10 years. The commenter further stated that another member estimates that conducting site surveys of all of its stores to identify newly covered appliances under the "15-pound threshold" would cost roughly \$500 to \$1,000 per site, depending on location and size. When multiplied across many sites, this would lead to significant costs just to identify newly covered equipment. The commenter stated that as a practical matter, regulating small, packaged units, VRF systems, and mini-splits would greatly increase the recordkeeping burden on owners and operators under the regulations, and would increase costs for inspections and carrying out retrofit and/or retirement plans. The commenter stated that many HVAC appliances contain multiple circuits within a unit, each with its own recordkeeping obligations and leak rates. This increases compliance costs and makes it more difficult to fix, repair, and/or retrofit appliances.

EPA also received another comment similarly claiming that the rule would impose a financial burden to food retailers due to the increased number of affected appliances. Specifically, the commenter estimates that audits of stores to determine which appliances would be subject to the leak repair requirements would cost between \$1,000 and \$2,000 dollars per

supermarket and upwards of \$700 dollars for convenience stores, further estimating a total cost of \$258,872,850 to the food retail industry. The commenter also expressed concern that many smaller appliances would need to be added to a company's recordkeeping, because appliances not previously covered under CAA section 608 would not have had their full charge data captured. The commenter claimed that some companies may have voluntarily kept records of appliances under 50 pounds, however these records would not have been kept with the same rigor as recordkeeping required under CAA section 608. The commenter estimates the costs of reweighing smaller refrigerant-containing appliances to determine full charge will cost individual stores a minimum of \$1,287 which industry-wide would result in an additional \$81,534,800 in compliance costs.

Response: EPA is finalizing the 15-pound charge size threshold as proposed for the leak repair requirements in this final rule after consideration of a number of factors, including information regarding where HFCs or their substitutes are currently being used in refrigerant-containing appliances and where they are expected to be used in the coming years. EPA also considered, for example, changes to the market for refrigerant-containing appliances over time, design elements of different types of refrigerant-containing appliances with different charge sizes and their respective propensity to leak (e.g., whether equipment is hermetically sealed), and whether refrigerant-containing appliances at specific charge sizes are typically repaired or disposed of. As previously stated, in the RIA addendum and Economic Impact and Benefits TSD for the proposed rulemaking the Agency assessed different thresholds. These assessments were prepared to provide additional information, increase transparency to the public, and comply with Executive Orders. EPA did not consider the cost-effectiveness of a specific charge size threshold in its reasoning for finalizing the 15-pound charge size threshold for the leak repair provisions; however, for informational purposes the Agency provided the cost assessments at different charge thresholds in the Draft Economic Impact and Benefits TSD associated with the NPRM. Further discussion on the charge size threshold for the leak repair provisions in this final rule can be found in section IV.C.2.

Regarding one commenter's assertion that the rule would institute additional recordkeeping and compliance costs for certain HVAC appliances, the Agency

refers the commenter to further discussions on the exemption of refrigerant-containing appliances used in the residential and light commercial air conditioning and heat pumps subsector in section IV.C.2. EPA notes that several of the refrigerant-containing appliances the commenter describes (e.g., mini-splits) may be considered a part of the residential and light commercial air conditioning and heat pumps sector and thus are exempt from the leak repair requirements in this final rule. EPA disagrees with the commenters' assessments of capital costs associated with complying with the leak repair provision and with the comments related to site surveys and store audits. Owners and operators will need to review an inventory of equipment and assess which equipment is subject to the rule's leak repair requirements regardless of where the threshold is set. Supermarkets and other entities should be able to ascertain which appliances are at or above the 15-pound threshold. Furthermore, owners or operators most likely have records of refrigerant-containing appliances that would allow them to determine if the full charge was at or above the 15-pound threshold. For instance, owner's manuals might provide the OEM's assessment of the full charge, or service records from when the equipment was installed and first filled or checked might provide the necessary information. The Agency understands that most stand-alone units would be below 15 pounds but to the extent that certain stand-alone units are above the 15-pound threshold owners or operators should be able to easily determine the charge size and type of refrigerant being used via a manufacturer label. Further, if an owner or operator is using the same make and model of refrigerant-containing appliance then they would not need to verify each individual appliance. Remote condensing units (e.g., supermarket cold rooms) may also have charge sizes at or above 15 pounds but as previously stated, previous records, manufacturer labels, and other information readily available should make the determination of the charge size for any such appliances uncomplicated. The recordkeeping for owners and operators is similar in nature to those required under the CAA section 608 regulations. Therefore, most owners and operators should already be familiar with the requirements being applied in the rule. The total estimated recordkeeping and reporting costs are provided in the Economic Impact and Benefits TSD and the assumptions for the various leak repair and inspection

actions anticipated are likewise provided in Appendix A of the TSD. EPA does not anticipate that it would typically be necessary to conduct full store audits of appliances or reweigh appliances in the way the commenters suggest for these reasons. EPA notes that in this final rule, the Agency delayed the date by which an owner or operator must determine the full charge of appliances containing 15 or more pounds of refrigerant and keep records of such, from 60 days after publication until January 1, 2026, and that such change allows owners and operators to collect the required information in the normal course of business. Thus, EPA disagrees with the asserted cost estimates for determining which appliances are subject to leak repair under the final rule, even in the absence of voluntary recordkeeping of refrigerant-containing appliances which may be subject to the leak repair requirements.

Comment: One commenter claimed that technician and equipment shortages and complexity of supermarket systems will make compliance with the one-year retrofit or retirement requirements difficult. The commenter also stated that the retrofits complying with the 2023 Technology Transitions Rule will further complicate compliance with the rule's deadline. Thus, the commenter asserts that owners or operators will incur significant excess costs to meet the retrofit or retirement requirements in the rule.

Response: EPA disagrees that 12 months is not enough time for an owner or operator to implement their retrofit or retirement plan as required under this rule, and further notes that the rule allows owners or operators to seek extensions if certain criteria are met. Owners or operators have up to 30 days to repair commercial refrigeration appliances (or 120 days if an industrial process shutdown is required) and extensions can be requested if certain criteria are met. During the leak repair process an owner or operator would know if a refrigerant-containing appliance is unable to be repaired and would therefore require retrofit or retirement. As discussed in section IV.A.2, EPA under the definition of "retrofit" being finalized in this rule, retrofitted refrigerant-containing appliances will not be required to transition to lower-GWP alternatives. The Agency, however, still encourages owners or operators that are retrofitting refrigerant-containing appliances to transition to a lower-GWP refrigerant. Further, in response to the commenter's concerns with complying with the 2023 Technology Transitions Rule, we note

that restrictions on retrofits are not included in that rule and thus disagree with the commenters' assertion that that rule would complicate compliance with this rule's deadlines for retrofit or retirement plans. Additionally, the Agency notes that the commenter did not provide detailed information or data to support—or to allow EPA to more fully assess—the commenter's claims regarding potential technician and equipment shortages and how these factors would affect compliance with the retrofit and retirement requirements in the final rule or lead to excess costs.

Comment: The commenter recommended that EPA follow CARB's leak repair timeline of 14 days from the initial detection of the leak to ensure that any detected leak is repaired in a timely fashion because this approach reduces both emissions and additional refrigerant costs to appliance owners and operators.

Response: EPA agrees that the quicker a leak is repaired, the more emissions and additional refrigerant costs would be mitigated (up to the time that the entire charge has leaked out). EPA does not agree with the commenter that it would be appropriate to establish a 14-day repair timeline for the requirements in this rule. The amount of time provided to repair a leak and the reasoning for that decision is provided in section IV.C.3.b of this preamble. For analysis purposes, as explained in the RIA addendum and Economic Impact and Benefits TSD, EPA estimated that leaks would be noticed and repaired early due to the provisions of this rule.

Comment: Another commenter expressed support for EPA's proposed leak detection and repair requirements. The commenter noted that these proposed requirements will have positive benefits for the atmosphere and climate and will help ease demand for servicing gas.

Response: EPA agrees that leak detection and repair requirements will have a beneficial impact on the environment and has provided estimated benefits of these impacts in the Economic Impact and Benefits TSD. EPA agrees that the detection and repair of leaks is effective in reducing the quantity of gas necessary for servicing existing equipment.

Comment: One commenter stated that EPA significantly underestimated the costs of installing ALD systems. The commenter stated that EPA's cost estimates for direct ALD systems do not include all the types of costs that owners or operators will incur. The commenter recommended that EPA develop cost estimates that also consider the following:

- Reviewing the ALD system requirements,
- preparing the process design for equipment installation, which includes safety and electrical reviews,
- preparing bid packages and reviewing bids,
- developing detailed mechanical designs (which would include the hardware/software needed to tie the systems to control houses and panels that may need to be modified),
- project cost estimating,
- management reviews,
- construction contracting,
- field installation, and
- testing.

With regards to indirect ALD systems, the commenter noted that EPA indicated that indirect systems have been installed in some retail stores but did not provide any information on applications in industrial facilities. The commenter suggested that the cost estimate for indirect ALD systems is orders of magnitude below what the actual costs will be because indirect ALD systems require specialized monitoring systems and require constant monitoring from complex logic systems to detect losses. The commenter also expressed concern that the TSD for ALDs did not include any references to discussions with equipment suppliers about actual fully installed appliances and recommended that EPA take steps to develop more realistic costs estimates before finalizing the proposed rule. The commenter also stated that EPA's reference for the cost estimates, "Abt Associates, Supplemental Automatic Leak Detect System Draft Analysis, 2023, prepared for EPA Stratospheric Protection Division," was not included in the docket.

Response: EPA responds that the commenter did not provide information on how their examples of costs apply to the costs associated with the installation and use of direct ALD systems nor did the commenter provide estimates of such costs. While EPA agrees to that project planning would need to take place to decide if an owner or operator would prefer to use an indirect or direct ALD system (including planning for the placement of refrigerant sensors) EPA disagrees that these actions would drastically increase the cost estimates provided in the RIA addendum and Economic Impact and Benefits TSD. Furthermore, some of the costs cited by the commenter like testing, installation, and construction contracting would reasonably fall under the installation cost estimates *Unit Cost Assumptions* Table in the RIA addendum and Economic Impact and Benefits TSD.

Regarding the commenter's statements on the installation and use of indirect ALD systems in industrial applications, EPA notes that the information provided on indirect systems installed in some retail stores in the TSD titled *American Innovation and Manufacturing Act of 2020—Subsection (h): Automatic Leak Detection Systems* was exemplary only and was not intended to represent all such installations. EPA provides information on the industries potentially affected by this rule both in the preamble to the proposed rule and the preamble to the final rule. A list by NAICS codes is also available in Appendix H of the Economic Impact and Benefits TSD. A full list of applications in any subsector of the industry is not plausible and not required for this rule; owners and operators whose equipment falls under the scope of the requirements (e.g., full charge size of 1,500 pounds or more, installed on or after January 1, 2017) are required to install and use an ALD system in the time frame set out by the final rule. The Agency reiterates that estimates in the RIA addendum and Economic Impact and Benefits TSD were provided for informational purposes and to comply with Executive Orders; the decision to require ALD systems for certain refrigerant-containing appliances and allow owners or operators to choose whether to use a direct or indirect system, as explained in section IV.D.1 of this preamble, serves the purposes described in subsection (h)(1), including the purpose of minimizing the release of regulated substances from equipment.

In addition, EPA notes that the commenter did not provide specific information on "realistic" costs that the commenter would have EPA incorporate into the final RIA addendum. EPA disagrees with the commenter's assertion that the cost estimates for the installation of an indirect ALD system is below the actual costs of installation of an indirect ALD system because existing refrigerant-containing appliances' control modules do not have the capability to do the logic calculations necessary to detect leaks. Indirect ALD systems are software-based detection tools that communicate with existing hardware on the refrigerant-containing appliance to detect leaks. Since the Agency has changed the scope of applicability for existing refrigerant-containing appliances for the ALD installation and use requirement from the proposal (specifically only refrigerant-containing appliances installed on or after January 1, 2017, are required to install an ALD) the control

modules on these appliances should be advanced enough to functionally use an indirect ALD system. Additionally, if an owner or operator were to find that a particular ALD technology (direct or indirect) would not suit their refrigerant-containing appliance, they have the option of choosing another ALD technology to meet the rule's requirements. Furthermore, the reasons for the requirements for ALD system, as explained in section IV.D.1 of this document, are not based on keeping below any specific cost; rather, it is based on serving the purposes described in subsection (h), as previously stated. Further discussion on the Agency's rationale for requiring the use of ALD systems for certain refrigerant-containing appliances can be found in section IV.D.1. In reference to the comment regarding EPA's numbers used in *Table A-4—Unit Cost Assumptions* table found in the RIA addendum, EPA acknowledges the cited source was not included in the docket at proposal and notes that it has docketed the relevant information from the document and corrected the citation (titled *Supplemental Information on Automatic Leak Detection Systems* available in the docket (EPA-HQ-OAR-2022-0606)). The information used was accurately described and summarized in the draft RIA addendum for the proposed rule and likewise in the analysis for the final rule.

Comment: A commenter requested a 2,000-pound threshold if EPA maintains the ALD installation requirement for some appliances. The commenter asserted that EPA's RIA suggested that thresholds below 2,000 pounds are not cost-effective. The commenter also asserted EPA should further evaluate the cost-effectiveness of a threshold higher than 2,000 pounds and, at a minimum, should not finalize any threshold below 2,000 pounds.

Response: As discussed further in section IV.D.1 of this preamble, the Agency is finalizing the 1,500-pound threshold for IPR and commercial refrigeration appliances containing an HFC or substitute for an HFC with a GWP greater than 53 as proposed. In the RIA addendum and Economic Impact and Benefits TSD for the proposed rulemaking, the Agency provided information on the costs and benefits of choosing a different threshold; however, EPA notes that the figures presented in the RIA are for informational purposes and to comply with Executive Orders and were not used as a record basis for deciding the threshold for ALD installation requirements. When deciding the charge size threshold for IPR and commercial refrigeration

appliances subject to this provision EPA considered the relative risks of leaks from larger refrigerant-containing appliances and the supply of ALD systems to facilitate compliance with the provision. With those considerations, EPA finds the 1,500-pound threshold appropriate for serving the purposes described in subsection (h)(1), including the purpose of minimizing the release of regulated substances from equipment.

Comment: A commenter stated that the proposed rule would require carriers in the commercial airline industry that maintain large chiller systems at airports to install ALD systems at high costs.

Response: EPA responds that the commenter did not provide any information or data to support their assertions regarding the effects of the costs associated with the installation and use of ALD systems for chillers at airports on the commercial airline industry, nor did they provide any information indicating how or why EPA should change the proposed rule to account for these costs.

Comment: A commenter claimed that mandating leak searches and adding ALD further adds to consumer costs.

Response: EPA responds that the commenter did not provide sufficient information to describe why or how the costs related the leak repair and ALD requirements would lead to more costs and thus be passed onto consumers. EPA understands that refrigerant and the maintenance of refrigerant systems are a small percentage of the overall costs of owning such refrigerant-containing appliances. The effective repair of leaks and the earlier detection of leaks via ALD systems is anticipated to lead to more cost savings for owners and operators, as properly functioning refrigerant-containing appliances are more energy efficient and require fewer refrigerant additions.

Comment: One commenter suggested that EPA provided no proof that the objectives noted in the proposed rule for reclamation to bolster the current supply of HFCs with recovered and reclaimed refrigerants from existing systems, support a smooth transition to substitutes for HFCs, minimize disruption of the current capital stock of equipment by allowing its continued use with existing refrigerant supplies, avoid supply shortages of virgin refrigerants, and insulate the industry against price spikes that could affect the servicing of existing systems using HFCs can be achieved. The commenter also claimed that EPA's claims of cost-savings are contradicted by the RIA,

which did not monetize any of the supposed benefits.

Response: EPA disagrees with the commenter and directs the reader to section IV.E of this preamble for additional information on the reclamation requirements. EPA notes that there was a 40 percent increase in the mass of HFCs reclaimed from 2021 to 2022, and approximately a 20 percent increase from 2022 to 2023, which may be an indication that there will be additional shifts in the reclamation market.¹⁸⁶ In EPA's experience with the CFC and HCFC phaseouts, the Agency has seen continued use of reclaim, indicating that equipment was and, in many cases, still is operating utilizing refrigerants that have been phased out. Throughout those phaseouts, EPA has not seen any significant disruption or premature retirement of equipment due to refrigerant shortages, nor did the commenter provide any evidence thereof for the CFC and HCFC phaseouts, nor any reason to think such effects would occur for the HFC phasedown.

In the RIA addendum and Economic Impact and Benefits TSD, EPA has estimated the costs and benefits of the regulations. While the commenter seems to indicate that cost savings were not included in the analysis, EPA notes that cost savings associated with avoided refrigerant losses were included in the analysis conducted for both the proposed and final rule. More information on these assumptions can be found in section VI.B.2 of this preamble as well as the RIA addendum and Economic Impact and Benefits TSD.

Comment: One commenter stated that the modeling conducted in support of the AIM Act regulations appears to rely on refrigerant recovery in disposal and servicing of appliances that may exceed what current regulations will achieve. The commenter cited the RIA for the allocation regulation and the RIA for the 2023 Technology Transitions Rule, on the basis of which the commenter stated their understanding is that EPA may expect a 100 percent recovery rate. The commenter noted that despite the proposed rule's multiple measures, the proposal has few provisions regarding the disposal side of refrigerant recovery or the recovery of refrigerants at EOL. The commenter stated that residential EOL disposal and recovery is not discussed in EPA reclaim market report provided in the docket, but residential appliances are an important source of HFC consumption and emissions. The commenter shared a concern that there

is little incentive for individuals that may collect residential appliances, such as from a curbside, to properly recover refrigerants before transferring the equipment to a recycling or other disposal facility, and stated that entities that accept EOL equipment, like metal recovery facilities, may request that refrigerant be vented prior to disposal so that they are not subject to regulation, creating a gap in enforcement of existing regulations and undermining reclaim supply. The commenter stated that of the jurisdictions with refrigerant collection policies, Japan may have the most recovery and Japan's government reports a 40 percent recovery rate. The commenter stated that based on information provided by EPA, the recovery rate in the United States is much lower than this and much lower than what may have been modeled in the AIM Act rulemakings. The commenter added that even the volume of HFCs contained within products exceeded the recovery rate in 2020 by seven times. The commenter further noted that one benefit of the proposed regulation is that by increasing the demand for reclaim, it also provides additional incentive for refrigerant recovery. However, the commenter stated that based on the industry report provided by EPA in the docket, the examples from other jurisdictions suggest that incentives are not enough to ensure a high rate of recovery. The commenter stated that EPA's modeling assumptions may only be achievable through robust enforcement and incentives.

Response: EPA confirms that the modeling conducted for the RIA and RIA addenda for the HFC Allocation and 2023 Technology Transitions rules do assume improvements to refrigerant recovery rates, during service and at disposal, in some of the potential compliance pathways. However, the rate of recovery assumed in this modeling was not 100 percent. To represent improvements to refrigerant recovery rates possible under the provisions of this final rule, in an alternate scenario EPA modeled an improvement in the emissions rates of all RACHP equipment (including residential) at disposal. Specifically, it was assumed that an emissions rate of three to four percent would be achieved for large and small RACHP equipment (in other words, three-four percent of equipment charge would still be emitted at EOL even with the improved recovery assumption). EPA notes that while this assumption was included in the compliance path for the Allocation Rule RIA, it was effectively treated as an uncertainty in

¹⁸⁶ Available at: <https://www.epa.gov/section608/summary-refrigerant-reclamation-trends>.

the subsequent 2023 Technology Transitions RIA Addendum, given that updated modeling results demonstrated that compliance with both rules could be achieved without improved recovery. As detailed in the associated RIA addendum, modeling conducted for this rule assumes that the prior improved recovery assumption would not occur in the “baseline” in order to conform with the base case analyzed for the 2023 Technology Transitions Rule. However, an alternative scenario has also been provided in the RIA addendum and the Economic Impact and Benefits TSD in which improved recovery is assumed to otherwise occur in the absence of this regulation, thus illustrating a lower bound of potential incremental benefits. EPA welcomes additional data and technical information on this topic and will continue to monitor industry recovery and reclamation rates in order to potentially update its modeling assumptions in the future. Finally, EPA acknowledges that further improvements in recovery rates may be achievable through enforcement and incentives such as those mentioned by the commenter.

Comment: One commenter stated that EPA is uncertain whether mandating the use of reclaimed HFCs would provide benefits in the form of additional HFC reductions. The commenter stated that EPA indicates that use of reclaimed HFCs in the RACHP subsector and fire suppression equipment “may not yield significant additional HFC consumption reductions, relative to what was previously modeled in the Allocation Framework Rule Reference Case,” while noting that EPA states that the “specific provision of this proposed rule would likely increase the use of recycled/reclaimed HFCs beyond what was already accounted for in [the RIA].” The commenter claimed that EPA offers no quantification of this increase, and that such imprecise and qualified impacts do not provide a sufficient policy basis for the imposition of requirements that will impact the HFC market as envisioned by the AIM Act.

The commenter also asserted that the proposed rule would create a captive market as opposed to one based on competition, thereby losing any economic incentives that could lower the cost of products to consumers. The commenter stated that EPA effectively requires OEMs to buy reclaimed HFCs in order to sell pre-charged HVACR equipment and technicians and others to buy reclaimed HFCs in order to “first fill” new equipment on-site. The commenter claimed that this creates a closed market given the finite amount of reclaimed HFCs available, citing EPA’s

2023 reclaim report documenting that 1,600 MT of R-410A was available in 2022 as reclaim, which the commenter claimed, relative to estimated 2022 demand for charging new R-410A AC equipment, represents less than four percent of new equipment demand. The commenter further claimed that in its analysis for the proposed rule, EPA has not considered that the finite amount available in 2022 was likely already sold, leaving other newly obligated parties to purchase required reclaimed HFCs from a market that already has a minimum value established for R-410A. The commenter claimed that this necessarily results in an unbalanced, artificial market of EPA’s creation. The commenter also stated that EPA has not analyzed the cost impact of such market conditions to the end consumer nor any potential adverse outcomes, including concentration of a finite amount of reclaimed HFCs within a relatively small number of suppliers.

The commenter also claimed that EPA utilizes “regulatorily manufactured demand” to estimate actual demand for initial charge of reclaimed HFCs in 2028 at 23,300 metric tons, and that by doing so EPA did not establish a “no action” base analysis. Instead, EPA forecasted existing demand by creating reclaim requirements meant to create this “artificial demand.” The commenter then stated that EPA made a faulty assumption in assuming that market forces would not be sufficient to increase reclamation before the next phasedown of HFC production and consumption. The commenter claimed that EPA erroneously concluded that voluntary reclamation programs that “worked in Europe” would not be sufficient to increase reclamation in the United States, and that EPA’s decision to institute regulations to increase reclamation is “at variance with the AIM Act . . . [and] arbitrary and capricious.”

The commenter further stated that reclaim requirements for HFCs are also unnecessary based on the United States’ experience with the phaseout of ODS, as a reclamation market has allowed the continued use of ODS even in the absence of voluntary reclamation requirements. Furthermore, the commenter stated that the climate impact of refrigerant leaks is the same regardless of whether refrigerant is reclaimed or virgin, and that EPA has no basis for claiming that there will be a climate benefit from reclamation requirements or that reclamation will offset emissions from newly produced HFCs, either domestic or imported. The commenter stated that EPA’s own analysis has not proven that increased

reclamation will provide additional benefits, citing quotations from the RIA addendum. The commenter instead concluded that “market distortion” is the most likely outcome, with some parts of the HFC marketplace impacted more heavily than others.

The commenter additionally asserted that the RIA is inadequate to support EPA’s proposed direct intervention in the market. The commenter noted that EPA states in the RIA addendum that because “cost and emission estimates aren’t available specifically in the United States context, cost savings and benefits are not directly incorporated into the overall compliance costs and benefit estimates associated with the rulemaking [provisions on reclamation],” and states that to account for the uncertainty in EPA’s intervention in the market, EPA created two scenarios: (1) Where requirements to use reclaimed HFCs result in a shift of the use of available consumption and production allowances; and (2) a ‘high additionality’ case where some abatement of HFCs is assumed. The commenter stated that EPA then measured the costs and benefits of reclamation using a highly flawed methodology, and that EPA calculated the incremental cost differences of virgin production, destruction, and reclamation at \$0.58 per kilogram. The commenter asserted that this methodology merely compared the cost of virgin production and destruction and then subtracted the cost of reclamation, and that this calculation is effectively meaningless in the context of what EPA actually proposed.

The commenter also claimed that this analysis showed that there is already a strong economic incentive to reclaim HFCs instead of destroying them, because the estimated cost of production is \$0.24 versus \$0.04 for reclamation. The commenter further stated that the cost calculated does not actually reflect EPA’s proposal to substitute the use of reclaimed versus newly produced HFCs, and instead assumes that all newly produced HFCs would be destroyed without EPA’s proposed mandatory use of reclaimed HFCs, which the commenter describes as nonsensical. The commenter claimed that for EPA’s proposed use of reclaimed HFCs to have a market effect (e.g., if it is assumed that reclaimed HFCs will offset the production of virgin HFCs) then new production should be offset by 1:1 (or some other, lesser ratio) but any newly produced HFCs would logically not be concurrently destroyed. Rather, the commenter asserted, both the virgin HFC and the reclaimed HFC would eventually be destroyed,

presumably at comparable rates, meaning that the calculated benefit of \$0.58 would not exist along with any derived climate benefit.

The commenter further stated that to the extent that EPA calculated the quantity of emissions prevented it appears to have assumed that 15 percent of HFCs would still be produced for blending into reclaimed HFCs and another 67 percent of HFCs would be lost in the reclamation process and eventual emissions of reclaimed HFCs. The commenter claimed that this would mean that EPA estimates that 18 percent of HFC production would be avoided due to the newly proposed requirements but claimed that EPA provided no basis for this assumption in the RIA. The commenter asserted that any claimed benefits to the climate must therefore be discounted due to a lack of explanation as to how such would occur. The commenter further claimed that EPA has not conducted sufficient analysis, and therefore cannot simply conclude that such benefits would occur, as the commenter states EPA appears to do. The commenter stated that EPA provided no TSD to support its reclamation proposal, unlike TSDs for ALD, fire suppression, and the cold chain, that the study cited (Yasaka et al. (2023)) was not provided in the docket, and that an additional report cited by EPA does not contain relevant calculations. The commenter stated that, for example, EPA cited but does not provide in the docket a report entitled "The 90 Billion Ton Opportunity," and that the available copy of this report on the web contains no calculations as to the amount of HFC releases avoided through mandatory reuse of HFCs.

Response: EPA responds that, upon consideration of comments, in light of the provisions being finalized, and because of further analysis, many of the analytic assumptions mentioned by the commenter have been updated in the final rule RIA addendum and Economic Impact and Benefits TSD. In the final RIA addendum and Economic Impact and Benefits TSD, EPA only mentions the Yasaka et al. paper in passing and does not rely upon it or the calculations of costs of production, reclamation, and destruction in our calculations. Further, EPA no longer assumes the 67 percent loss with which the commenter took issue. EPA acknowledges that there is uncertainty regarding the degree to which some of the provisions contained in this final rule will lead to incremental reductions in HFC consumption and emissions when considering already in-place regulations and market forces. For these reasons, EPA has included multiple scenarios in

the RIA addendum for the final rule. However, as detailed in the RIA addendum, even in EPA's most conservative assessment of the incremental benefits of the final rule, significant incremental consumption and emissions reductions occur. Although EPA conservatively assumes the reclamation provisions do not provide additional emission reductions, the analysis finds those provisions reduce HFC consumption by over 150 MMTCO₂e through 2050.

EPA disagrees that existing economic incentives for reclamation in the absence of this rulemaking would represent a flaw in the analysis. As noted elsewhere in the rule preamble, some market failure may exist that acts as a barrier to businesses' adoption of the most profitable course. For example, market failures may exist where there are imperfect information or split incentives, such as decision-makers not knowing the percentage of energy use associated with different options.

EPA also disagrees that the experience of the ODS phaseout provides any proof that a voluntary reclaim market for HFCs would materialize that would serve the same goals as this rule and that the requirements of the final rule are thus unnecessary. The consumption of halons and CFCs were completely phased out in 1994 and 1996, respectively, and likewise later for HCFCs on a species-specific schedule. Although the ODS phaseouts effectuated a type of reclamation market, as users would need to access used or stockpiled material to service their equipment, that market was not intended to meet specific statutory provisions with respect to reclamation. As the commenter notes with statistics regarding R-410A, such a reclamation market does not exist for all HFCs currently. Further, given that HFC production and consumption are phased down, not phased out, under the AIM Act, and given the express language in the AIM Act addressing reclamation, the comparison to the ODS history in this respect is not analogous with the goals of this final rule.

EPA notes that the commenter's assertions regarding the creation of potentially anticompetitive markets for reclaimed HFCs appear to be speculative. The commenter did not provide sufficient information to support their claims or analyze the specific details of their assertions, including information addressing how the rule would lead to such adverse outcomes given the numerous EPA-certified reclaimers that exist, and the opportunity for other entities to enter the reclaim market. Nor is EPA aware of

such information or analyses in the record for this rule. In addition, the Agency is not finalizing, at this time, the proposed requirements for the initial fill of refrigerant-containing equipment to be done with reclaimed HFCs, thus potentially alleviating some of the commenter's concerns. EPA has also responded to many of the commenter's concerns regarding the market for reclaimed HFCs and has described the rationale for the requirements for reclaimed HFCs that are being finalized in this rule, in section IV.E.2 of this preamble. Regarding a "no action" analysis, EPA notes that the Agency provided a "Business as Usual" scenario in the 2021 Allocation Framework Rule RIA addendum. EPA further notes that the commenter seems to misunderstand the reason for preparing the RIA addendum. As noted elsewhere in this preamble, while EPA has included estimates of the costs and benefits of this rulemaking in the RIA addendum, to provide the public with information on the relevant costs and benefits of this action and to comply with Executive Orders, the analysis in the RIA addendum does not form a basis or rationale for any of the provisions EPA is promulgating in this rulemaking.

Finally, in its analysis of the costs and benefits of this rule, EPA has not assumed that reclaimed HFCs are more cost-effective vis-à-vis virgin HFCs due to avoided destruction costs. Such an assumption may be defensible, and EPA is aware of the study, referenced by the commenter, indicating that reclaimed HFCs may actually be more cost-effective than virgin manufacture, when considering the full refrigerant lifecycle including destruction. While EPA referenced this study in the RIA addendum included with the proposed rule, for the final RIA addendum EPA has conservatively not included the potential savings cited by that study. Indeed, in its central base case analysis EPA has conservatively assumed a cost premium for reclaimed HFCs vis-à-vis virgin HFCs of 10 percent. For informational purposes, we also provided a sensitivity analysis around this assumption.

In response to the commenter's claim that EPA should implement a voluntary refrigerant reclamation program instead of promulgating refrigerant regulations, EPA responds that the Agency is finalizing reclamation requirements to implement subsection (h)(1) and subsection (h)(2)(B) of the AIM Act, as stated in IV.E.1. Namely, EPA instituted reclamation provisions in order to maximize reclamation and minimize releases of HFCs consistent with (h)(1), and also to implement subsection

(h)(2)(B) of the AIM Act, which provides that a regulated substance used as a refrigerant shall be reclaimed before being sold or transferred to a new owner, except where such sale or transfer is solely for purposes of reclamation or destruction of the regulated substance. The commenter fails to provide any information or analysis to support a conclusion that a voluntary reclamation program would be as well suited to meeting the objectives of this rule as the program that EPA is establishing in this rule.

In response to the commenter's assertions regarding docketing, EPA included both sources that the commenter mentioned in the docket. Yasaka et al. (2023) is included in the docket as an attachment to the docket entry for the RIA addendum,¹⁸⁷ while the study the commenter cites "The 90 Billion Ton Opportunity" is included in a docketed list of references from the NPRM.¹⁸⁸

Comment: Another commenter stated that EPA did not clearly and consistently identify the heel estimates used when assessing potential benefits of the proposed cylinder management requirements. The commenter stated that EPA's environmental benefit analysis is contradictory, insufficiently supported, and does not rely on facts.

Response: EPA has included information in the RIA addendum and Economic Impact and Benefits TSD for the final rule regarding the assumptions, including the estimated heel, used in The Agency's analysis of the costs and benefits of the requirements for the management of disposable cylinders. Further, based on information from the commenter, EPA has provided sensitivity analyses of the related costs and benefits in Appendix K of the RIA addendum.

Comment: One commenter stated that there would be no benefit for reclaimers to recover refrigerant heels because there would be little refrigerant left in the cylinders, resulting in an expensive refrigerant from a cost per ounce perspective. Another commenter stated that EPA's RIA addendum did not provide any estimates of the costs and benefits of the proposed container tracking system. The commenter stated that EPA cost estimates appear to be entirely based on the separate

requirement regarding the recovery of cylinder heels.

An additional commenter stated that there is no benefit to forcing empty disposable cylinders to outside facilities and that tracking cylinders will increase costs.

Response: EPA has estimated the costs and benefits of requirements to manage disposable cylinders and heels in the RIA addendum and Economic Impact and Benefits TSD for the final rule. EPA is not finalizing the cylinder tracking requirements at this time, and thus costs related to those provisions are not included in the costs from the aforementioned RIA addendum and TSD. EPA notes that for consistency with previous regulations under the AIM Act, the Agency assumed the value of the recovered heel is \$4 per pound. That said, EPA expects that given the HFC phasedown that is underway, those costs could increase over time, providing more value to those recovering the heels. The reasons for establishing these requirements related to disposable cylinders and heels are explained in section IV.G of this document.

Comment: One commenter also stated that there will be a cost impact throughout the supply chain to handle the logistics and tracking required to recover a likely small amount of HFCs. The commenter expressed concern with the net environmental impact of reclaiming the heel refrigerant from disposable cylinders in the MVAC sector after considering the transport, handling, and reclamation energy required to extract the remaining refrigerant, and the commenter urged EPA to consider all factors involved in the net environmental benefit of heel reclamation before implementing the rule.

Response: EPA has estimated the costs and benefits of the requirements to manage disposable cylinders and send heels for reclamation in the RIA addendum and Economic Impact and Benefits TSD for the final rule. EPA's assessment included additional costs related to transport and the labor costs, plus overhead, for handling and transporting such cylinders. While EPA acknowledge there are energy use implications in reclaiming materials, the Agency noted in the draft RIA addendum to the proposed rule a study (Yasaka et al., 2023)¹⁸⁹ that shows, overall, the use of reclaimed refrigerant leads to net reductions in energy

compared to the production of virgin material. To be conservative and because these results were based on data from Japan and Europe, EPA does not, however, use those findings to increase the benefits assessed from the avoided emissions estimated based on the requirements of the final rule.

Comment: One commenter suggested that the proposed cylinder management and tracking requirements do not appear to be based on a complete and legally sufficient analysis of the best available data. As such, the commenter stated that that EPA may have significantly overstated the environmental benefits. Another commenter expressed concern that the proposed rule requiring machine readable tracking identifiers on all containers of HFCs that could be used for the servicing, repair, or installation of refrigerant-containing equipment, including both refillable and disposable cylinders, and the requirement to record specific data during the movement of these cylinders will impose significant costs and investment by all industry stakeholders.

Response: EPA responds that it is not finalizing the cylinder tracking requirements at this time, and thus costs and benefits related to those provisions are not included in the RIA addendum and the Economic Impact and Benefits TSD for the final rule. EPA has explained the data used to assess the costs and benefits of the requirement to manage disposable cylinders and send heels to reclaimers in the RIA addendum and the Economic Impact and Benefits TSD. Further, EPA has used information provided by the commenters to perform sensitivity analyses of the Agency's estimate, and notes that in all cases examined, there are environmental benefits, and the savings outweigh the costs even without considering the monetized climate benefits (*i.e.*, even without applying SC-HFC values to the emission reductions). However, as noted previously in this preamble, while EPA included estimates of the costs and benefits of this rulemaking in the RIA addendum to provide the public with information on the relevant costs and benefits of this action and to comply with Executive Orders, the analysis in the RIA addendum does not form a basis or rationale for any of the provisions EPA is promulgating in this rulemaking. Further, although EPA is using the SC-HFCs for purposes of some of the analysis in the RIA addendum, this action does not rely on those estimates of these costs as a record basis for the Agency's action. EPA would reach the conclusions in this rule even in the absence of the SC-HFCs. EPA's reasons

¹⁸⁷ The docket entry for the RIA addendum for the proposed rule is available at: <https://www.regulations.gov/document/EPA-HQ-OAR-2022-0606-0023>, and the Yasaka study is attachment 17.

¹⁸⁸ The docket for materials referenced in the proposed rule is available at: <https://www.regulations.gov/document/EPA-HQ-OAR-2022-0606-0015>.

¹⁸⁹ Yasaka, Yoshihito, et al. "Life-Cycle Assessment of Refrigerants for Air Conditioners Considering Reclamation and Destruction." *Sustainability*, vol. 15, no.1, 2023, p. 473, doi:10.3390/su15010473.

for establishing the requirements related to disposable cylinders are explained in section IV.G of this preamble.

Comment: Another commenter stated that the container requirements would likely have the greatest impact on the smallest firms in the industry with the fewest resources to spare. The commenter stated that any increased costs associated with the container provisions will ultimately be passed on to consumers, regardless of whether the initial impact is absorbed by contractors or distributors.

Response: In Appendix G of the RIA addendum, EPA performed an assessment under the guidelines of the Small Business Regulatory Enforcement Fairness Act of 1996 and found that the rulemaking can be presumed not to have a significant economic impact on a substantial number of small entities (SISNOSE). Further, to the extent that the comment pertains to the proposed cylinder tracking requirements, EPA notes that it is not finalizing the cylinder tracking requirements at this time.

Comment: One commenter suggested that the implementation of the proposed rule's requirements would unduly burden disadvantaged communities. The commenter stated that it may not be economically viable to retrofit, retire, or replace an existing system to comply with the mandates in the proposed rule due to the complex and integrated nature of grocery store refrigeration systems. The commenter also mentioned that rural and poor communities are more likely to have older stores with older systems that leak at a higher rate than average and with tighter profit margins that make it hard for store owners to pay for extensive repairs, retrofits, or replacements of their refrigeration systems. Additionally, the commenter stated that expenses associated with system maintenance under the proposed requirements would also increase the chances that store owners would be unable to keep less profitable stores open and those stores that remain open would be forced to raise food prices in disadvantaged areas and, in some situations, exacerbate the "food desert" problem in certain areas of the country.

The commenter also stated that the proposed requirements to use only reclaimed refrigerants would push additional costs onto the retail food sector which is already struggling due to low profit margins and inflation. The commenter claimed that these high costs may also cause more frequent and longer repairs, which lead to store shutdowns, greater food safety risk, and potential removals of refrigerated

sections altogether. The commenter stated that such an increased financial burden will likely impact older stores, and those either owned by or residing in minority and already economically stressed communities.

Another commenter stated that the premature retirement of certain equipment would lead to a disproportionate burden on poorer communities that are unable to replace their equipment. The commenter stated that EPA did not evaluate the implications of this part of its proposed rule on poor communities and users. The commenter further stated that these issues and the environmental burdens caused by disposal of prematurely obsolete equipment should also be considered.

Lastly, a separate commenter stated that EPA must analyze how increased costs on the baking sector and other food production sectors that use refrigeration will contribute to increased food price inflation and basket of goods impacts generally. The commenter stated that EPA must also analyze how these increased cost pressures might impact food prices cumulatively when considered together with what they characterized as other inflationary pressures, such as EPA's biodiesel and renewable diesel mandates under the Renewable Fuel Standard Program (RFS).

Response: EPA recognizes the importance of the food cold chain and food retailers servicing various communities, including avoiding food deserts. However, EPA disagrees that the requirements finalized in this rule will result in undue burden and store closures or the loss of access to food. Store owners may replace broken or inefficient HFC components and save money by repairing leaks in their existing systems. With regard to the comments concerning passing on costs by raising the prices of retail food, EPA reiterates that the overall HFC phasedown will impact the costs of HFC refrigerants in the future. The commenter did not provide detailed information on how specific elements of this rule would result in costs that would be passed on to the consumer and in particular how that would differ from the longstanding ODS requirements or existing HFC requirements. Additionally, some of the requirements in this final rule have been modified from the proposal, and some of those modifications have the effect of easing burden. For example, the requirements for ALD systems include those existing commercial refrigeration equipment with charge sizes of 1,500 pounds or more that were installed on

or after January 1, 2017, whereas the proposal included all existing systems with charge sizes of 1,500 pounds or more. Overall, the refrigerant management provisions help to maintain the health of appliances. This can be crucial for refrigerant-containing appliances in the RACHP subsectors that are relevant to handling food products, such as supermarket systems, where the intended function is to ensure food products are maintained at appropriate temperatures to avoid spoilage and food waste. Successful repair of leaks and avoiding leaks are a few ways to help ensure that these appliances are operating efficiently, as intended, and can help to avoid unnecessary food waste.

EPA appreciates concern over food costs; however, with the delayed compliance dates for the reclaim requirements, the Agency anticipates that this will give the market time to adjust to the changes. In the RIA addendum, EPA conservatively assumed that reclaimed refrigerant would cost 10 percent more than virgin refrigerant. Based on consideration of a public comment from a reclaimer stating that virgin and reclaimed refrigerant are the same price, the Agency has also included a sensitivity analysis under that assumption.

In response to the comment on the baking sector, the commenter did not provide sufficient information to support their claims or analyze the specific details of their assertion that the "rule will contribute to increased food prices and basket of goods impacts, generally." Nor is EPA aware of such information or analyses in the record for this rule. EPA estimated the overall costs and benefits of the rule in the RIA addendum and the Economic Impact and Benefits TSD, and to the extent the baking sector is affected by the rule, those estimates include those costs and benefits that will be directed towards that sector. Evaluation of "other inflationary pressures," including the commenters' assertions of such impacts from the Renewable Fuel Standard, is outside of the scope of this rulemaking and so is not included in the RIA addendum or the Economic Impact and Benefits TSD. Moreover, the commenter has not provided any information to indicate that such inflationary pressures would affect this rule differently than the baseline scenarios.

VII. How is EPA considering environmental justice?

As part of the RIA addendum for the final rulemaking, EPA updated the environmental justice analysis that was previously conducted for the proposed

rule. The updated environmental justice analysis utilized the same analytical approach used previously, along with the addition of more reclamation facilities identified since publication of the proposed rule.

Executive Order 14096, signed April 21, 2023, builds on the prior executive orders to further advance environmental justice (88 FR 25251), including Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021) which establish Federal executive policy on environmental justice.

EPA defines¹⁹⁰ environmental justice as the “just treatment and meaningful involvement of all people, regardless of income, race, color, national origin, Tribal affiliation, or disability, in agency decision-making and other Federal activities that affect human health and the environment so that people: (i) Are fully protected from disproportionate and adverse human health and environmental effects (including risks) and hazards, including those related to climate change, the cumulative impacts of environmental and other burdens, and the legacy of racism or other structural or systemic barriers; and (ii) have equitable access to a healthy, sustainable, and resilient environment in which to live, play, work, learn, grow, worship, and engage in cultural and subsistence practices.”¹⁹¹

Meaningful involvement means that: (1) Potentially affected populations have an appropriate opportunity to participate in decisions about a proposed activity that will affect their environment and/or health; (2) the public’s contribution can influence the regulatory Agency’s decision; (3) the concerns of all participants involved will be considered in the decision-making process; and (4) the rule-writers and decision-makers seek out and facilitate the involvement of those potentially affected.¹⁹² The term “disproportionate impacts” refers to differences in impacts or risks that are extensive enough that they may merit Agency action. In general, the

determination of whether there is a disproportionate impact that may merit Agency action is ultimately a policy judgment which, while informed by analysis, is the responsibility of the decision-maker. The terms “difference” or “differential” indicate an analytically discernible distinction in impacts or risks across population groups. It is the role of the analyst to assess and present differences in anticipated impacts across population groups for both the baseline and regulatory options, using the best available information (both quantitative and qualitative) to inform the decision-maker and the public.¹⁹³

In addition, the Presidential Memorandum on Modernizing Regulatory Review calls for procedures to “take into account the distributional consequences of regulations, including as part of any quantitative or qualitative analysis of the costs and benefits of regulations, to ensure that regulatory initiatives appropriately benefit, and do not inappropriately burden disadvantaged, vulnerable, or marginalized communities.”¹⁹⁴ OMB Circular A–4 provides details regarding identifying relevant groups and approaches to analyzing distributional effects.¹⁹⁵ EPA also released its June 2016 “Technical Guidance for Assessing Environmental Justice in Regulatory Analysis” (2016 Technical Guidance) to provide recommendations that encourage analysts to conduct the highest quality analysis feasible, recognizing that data limitations, time and resource constraints, and analytic challenges will vary by media and circumstance.¹⁹⁶

For this action, EPA conducted an environmental justice analysis.¹⁹⁷ For

this analysis, EPA used a methodology similar to that used as part of the Allocation Framework Rule (86 FR 55116, October 5, 2021), the 2023 Technology Transitions Rule (88 FR 73174, October 24, 2023), and the proposal of this rule, for consistency and because these rules have in common that they affect the industries involved in using HFCs, although there are some differences in the nature of those effects and the entities affected. The information provided in this section is for informational purposes only; EPA is not relying on the information in this section as a record basis for this action. EPA evaluated communities surrounding the 38 identified HFC reclamation facilities¹⁹⁸ and followed the analytical approach used in the Allocation Framework Rule RIA. This update uses information from the AirToxScreen 2019 dataset.

The analysis shows that communities near the 38 identified HFC reclamation facilities are generally more diverse than the national average with respect to race and ethnicity. While the median income of these communities is slightly higher than the national average, there are more low-income households. Across the 38 facilities, total respiratory risk and total cancer risk are higher than the national average (total cancer risk is between 28 and 29 for the communities near the facilities, compared to 26 for the national average, and total respiratory risk is 0.34 compared to the national average of 0.31). The risk for those closer to the facilities appears slightly lower than for those at greater distances (5- and 10-mile radii).

This rule is expected to result in benefits in the form of reduced GHG emissions. The analysis conducted for this rule also estimates that a portion of these benefits would be incremental to emissions reductions that were anticipated under the Allocation Framework Rule and the 2023 Technology Transitions Rule, thus further reducing the risks of climate change associated with the emissions avoided through this rule.

While providing additional overall climate benefits, this rule may also result in changes in emissions of air pollutants or other chemicals which are potential byproducts of HFC reclamation processes at affected

¹⁹⁰ EPA recognizes that Executive Order 14096 (88 FR 25251, April 21, 2023) provides a new terminology and a new definition for environmental justice. For additional information, see <https://www.federalregister.gov/documents/2023/04/26/2023-08955/revitalizing-our-nations-commitment-to-environmental-justice-for-all>.

¹⁹¹ See, e.g., Environmental Protection Agency. “Environmental Justice.” Available at: <https://www.epa.gov/environmentaljustice>.

¹⁹² The criteria for meaningful involvement are contained in EPA’s May 2015 document “Guidance on Considering Environmental Justice During the Development of an Action.” Environmental Protection Agency, 17 Feb. 2017. Available at: <https://www.epa.gov/environmentaljustice/guidance-considering-environmental-justice-during-development-action>.

¹⁹³ The definitions and criteria for “disproportionate impacts,” “difference,” and “differential” are contained in EPA’s June 2016 document “Technical Guidance for Assessing Environmental Justice in Regulatory Analysis.” Available at: <https://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis>.

¹⁹⁴ Presidential Memorandum on Modernizing Regulatory Review, January 20, 2021. Available at: <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/modernizing-regulatory-review/>.

¹⁹⁵ Office of Management & Budget, Circular No. A–94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs 17–18, November 9, 2023. Available at: <https://www.whitehouse.gov/wp-content/uploads/2023/11/CircularA-94.pdf>.

¹⁹⁶ Technical Guidance for Assessing Environmental Justice in Regulatory Analysis, June 2016. Available at: https://www.epa.gov/sites/default/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf.

¹⁹⁷ EPA recognizes that new terminology and a new definition for environmental justice were established in Executive Order 14096 (88 FR 25251, April 21, 2023). When the analysis of the proposed rule was performed, EPA was operating under prior

guidance available here: <https://www.epa.gov/sites/default/files/2015-06/documents/considering-ej-in-rulemaking-guide-final.pdf>.

¹⁹⁸ As discussed in the RIA addendum, EPA used data from reports required under Section 608 of the Clean Air Act, EPA’s Enforcement and Compliance History Online (ECHO) database, and information provided by company websites to identify facilities that are active HFC reclaimers.

facilities. The market for reclaimed HFCs could drive changes in potential risk for communities living near these facilities, but the changes in emissions that could have local effects are uncertain. Further, the nature and location of the emission changes are uncertain. Moreover, there is insufficient information at this time about which facilities will change reclamation processes. Given limited information at this time, it is unclear to what extent this rule will impact existing disproportionate adverse effects on communities living near HFC reclamation facilities.¹⁹⁹ The Agency will continue to evaluate the impacts of this rulemaking on affected communities, including communities with environmental justice concerns, and consider further action, as appropriate, to protect health in communities affected by HFC reclamation.

Comment: One commenter expressed support for EPA's approach on environmental justice and noted that ensuring safety for technicians and consumers will benefit all end users. The commenter noted areas for EPA's consideration regarding impacts on low- and medium-income families in its comments, including allowing some flexibility with retrofit and retirement requirements and considering using some of EPA's budget to fund the purchase of recovery equipment for small contractors serving low- and medium-income communities.

Response: EPA acknowledges the commenter's general support for the approach the Agency has taken for its environmental justice analysis. EPA acknowledges the commenter's suggestion that portions of the Agency budget be redirected to support the

purchase of recovery equipment. The Agency notes that to date, funds have not been appropriated for such a purpose. EPA clarifies that leak repair requirements do not apply to residential RACHP equipment, and that EPA is not requiring refrigerant-containing appliances to be retrofitted to a lower-GWP refrigerant.

Comment: One commenter stated that there needs to be greater awareness of the environmental impacts for those who work with HFC refrigerants and to those who advocate for environmental justice.

Response: EPA acknowledges the commenter's support for greater awareness of environmental impacts in this area. EPA notes that the discussion of environmental justice in this action may help increase awareness of these issues.

VIII. How is EPA responding to other comments on the proposed rule?

Comment: One commenter stated there is no authority in the AIM Act (or in the CAA) for mandating facilities install leak detection systems to be used in the normal operation of equipment between servicing. The commenter stated that the Agency's assertion that leak detection is "an activity regarding the servicing or repair of equipment" stretches the actual languages used by Congress beyond their intent and cannot be legally supported. The commenter also mentioned that EPA does not have the authority to penalize facility owners (or equipment owners) for mismanagement of refrigerant resulting from errors made by certified service providers, nor does EPA have the power to regulate loss of refrigerant during normal operations. While the commenter generally agreed with EPA's regulation and best practices for technicians, they claimed the proposed rule does not indicate how that authority extends to the regulation of facility owners. Accordingly, the commenter stated the Agency legally may only require leak detection and prevention during the time that service providers are maintaining refrigeration systems. Further, the commenter stated that EPA has previously recognized that refrigeration equipment will inherently lose refrigerant charge over time and that refrigeration and air conditioning equipment does often leak. If taken to its logical conclusion, the overly broad interpretation of the section 608 rules and the proposed rule to encompass normal operation, in theory, would also extend liability to equipment manufacturers whose appliances would violate the venting prohibition by merely selling equipment into

commerce because the equipment might leak and require replacement of refrigerant. Thus, EPA lacks authority to impose liability for normal operation of refrigeration equipment, it cannot impose liability for replacement of refrigerant that is lost routinely during normal operation.

Another commenter stated that EPA should acknowledge that the Agency has no authority under the AIM Act or CAA section 608 to penalize facility or equipment owners for management of refrigerant resulting from errors made by service providers or regulate the loss of refrigerant during normal operations. The commenter cites the use of the term "maintenance" in section 608(c), but not in 608(a), as justification that Congress intended EPA to regulate servicing of equipment by technicians, rather than equipment by facility owners. The commenter further stated that if section 608 is interpreted to encompass normal operation of equipment, an equipment manufacturer would violate the venting prohibition by selling equipment into commerce, because their equipment might leak. Further, the commenter stated that if EPA lacks authority to "impose liability for normal operation of refrigeration equipment" the Agency cannot hold others liable for replacement of refrigerant that is lost in routine operation. The commenter concluded that EPA's authority is limited under section 608 to regulating "intentional or negligent venting" by service providers during servicing, and that the same applies to EPA's authority under the AIM Act.

The commenter claimed that even if EPA could impose penalties for refrigerant release during normal operation, section 608 and subsection (h) do not enable EPA to impose monetary penalties on facilities owners, unless the owner was using its own personnel to service equipment. The commenter cited EPA's prior refrigerant management rule under section 608 as overstepping the Agency's authority to impose the venting prohibition on actions taken over the course of maintaining, servicing, repairing, or disposing of equipment. The commenter further stated that the AIM Act does not give the Agency the authority to regulate facility owners or compel them to install leak detection systems to be used in normal operation of equipment.

Response: With regards to one commenter's assertions that the AIM Act did not give EPA the authority to require facilities to install leak detection systems that would be used in normal operations or authority to regulate owners or operators, the Agency

¹⁹⁹ Statements made in this section on the environmental justice analysis draw support from the following citations: Banzhaf, Spencer, Lala Ma, and Christopher Timmins. 2019. Environmental justice: The economics of race, place, and pollution. *Journal of Economic Perspectives*; Hernandez-Cortes, D. and Meng, K.C., 2020. Do environmental markets cause environmental injustice? Evidence from California's carbon market (No. w27205). NBER; Hu, L., Montzka, S.A., Miller, B.R., Andrews, A.E., Miller, J.B., Lehman, S.J., Sweeney, C., Miller, S.M., Thoning, K., Siso, C. and Atlas, E.L., 2016. Continued emissions of carbon tetrachloride from the United States nearly two decades after its phaseout for dispersive uses. *Proceedings of the National Academy of Sciences*; Mansur, E. and Sheriff, G., 2021. On the measurement of environmental inequality: Ranking emissions distributions generated by different policy instruments.; U.S. EPA. 2011. Plan EJ 2014. Washington, DC: U.S. EPA, Office of Environmental Justice.; U.S. EPA. 2015. Guidance on Considering Environmental Justice During the Development of Regulatory Actions. May 2015.; USGCRP. 2016. The Impacts of Climate Change on Human Health in the United States: A Scientific Assessment. U.S. Global Change Research Program, Washington, DC.

disagrees with the commenter's claims. As discussed throughout this notice, subsection (h)(1) directs EPA to promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or installation of equipment, for purposes including maximizing reclamation and minimizing the release of HFCs from equipment. As explained elsewhere in this notice, EPA interprets this language to encompass practices, processes, and activities that occur before, during, and after servicing, repair, disposal, or installation of equipment. EPA understands this provision to authorize both the leak repair provisions described in section IV.C and the required use of ALD as described in IV.D because the requirements govern practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment. Determining that equipment is leaking is a critical first step in understanding that it needs servicing or repair, or perhaps to be disposed of and replaced, depending on whether or not the leak can be repaired. The ALD equipment that must be installed and operated under this requirement will inform equipment owners and operators when the equipment is leaking, and EPA expects that this knowledge will lead to earlier repairs, which in turn will prevent releases of HFCs (and potentially costly refrigerant losses). Thus, installing and operating an ALD system is a "process, practice or activity regarding servicing, repair, disposal, or installation of equipment" because taking these steps will alert the equipment owner or operator when servicing or repair of equipment may be required. Accordingly, there is a direct connection between installing and operating the ALD system and servicing or repair (or in some cases, disposal) of equipment.

EPA agrees with the comment that subsection (h) conveys authority to regulate technicians' activities during servicing and repair, but contrary to the commenter's view, nothing in the text of subsection (h) suggests that EPA is precluded from also regulating activities during normal operations that are within the scope of subsection (h) or from regulating equipment owner or operators. Moreover, imposing such restrictions could limit EPA's ability to ensure that the regulations under subsection (h) achieve the stated purposes in the statute because activities that occur during normal operations, or that are taken by equipment owners or operators, will

affect efforts to maximize reclamation, minimize releases²⁰⁰ from equipment, and ensure the safety of technicians and consumers. Further, the statutory phrase for what EPA regulations under (h)(1) may control—"any process, practice or activity *regarding* servicing, repair, disposal, or installation of equipment" (emphasis added)—indicates that Congress did not limit EPA to only regulate processes, practices or activities *during* servicing, repair, disposal, or installation of equipment. Indeed, the authority to regulate to "control . . . activities regarding servicing" includes authority to require that servicing be done, including to address refrigerant losses that occur during normal operation of equipment. Further EPA notes that it considers servicing to include a range of activities involved in preserving equipment in the normal working order, as some form of ongoing and routine servicing is necessary for proper functioning of equipment.

To the extent these comments relate to EPA's regulations under CAA section 608, they are outside the scope of this rulemaking as the Agency did not reopen the section 608 rules as part of this rulemaking and thus require no further response.²⁰¹ However, aspects of this rule are analogous to similar EPA rules under CAA section 608, which apply to owners and operators. For example, in the preamble to the 1993 CAA 608 final rule, EPA explained that it had made "additions to the scope section to clarify that the rule covers refrigerant reclaimers, *appliance owners*, and manufacturers of appliances and recycling and recovery equipment in addition to persons servicing, repairing, maintaining, and disposing of appliances." 58 FR 28707 (emphasis added); *see also* 58 FR 28681. EPA explained that the rule required the owner of the equipment to either authorize the repair of substantial leaks

²⁰⁰ The Agency recognizes that refrigerant-containing appliances may lose refrigerant charge over time. However, manufacturers of refrigerant-containing equipment have made great strides in manufacturing equipment less prone to leaks. Nevertheless, refrigerant-containing equipment, especially with larger charge sizes, could leak significant amounts of refrigerant before a leak is detected.

²⁰¹ EPA further notes that this comment states that it incorporates by reference prior comments submitted on prior proposed rules under CAA section 608. EPA notes that in order to merit a response, comments on a proposed rule must be stated with specificity, so that the Agency can identify the commenter's concern or requested alteration to the rule at issue. A commenter's statement, such as the statement in this comment, that they are incorporating prior comments or arguments, without any further explanation of how those prior comments or arguments relate to the proposed rule or how the Agency should change its proposal, do not require a response.

or develop the equipment retirement/ retrofit plan within 30 days of discovering a leak above the standard and that the owner has the legal obligation to ensure that repairs are made to equipment where the leak rate exceeds the standard. *See* 81 FR 82272. For similar reasons as under section 608, including the role of the equipment owner and operator in determining whether to authorize repair of a leak or whether to retire or retrofit the equipment, this final rule finds it reasonable to include the owners and operators among the regulated entities, consistent with the Agency's practice under the CAA Title VI. EPA has found this approach to be workable, and using the same approach in this final rule should be familiar to entities that have experience implementing the CAA 608 rules, reduce confusion, and facilitate compliance. For this reason, and also given the role of equipment owners and operators in making decisions about the servicing, repair, disposal, and installation of equipment, EPA concludes that it is appropriate to structure the regulations so that equipment owners and operators may be held responsible for certain violations, even if the actions of a technician may play a role in the violation, rather than adopt the commenter's view, which could improperly shield owners and operators from liability even if a decision or action they took resulted in or contributed to the violation. Further, EPA notes that while certain aspects of its experience in implementing certain requirements under CAA section 608 inform this rulemaking and while there are certain analogies between this rule and requirements established under CAA section 608, it has also been clear that AIM subsection (h) and CAA section 608 are separate and distinct statutory authorities, and that this rule is established under AIM subsection (h), such that the text and purposes of that provision govern this action. While there are some similarities in statutory text between AIM subsection (h) and CAA section 608, there are also meaningful differences to consider. Thus, to the extent that commenters suggest that a limitation they perceive in CAA section 608 would also somehow simply apply to EPA's authority under the AIM Act, without further evaluation of the relevant provisions of the AIM Act, EPA disagrees.

EPA disagrees with commenters' assertions that it does not have authority under subsection (h) of the AIM Act to regulate the loss of refrigerant during normal operations or to regulate or penalize facility owners or equipment

operators, including imposing penalties on them for violations of requirements under the AIM Act. Under subsection (h), for purposes including maximizing reclaiming and minimizing the release of a regulated substance from equipment, Congress directed the Administrator to promulgate regulations to control practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment that involves a regulated substance and the reclaiming of a regulated substance used as a refrigerant. As explained in prior sections of this document, establishes regulations that apply to HFCs and or a substitute for an HFC with a GWP greater than 53 to control practices, processes, or activities regarding servicing, repair, disposal, or installation of equipment. Accordingly, the requirements established under this rule are within the scope of EPA's authority under subsection (h). For example, as explained in section IV.C.3 in this notice, EPA is establishing leak repair requirements that control practices, processes, or activities regarding servicing or repair of appliances and that provide persons engaged in such activities with additional clarity and certainty on how to ensure that their actions comport with the requirements established in this action. While many of these requirements regulate the activities of the person working on equipment, *e.g.*, those performing the leak repair, Congress did not limit EPA's authority under (h)(1) to only regulating activities that are performed directly on equipment or only those persons or entities who are directly working on equipment, but rather, as noted previously, authorized EPA to regulate a broader scope of processes, practices or activities *regarding* servicing, repair, disposal, or installation of equipment. EPA interprets the direction under subsection (h)(1) to include authority to regulate equipment owners and operators, as they make decisions and have control over processes, practices or activities regarding servicing, repair, disposal, or installation of equipment, and their decisions and actions will affect efforts to maximize reclamation, minimize releases from equipment and ensure the safety of technicians and consumers. Even if an owner or operator is not using their own personnel to service equipment, their decisions and actions could affect compliance with the requirements under this rule, such as the timing of leak repair activities and the extent to which leaks are repaired.

Further, with respect to EPA's authority to impose penalties on owners

and operators, EPA responds that subsection (k)(1)(C) of the AIM Act provides that certain sections of the CAA, including section 113, apply to the AIM Act and any regulations EPA promulgates under the AIM Act as though the AIM Act were part of Title VI of the CAA. Among other things, section 113(a)(3) of the CAA, entitled "EPA enforcement of other requirements" authorizes the EPA Administrator to take certain measures if the Administrator "finds that any person has violated, or is in violation of, any . . . requirement or prohibition of . . . subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule . . . promulgated under [that] subchapter[.]" Similarly, the Administrator's enforcement authorities under section 113 of the CAA also include the assessment of monetary civil penalties "against any person" if the Administrator finds that "such person" has violated or is violating any requirement or prohibition of Title VI of the CAA, "including, but not limited to, a requirement or prohibition of any rule" promulgated under Title VI. These provisions apply to the AIM Act and this rule by operation of subsection (k)(1)(C) of the AIM Act. Facility owners or operators are within the broad definition of "person" in section 302(e) of the CAA. Accordingly, EPA has authority to enforce the requirements and prohibitions of this rule against facility owners or operators, consistent with section 113 of the CAA. While, as noted previously, this action is separate and distinct from EPA's rules under CAA section 608, EPA further observes that, as described further in section IV.D above, this approach to applying regulatory requirements to owners and operators is similar to and consistent with EPA's approach to requirements in analogous rules under CAA section 608, which also include requirements that apply to owners and operators.

EPA also disagrees with commenters' assertion that EPA does not have authority under subsection (h) of the AIM Act to regulate activities during normal operations. Such restrictions could limit EPA's ability to ensure that the regulations under subsection (h) achieve the stated purposes in the statute because activities that occur during normal operations will affect efforts to maximize reclamation, minimize releases from equipment and ensure the safety of technicians and consumers. Further, the statutory phrase for what EPA regulations under (h)(1) may control—"any process, practice or activity *regarding* servicing, repair,

disposal, or installation of equipment" (emphasis added)—indicates that Congress did not limit EPA to only regulate processes, practices, or activities *during* servicing, repair, disposal, or installation of equipment. Indeed, the authority to regulate to "control . . . activities regarding servicing [or] repair" includes authority to require that servicing or repair be done, including to address refrigerant losses that occur during normal operation of equipment. Further EPA notes that it considers servicing to include a range of activities involved in keeping equipment in the normal working order, as some form of ongoing and routine servicing is necessary for proper functioning of equipment.

EPA responds to other comments regarding leak repair in section IV.C above and regarding the use of ALD systems in section IV.D.1 above.

Comment: One commenter questioned EPA's authority to regulate sources on the Outer Continental Shelf (OCS) in the western and central Gulf of Mexico pursuant to 40 CFR part 84, and asked EPA to confirm that OCS sources in those two areas are excluded from the applicability of the proposed regulations in 40 CFR part 84. The commenter stated that 40 CFR part 55 delineates the EPA's air programs applicable to the OCS and that under 40 CFR 55.3(a) the scope of this part extends to all OCS sources except those west of 87.5 degrees longitude. The commenter also claimed that under the Outer Continental Shelf Lands Act (OCSLA) the Department of the Interior (DOI) has the authority to administer programs and rules relating to the OCS, including those related to air quality, and asserted that that authority is not shared with EPA, citing *California v. Kleppe*, 604 F.2d 1187, 1193 (9th Cir. 1979). The commenter further stated that section 328 of the CAA sets EPA's regulatory authority in the OCS, limiting that authority to sources east of longitude 87 degrees 30 minutes. The commenter stated that the intent of the AIM Act and the proposed rule were to regulate air quality and emissions related to HFCs and concluded that there is overlap between EPA's authority under the AIM Act and the DOI's authority. The commenter stated that EPA's proposed regulations to track, record, and provide information regarding the sale and distribution of HFCs are "similar to requirements in 43 U.S.C. [section] 1348(b)(3) for lease and permit holders to provide 'documents and records which are pertinent to . . . environmental protection, as may be

requested' under OCSLA.”²⁰² The commenter further stated that AIM Act subsection (h) provides EPA broad authority to promulgate regulations but that “the AIM Act is silent on the question of OCS sources and in (k)(1)(C) expressly applies sections of title VI of the CAA to EPA’s authority” in the proposed regulations. The commenter further stated that the AIM Act “does not alter the existing division of jurisdiction between the EPA and DOI with regard to air quality regulations applicable to OCS sources” and that, “[a]ccordingly, . . . 40 CFR part 84 is not applicable to the western and central [Gulf of Mexico],”²⁰³ and the regulation of sale and distribution of HFCs does not extend to those areas without a grant of similar authority to the DOI and the Bureau of Ocean Energy Management (BOEM) under the AIM Act. The commenter acknowledged that 40 CFR part 84 would apply to the eastern Gulf of Mexico, given that BOEM has not been delegated authority over air quality in this specific area.

Response: EPA disagrees with the commenter’s broad assertions that EPA does not have authority under the AIM Act to issue regulations pertaining to HFCs and their substitutes related to offshore operations in the western and central Gulf of Mexico. EPA also disagrees with the commenter’s assertions that the regulations finalized in this action under subsection (h) of the AIM Act are not applicable in the western and central Gulf of Mexico and that OCS sources situated in the western and central Gulf of Mexico are excluded from these regulations. The commenter cites *California v. Kleppe*, 604 F.2d 1187, 1193–94 (9th Cir. 1979) (“*Kleppe*”) for the proposition that DOI has “sole” authority to promulgate air quality regulations for OCS sources, which is not shared with EPA. But *Kleppe* addresses DOI’s authorities over offshore activities as those authorities existed in 1979, long before both the 1990 Amendments to the CAA, which authorized EPA to regulate air emissions from OCS sources (42 U.S.C. 7627, Pub. L. 101–549, Title VIII, Sec. 801 (“OCS air pollution”), November 15, 1990), and Congress’s 2020 enactment of the AIM Act, which authorized EPA to promulgate regulations to address HFCs (42 U.S.C. 7675, Pub. L. 116–260, Division S, Sec. 103 (“American Innovation and Manufacturing”), December 27, 2020). *Kleppe* therefore does not speak to EPA’s current

authorities under either the CAA or the AIM Act. Additionally, while the commenter states that aspects of this rule are “similar to” DOI’s authorities to seek records and documents under OCSLA, it fails to identify any conflict between these requirements or to provide any other support for a conclusion that the relevant provisions cannot all be given effect.

This rule implements Congress’s direction in subsection (h)(1) of the AIM Act for EPA to establish regulations “to control, where appropriate, any practice, process or activity regarding the servicing, repair, disposal, or installation of equipment” that involves an HFC or a substitute for an HFC, or the reclaiming of an HFC or a substitute for an HFC used as a refrigerant, for purposes of maximizing reclamation, minimizing releases of HFCs from equipment, and ensuring the safety of technicians and consumers. The AIM Act, which was enacted separately from the CAA, does not exclude any geographic area within the United States from the scope of EPA’s authorities under in the Act. In fact, certain provisions of the Act clearly indicate that the Act applies throughout the United States. For example, subsection (b)(6) of the AIM Act defines the term “import” to mean “to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States.”

The commenters cite certain geographic restrictions on EPA’s authority to regulate air pollution from OCS sources under CAA section 328 and EPA’s implementing regulations in 40 CFR part 55, suggesting that EPA’s regulatory authority over emissions sources in the Gulf of Mexico is limited to “sources east of longitude 87 degrees 30 minutes” (or 87.5 degrees longitude) under these statutory and regulatory provisions. Section 328 of the CAA, however, pertains only to EPA’s authorities under the CAA with respect to “OCS sources” and has no bearing on EPA’s independent authorities under the AIM Act and other Federal statutes. In addition to the AIM Act, which, by its terms, applies to activities such as production and consumption of HFCs, restrictions on use of HFCs in the sectors or subsectors in which they are used, and practices, processes, or activities regarding servicing, repair, disposal, or installation of equipment that involves an HFC or a substitute for an HFC, or the reclaiming of an HFC or a substitute for an HFC used as a refrigerant, the Deepwater Port Act directs that Federal laws apply to deepwater ports “and to activities

connected, associated, or potentially interfering with the use or operation of any such port, in the same manner as if such port were an area of exclusive Federal jurisdiction located within a State. . . .” 33 U.S.C. 1518(a)(1). Thus, any deepwater port or associated activity that would be subject to the AIM Act if located onshore remains subject to these requirements offshore, both in the Gulf of Mexico and in other waters over the OCS. The requirements of the AIM Act, the Deepwater Port Act, and other Federal laws apply by their terms to sources located offshore, independent of the authorities and limitations specified in CAA section 328 with respect to OCS sources.

The commenter’s reference to section (k)(1)(C) of the AIM Act provides no support for a claim that EPA’s authorities under the AIM Act are limited by CAA section 328. Section (k)(1)(C) of the AIM Act states that “sections 113, 114, 304, and 307 of the Clean Air Act (42 U.S.C. 7413, 7414, 7604, 7607) shall apply” to the AIM Act and any regulations EPA promulgates under the AIM Act as though the AIM Act were part of Title VI of the CAA. These provisions of the CAA pertain to Federal and citizen enforcement, EPA’s information-gathering authorities, and judicial review of EPA’s actions under the CAA. By directing that these provisions apply to the AIM Act and any implementing regulations promulgated by EPA to implement the AIM Act, Congress provided EPA and citizens with the same enforcement and information-gathering authorities that the CAA provides and vested the United States Courts of Appeals with jurisdiction to review challenges to EPA’s final actions under the AIM Act, in the same manner as under the CAA. CAA section 328 (42 U.S.C. 7627), by contrast, authorizes EPA to “establish requirements to control air pollution from Outer Continental Shelf sources” in specific offshore areas. Section 328 is not included among the CAA provisions expressly identified in section (k)(1)(C) of the AIM Act, and there is no indication in either the CAA or the AIM Act that Congress intended for EPA’s regulatory authorities with respect to OCS sources under CAA section 328 to apply to or limit its authorities with respect to HFCs or HFC substitutes under the AIM Act.

The AIM Act itself creates no exemption for emissions sources in the western and central Gulf of Mexico from its requirements. Establishing an exemption from the requirements of this rule for sources in the western and central Gulf of Mexico could create an unequal framework rather than fairly

²⁰² See comment number EPA–HQ–OAR–2022–0606–0098 at 2.

²⁰³ See comment number EPA–HQ–OAR–2022–0606–0098 at 2–3.

applying regulations under the AIM Act subsection (h) to similarly situated sources, including those in the eastern Gulf of Mexico, which the commenter concedes would be subject to these rules.

EPA further notes that this ER&R rule implements provisions under subsection (h) of the AIM Act. To the extent this comment relates to the application of EPA's rules under CAA Title VI or other particular aspects of the AIM Act or regulations under Part 84, those topics are beyond the scope of this rulemaking and thus require no further response.

Regarding the commenter's statement about the tracking, recordkeeping, and reporting of information regarding sale and distribution of HFCs, as noted previously in this preamble, EPA is not finalizing the proposed provisions for container tracking of HFCs that could be used in the servicing, repair, and/or installation of refrigerant-containing or fire suppression equipment. Thus, any concerns pertaining to that aspect of the proposal are not relevant to this action. However, EPA is establishing a discrete reporting requirement to better understand the use of reclaimed HFCs in the subsectors covered in this rulemaking, as described in section IV.E.2 above. EPA additionally notes that the other recordkeeping and reporting provisions established under this rule provide no exemption for offshore sources, and remain applicable by their terms, consistent with the discussion earlier in this response to comment."

Comment: One commenter stated that EPA's statutory authority and specific legislative guidance indicated the importance of interpreting similar authorities to avoid unreasonable outcomes and thus understood subsection (h)(2) to mean that in developing regulations for equipment servicing, repair, disposal, or installation "EPA should prioritize, and may only have the authority to prioritize, the exploration of opportunities for refrigerant reclamation." The commenter stated that this interpretation aligns with the Agency's mission and ensures a responsible and sustainable approach to refrigerant management, while ensuring that there is adequate access to refrigerant supply to meet demand.

Response: EPA disagrees with the commenter's interpretation of subsection (h)(2). Subsection (h)(1) of the AIM Act provides EPA authority to promulgate regulations to control, where appropriate, any practice, process, or activity regarding the servicing, repair, disposal, or

installation of equipment that involves HFCs or their substitutes, or the reclaiming of HFCs or their substitutes used as refrigerants. Subsection (h)(2)(A) of the Act provides that the Administrator "shall consider the use of authority available . . . under this section to increase opportunities for the reclaiming of regulated substances used as refrigerants." Subsection (h)(2)(B) of the Act provides that a "regulated substance used as a refrigerant that is recovered shall be reclaimed before the regulated substance is sold or transferred to a new owner, except where the recovered regulated substance is sold or transferred to a new owner solely for the purposes of being reclaimed or destroyed." While subsection (h)(2)(A) requires that the Agency consider the potential to increase opportunities for reclamation of regulated substances used as refrigerants, nothing in this statutory language limits the use of EPA's authorities for other purposes or requires that the Agency reach a certain result based on such consideration. Nothing in the text of either subsection (h)(2)(A) or (B) suggests that it is intended to modify the grant of regulatory authority in subsection (h)(1) or dictate the Agency's priorities in implementing subsection (h)(1). Further, such an interpretation of subsection (h)(2) could unduly restrict EPA's ability to fully implement the regulatory authority granted in subsection (h)(1), for example in promulgating regulations consistent with that provision that are focused on the purposes identified in subsection (h)(1) of minimizing releases of HFCs from equipment and ensuring the safety of technicians and consumers. Notwithstanding EPA's disagreement with the commenters' interpretation of (h)(2), the Agency notes it has considered various uses of its authority in this rulemaking that could increase opportunities for reclamation of HFCs used as refrigerants and that several aspects of this final rule that are focused on maximizing reclamation of HFCs could also increase opportunities for reclamation.

Comment: Many commenters expressed support for the development of new requirements for technician training and certification. Some commenters also expressed support for continuing education requirements, recertification requirements, and developing new requirements for already certified technicians. Other commenters expressed support for new requirements for technicians obtaining certifications for the first time but opposed requirements for already

certified technicians. Some commenters stated that requirements for technician training and certification would ensure that technicians are up to date relative to changes in the industry, are properly trained for the installation and servicing of equipment, can handle flammability and safety concerns such as those associated with new refrigerants, and are aware of regulatory requirements related to HFCs such as the prohibition on venting. Some commenters also stated that technician and certification requirements would encourage recovery and reclamation, protect facility owners and operators, reduce emissions, ensure a smooth transition, promote adoption of new refrigerants, change the culture in the industry to reinforce the use of proper methods, and enhance compliance. Some commenters mentioned that current requirements are inadequate to ensure that HFCs are managed correctly.

Other commenters expressed opposition to the development of new requirements for technician training and certification. Some commenters stated that such requirements would add compliance burdens without environmental and safety benefits, that such requirements would exceed EPA's authority, that technicians do not want to be forced to take a test, that certain entities would profit off of the certification requirements, that requirements would impose added costs on technicians, that requirements would dissuade potential HVAC professionals from entering the industry, that existing government and industry requirements are sufficient, and that already certified technicians should not be subject to new requirements. One commenter suggested that EPA encourage but not mandate training and certification, and another commenter expressed openness to more training but opposed any more EPA requirements.

Response: EPA acknowledges these comments. As discussed in section I.B above in this action, EPA also issued in conjunction with the proposed rule an ANPRM seeking information on approaches for establishing requirements for technician training and/or certification. EPA explained in that notice that it was not proposing and will not be finalizing a technician training and certifying program on which it sought advance comment. Accordingly, EPA explained that the Agency did not intend to respond to any advance information received. However, EPA intends to consider those comments as part of a potential future notice and comment rulemaking to establish a training and/or certification program. Therefore, EPA is not

addressing technician training in this final rulemaking and accordingly is not responding to comments on the ANPRM in this action. However, EPA is establishing requirements for fire suppression technician training, as described in section IV.F.2.d.

Comment: One commenter asserted that EPA must take additional steps, on its own and in conjunction with other Federal agencies, to level the playing field for reclaimers. For example, the commenter stated that EPA should revise its implementation of the SNAP program to curtail patent or contractual limitations on reclamation. Among other comments related to the Allocation Program, the commenter stated that EPA should use administrative consequences in additional scenarios including to entities engaged in market manipulation, patent misconduct, and “unfair trade practices” and that all allowances revoked pursuant to administrative consequences should be reallocated to EPA-certified reclaimers. Additionally, the commenter stated that EPA should change the provision in the Framework Allocation Rule allowing HFCs contained in equipment to be imported without expending allowances. The commenter further stated that EPA should assign a GWP value of zero to all refrigerants reclaimed in the U.S. by EPA-certified reclaimers, establish a “life-cycle adjusted GWP” value for all refrigerants to reflect their actual reclaim rate, and use that adjusted GWP value for purposes of all AIM Act regulatory programs, as well as establish a recycle or release rate for every SNAP-approved product. The commenter also recommended that EPA develop a rule providing that refrigerants that do not meet a 15% reclaim rate could be designated as unacceptable substitutes under SNAP.

The commenter further suggested that EPA should require all recovered refrigerant to be exclusively returned to EPA-certified reclaimers and should update the certification requirements for reclaimers. The commenter also stated that EPA should establish a mechanism for reclaimers or third parties to seek EPA intervention to prevent or call attention to anticompetitive practices that harm the reclaim market. The commenter further recommended that EPA should create a unified reporting portal for EPA-certified reclaimers. The commenter asserted that EPA should enhance its engagement with DOC and U.S. Customs and Border Protection to address anticompetitive behavior by virgin refrigerant producers and ensure a level playing field, especially

regarding antidumping and countervailing duties and the 2016 Blends Order. Finally, the commenter suggested that State and local government agencies and regulatory bodies consider imposing fees on all newly manufactured HFC/HFO refrigerant products and stated that EPA should support this effort.

Response: Regarding the commenter's points on patent or contractual limitations on reclamation, providing mechanisms for reclaimers related to anticompetitive practices, implementation of the SNAP program, and requested listings as unacceptable under EPA's SNAP program, these comments are outside the scope of this final rule promulgated under the AIM Act and thus require no further response. The commenter's suggestions for changes to the administrative consequences under the Allocation Program as well as the requested changes to the regulations established by the Framework Allocation Rule and codified at 40 CFR part 84, subpart A are also outside the scope of this final rule and thus require no further response. Regarding commenter's points regarding assigned GWP values, EPA responds that subsection (c) of the AIM Act uses exchange values which are numerically equivalent to the 100-year GWP of the chemical as given in the Errata to Table 2.14 of the IPCC's 2007 Fourth Assessment Report. These exchange values are codified in EPA's regulations as appendix A to 40 CFR part 84, and this rulemaking did not propose, and is not finalizing, new or revised exchange values for any regulated substances. By their terms, the exchange values listed in subsection (c) of the AIM Act and codified at appendix A to 40 CFR part 84 apply to regulated substances regardless of whether the substance is newly manufactured or reclaimed, and they are based on physical properties of the compound itself that are the same for a substance, regardless of whether it is virgin or reclaimed. Further, to the extent that commenters on this rule are using terminology that is used under the Allowance Allocation Program in ways that diverge from how the Agency uses those terms or seeking modifications to requirements under that program, EPA is not making any changes to the Allowance Allocation Program in this rule. Under the regulations at 40 CFR 84.5(b)(1) the quantity of consumption allowances that must be expended for an import of a regulated substance must be equal to the exchange-value weighted equivalent of the regulated substances imported. EPA is not changing that

requirement for any regulated substance in this rulemaking.

Regarding comments recommending that EPA should require that all recovered refrigerant be exclusively returned to EPA-certified reclaimers, there may be instances where this may not be appropriate or practical (e.g., the same owner recovers refrigerant and transfers to another location). EPA is, however, requiring that disposable cylinders that were used in the servicing, repair, or installation of refrigerant-containing equipment or fire suppression equipment be sent to a reclaimer, fire suppression recycler, final processor for removal of the heel as discussed in section IV.G.1. Further, as discussed in section IV.E.1 above, EPA is also establishing labeling and recordkeeping requirements, as proposed, and prohibiting the sale, identification, or reporting of refrigerant as being reclaimed if the HFC component of the resulting refrigerant contains more than 15 percent, by weight, of virgin HFC. EPA proposed and is requiring that certified reclaimers affix this label to reclaimed HFCs being sold or distributed or offered for sale or distribution beginning January 1, 2026. EPA also proposed and is finalizing that beginning January 1, 2026, certified reclaimers generate a record to certify that the reclaimed refrigerant does not exceed 15 percent, by weight, of virgin HFCs. Such records must be maintained for three years.

IX. Judicial Review

The AIM Act regulations promulgated herein may be challenged in the United States Court of Appeals for the District of Columbia Circuit. Pursuant to section 307(b)(1) of the CAA, petitions for judicial review of the AIM Act regulations must be filed in that court within 60 days after the date notice of this final action is published in the **Federal Register**. Any person seeking to challenge both the AIM Act regulations and the RCRA regulations must file the challenge to the AIM Act regulations within 60 days after the date notice of this final action is published in the **Federal Register**.

The AIM Act provides that certain sections of the CAA “shall apply to” the AIM Act and to “any rule, rulemaking, or regulation promulgated by the Administrator of [EPA] pursuant to [the AIM Act] as though [the AIM Act] were expressly included in title VI of [the CAA]” (42 U.S.C. 7675(k)(1)(C)). Among the applicable sections of the CAA is section 307, which includes provisions on judicial review. Section 307(b)(1) provides, in part, that petitions for review must be filed in the United

States Court of Appeals for the District of Columbia Circuit: (i) When the Agency action consists of “nationally applicable regulations promulgated, or final action taken, by the Administrator,” or (ii) when such action is locally or regionally applicable, but such action is “based on a determination of nationwide scope or effect.”

The AIM Act regulations promulgated herein are “nationally applicable regulations” within the meaning of CAA section 307(b)(1). These regulations define and interpret terms under the AIM Act and establish regulatory requirements applicable across the entire United States to implement subsection (h) of the AIM Act, including requirements to control practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment that involves a regulated substance, a substitute for a regulated substance, the reclaiming of a regulated substance used as a refrigerant, or the reclaiming of a substitute for a regulated substance used as a refrigerant, as well as regulatory requirements for labeling, recordkeeping, and reporting, for purposes including maximizing reclamation and minimizing releases of regulated substances from equipment. Accordingly, under section 307(b)(1) of the CAA, petitions for judicial review of these AIM Act regulations must be filed in the United States Court of Appeals for the District of Columbia by December 10, 2024.

EPA’s RCRA regulations promulgated herein may be challenged in the United States Court of Appeals for the District of Columbia Circuit. Section 7006(a)(1) of RCRA provides that “a petition for review of action of the Administrator in promulgating any regulation, or requirement under this chapter . . . may be filed only in the United States Court of Appeals for the District of Columbia, and such petition shall be filed within ninety days from the date of such promulgation” Accordingly, petitions for judicial review of the RCRA regulations promulgated herein must be filed in the United States Court of Appeals for the District of Columbia by January 9, 2025. Any person seeking to challenge both the AIM Act regulations and the RCRA regulations must file the challenge to the RCRA regulations within 90 days after the date notice of this final action is published in the **Federal Register**.

X. Severability

As noted previously, in this **Federal Register** notice we are providing notice of two sets of regulations: one under the

AIM Act and another under RCRA. Accordingly, as explained in the proposal and in other sections of this notice, as well as in the following paragraphs for clarity, this notice of final rulemaking is multifaceted and addresses many separate issues for independent reasons. For example, the AIM Act regulations include definitions and interpretations of terms under the AIM Act; new requirements, including provisions that address maximizing the reclamation and minimizing the release of HFCs from equipment under subsection (h) of that Act; and labeling, recordkeeping, and reporting requirements to support the enforcement of the new provisions. EPA has separately considered and adopted the elements of the AIM Act regulations, including leak repair of refrigerant-containing appliances; reclaimed HFCs for the servicing and/or repair of certain refrigerant-containing equipment; recycled HFCs in fire suppression equipment; emissions reductions in the fire suppression sector; and removal of HFCs from disposable cylinders before discarding them. Each of these requirements is supported by a separate analysis and rationale, based on independent consideration of issues such as the particular processes, practices, or activities that are relevant to and controlled by the requirement and how the requirements relate to the purposes identified in subsection (h)(1). These requirements also address different sectors and subsectors (RACHP and fire suppression). EPA intends for requirements for each of these topics to be able to stand independently from one another and has designed them accordingly. For example, the leak repair requirements for refrigerant-containing appliances are designed to operate independently from the requirements for servicing, repair, disposal, or installation of fire suppression equipment, as they address different types of equipment and are each independently intended to further serve the purposes of maximizing the reclamation and minimizing the release of HFCs from equipment. Similarly, while the requirements for the servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs and the requirements for recycled HFCs in the fire suppression sector also serve those same purposes, they do so by addressing processes, practices, or activities regarding the servicing, repair, installation, or disposal of equipment that differ both from those addressed by the leak repair requirements for refrigerant-containing appliances and those addressed by the emissions

reductions requirements for fire suppression equipment, as well as from one another. Likewise, while the requirements for removal of HFCs from disposable cylinders also help serve the purpose of maximizing reclamation, this portion of the AIM Act regulations is not integral to the adoption of the standards for what constitutes reclaimed HFC refrigerant, requirements for the servicing and/or repair of certain refrigerant-containing equipment with reclaimed HFCs, or other requirements.

In this notice of final rulemaking, EPA is also amending regulations under RCRA, which are separate from the regulations under subsection (h)(1) of the AIM Act, to establish alternative standards for ignitable spent refrigerants when recycled for reuse, as the term “recycle” is to be used under RCRA. These standards are established under a different set of statutory authorities than the AIM Act regulations, and they are part of an independent and distinct regulatory regime. While we intend for the AIM Act regulations and the separate RCRA regulations described in this notice of final rulemaking to operate independently of one another and to be severable from each other, we are providing notice of both sets of regulations simultaneously because both the RCRA regulations concerning the recovery and recycling of certain ignitable spent refrigerants and the AIM Act regulations concerning recovery and reclamation of refrigerants may be of interest to some of the same stakeholders.

Thus, EPA has independently considered and adopted the RCRA regulations (including the element for the RCRA alternative standards for ignitable spent refrigerants when recycled for reuse) and the AIM Act regulations (including but not limited to the elements of the ER&R program related to leak repair of refrigerant-containing appliances; reclaimed HFCs for the servicing and/or repair of certain refrigerant-containing equipment; recycled HFCs in fire suppression equipment; emissions reductions in the fire suppression sector; and removal of HFCs from disposable cylinders before discarding them), and these elements of these regulations are severable from the others. If a court were to invalidate any one of these elements, EPA intends the remainder of the provisions to remain effective, as the Agency has designed the elements of both the AIM Act regulations and the RCRA regulations to function sensibly and separately, and finds each portion appropriate, even if one or more other provisions has been set aside. Moreover, this discussion is not intended to be exhaustive, and

should not be viewed as an intention by EPA to consider other requirements not explicitly listed here as not severable from other requirements.

XI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 14094: Modernizing Regulatory Review

This action is a “significant regulatory action”, as defined under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. Accordingly, EPA submitted this action to the OMB for Executive Order 12866 review. Documentation of any changes made in response to the Executive Order 12866 review is available in the docket. EPA prepared an analysis of the potential

costs and benefits associated with this action. This analysis, *Final Regulatory Impact Analysis Addendum: Analysis of the Economic Impact and Benefits of the Proposed Rule: American Innovation and Manufacturing (AIM) Act Subsection H Management of Regulated Substances* (Docket Number EPA–HQ–OAR–2022–0606), is also available in the docket and is summarized in section I.C and section VI of this preamble. Estimated costs, benefits, and resulting net benefits are provided by type of provision in table 10 below.

TABLE 10—SUMMARY OF PRESENT VALUE COSTS, BENEFITS, AND NET BENEFITS BY REGULATORY PROVISION (MILLIONS OF 2022\$, DISCOUNTED TO 2024)—BASE CASE SCENARIO

Provision	Climate benefits (3%)	Costs (savings) (2%)	Costs (savings) (3%)	Costs (savings) (7%)	Net benefits (3% benefits, 2% costs)	Net benefits (3% benefits, 3% costs)	Net benefits (3% benefits, 7% costs)
Leak Repair And ALD	\$6,176	\$1,285	\$1,146	\$760	\$4,891	\$5,031	\$5,417.
Fire Suppression	14	\$15	\$13	\$7	(\$1)	\$1	\$7.
Cylinder Management	2,165	(\$195)	(\$169)	(\$101)	\$2,360	\$2,335	\$2,266.
Use of Reclaimed HFCs for Servicing ^a		\$43	\$38	\$23	(\$43)	(\$38)	(\$23).
Recordkeeping & Reporting		\$350	\$308	\$195	(\$350)	(\$308)	(\$195).
Total (AIM Act) ^b	8,356	\$1,499	\$1,335	\$884	\$6,857	\$7,021	\$7,471.
RCRA Alternative Standard Requirements ^c		\$0 to (\$40)	\$0 to (\$35)	\$0 to (\$22)	\$0 to (\$40)	\$0 to (\$35)	\$0 to (\$22).
Total (AIM Act + RCRA) ^b		\$1,459 to \$1,499	\$1,300 to \$1,335	\$863 to \$884	\$6,857 to \$6,897	\$7,021 to \$7,056	\$7,471 to \$7,493.

^a As detailed in the RIA addendum, reclaim requirements may lead to additional emissions reductions by inducing increased recovery of refrigerant at servicing and disposal that may otherwise be released or vented. In the base case scenario, EPA does not estimate an increase in these avoided emissions beyond baseline assumptions. See the RIA addendum for additional analysis related to this assumption.

^b Rows may not appear to add correctly due to rounding.

^c RCRA alternative standard requirements are part of the RCRA regulations, which are separate from the regulations under subsection (h)(1) of the AIM Act. Potential RCRA-related benefits presented in this table are included here for informational purposes.

B. Paperwork Reduction Act (PRA)

The information collection activities in this rule have been submitted for approval to the OMB under the PRA. The ICR document that EPA prepared has been assigned EPA ICR number 2778.02. You can find a copy of the ICR in the docket for this rule, and it is briefly summarized here. The information collection requirements are not enforceable until OMB approves them.

Subsection (k)(1)(C) of the AIM Act states that section 114 of the CAA applies to the AIM Act and rules promulgated under it as if the AIM Act were included in title VI of the CAA. Thus, section 114 of the CAA, which provides authority to the EPA Administrator to require recordkeeping and reporting in carrying out provisions of the CAA, also applies to and supports this rulemaking.

EPA is establishing certain labeling requirements for containers of reclaimed HFCs. EPA is also establishing recordkeeping and reporting requirements for owners or operators of applicable refrigerant-containing appliances that contain HFCs or certain substitutes for HFCs to support compliance with the leak repair

provisions, as well as recordkeeping and reporting requirements for the fire suppression provisions for HFCs. Additionally, where ALD systems are required, EPA is establishing that owners or operators maintain records regarding the annual calibration or audit of the system.

Respondents/affected entities: Respondents and affected entities will be individuals or companies that own, operate, service, repair, recycle, dispose, or install equipment containing HFCs or their substitutes addressed by this final rule, as well as individuals or companies that recover, recycle, or reclaim HFCs or such substitutes.

Respondent's obligation to respond: Mandatory (AIM Act and section 114 of the CAA).

Estimated number of respondents: 781,563.

Frequency of response: Quarterly, annually, and as needed depending on the nature of the report.

Total estimated burden: 222,268 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$17,069,893 (per year), includes \$0 annualized capital or operation & maintenance costs. This includes \$2,131,844 avoided per year

for reclamation reporting and recordkeeping related to the RCRA alternative standards.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR are listed in 40 CFR part 9. When OMB approves this ICR, the Agency will announce that approval in the **Federal Register** and publish a technical amendment to 40 CFR part 9 to display the OMB control number for the approved information collection activities contained in this final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities (SISNOSE) under the RFA. The small entities subject to the requirements of this action include those that may use as refrigerant, use as a fire suppression agent, reclaim, or recycle HFCs. EPA estimates that approximately 493 of the 767,568 potentially affected small entities (~0.06%) could incur costs in excess of one percent of annual sales/revenue and that approximately 12

small entities (<0.01%) could incur costs in excess of three percent of annual sales/revenue. Because there is not a substantial number of small entities that may experience a significant impact, it can be presumed that this action will have no SISNOSE. Details of this analysis are presented in the Economic Impact and Benefits TSD. (Docket ID EPA–HQ–OAR–2022–0606).

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.

E. Executive Order 13132: Federalism

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

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action. EPA periodically updates Tribal officials on air regulations through the monthly meetings of the National Tribal Air Association and will share information on this rulemaking through this and other fora.

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

Executive Order 13045 directs federal agencies to include an evaluation of the health and safety effects of the planned regulation on children in federal health and safety standards and explain why the regulation is preferable to potentially effective and reasonably feasible alternatives. 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 contends that the environmental health or safety risk addressed by this action has a disproportionate effect on children.

Accordingly, the Agency has evaluated the environmental health or safety effects of climate change on children.

Greenhouse gases, including HFCs, contribute to climate change. Certain populations and life stages, including children, the elderly, and the poor, are most vulnerable to climate-related health effects. The results of this evaluation are contained in the assessment literature cited in EPA's 2009 and 2016 Endangerment Findings. The assessment literature since 2016 strengthens these conclusions by providing more detailed findings regarding these groups' vulnerabilities and the projected impacts they may experience.

This action is preferred over other regulatory options analyzed because the GHG emissions reductions resulting from implementation of this rule will further reduce risks to children's health associated with the avoided emissions. These assessments describe how children's unique physiological and developmental factors contribute to making them particularly vulnerable to climate change. Impacts to children are expected from heat waves, air pollution, infectious and waterborne illnesses, and mental health effects resulting from extreme weather events. In addition, children are among those especially susceptible to most allergic diseases, as well as health effects associated with heat waves, storms, and floods. Additional health concerns may arise in low-income households, especially those with children, if climate change reduces food availability and increases prices, leading to food insecurity within households.

More detailed information on the impacts of climate change to human health and welfare is provided in section III.B of this preamble.

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. This action applies to certain regulated substances and certain equipment containing regulated substances or certain substitutes for regulated substances, none of which are used to supply or distribute energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14096: Revitalizing Our Nation's Commitment to Environmental Justice for All

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 communities with environmental justice concerns. EPA carefully evaluated available information on HFC reclamation facilities and the characteristics of nearby communities to evaluate these impacts in the context of this final rulemaking. Based on this analysis, EPA finds evidence of environmental justice concerns near HFC reclamation facilities from cumulative exposure to existing environmental hazards in these communities.

The analysis shows that communities near the 38 identified HFC reclamation facilities are generally more diverse than the national average with respect to race and ethnicity. While the median income of these communities is slightly higher than the national average, there are more low-income households. Across the 38 facilities, total respiratory risk and total cancer risk are slightly elevated compared to the national average.

This rule is expected to result in benefits in the form of reduced GHG emissions. The analysis conducted for this rule also estimates that a portion of these benefits would be incremental to emissions reductions that were anticipated under the Allocation Framework Rule alone, thus further reducing the risks of climate change associated with those emissions.

It is not practicable to assess whether this action is likely to result in new disproportionate and adverse effects on communities with environmental justice concerns. While providing additional overall climate benefits, this rule may also result in changes in emissions of air pollutants or other chemicals that are potential byproducts of HFC reclamation processes at affected facilities. The market for reclaimed HFCs could drive changes in potential risk for communities living near these facilities due to the changes in emissions that could have local effects is uncertain. However, the nature and location of the emission changes are uncertain. Moreover, there is insufficient information at this time about which facilities will change reclamation processes. Given limited

information at this time, it is unclear to what extent this rule will impact existing disproportionate adverse effects on communities living near HFC reclamation facilities. The Agency will continue to evaluate the impacts of this rulemaking on affected communities, including communities with environmental justice concerns, and consider further action, as appropriate, to protect health in communities affected by HFC reclamation. The information supporting this Executive Order review is contained in section VII of this preamble.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action meets the criteria set forth in 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 84

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Climate change, Emissions, Reclaiming, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Environmental protection, Exports, Hazardous materials transportation, Hazardous waste, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

40 CFR Part 266

Environmental protection, Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 270

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians—lands, Intergovernmental relations, Penalties, Reporting and recordkeeping

requirements, Water pollution control, Water supply.

Michael S. Regan,
Administrator.

For the reasons stated in the preamble, EPA amends 40 CFR parts 84, 261, 262, 266, 270, and 271 as follows:

PART 84—PHASEDOWN OF HYDROFLUOROCARBONS

■ 1. The authority citation for part 84 continues to read as follows:

Authority: Pub. L. 116–260, Division S, Sec. 103.

■ 2. Add subpart C, consisting of §§ 84.100 through 84.120, to read as follows:

Subpart C—Management of Regulated Substances

Sec.

- 84.100 Purpose.
- 84.102 Definitions.
- 84.104 Prohibitions.
- 84.106 Leak repair.
- 84.108 Automatic leak detection systems.
- 84.110 Emissions from fire suppression equipment.
- 84.112 Reclamation.
- 84.114 Exemptions.
- 84.116 Requirements for disposable cylinders.
- 84.118 Treatment of data submitted under 40 CFR part 84, subpart C.
- 84.120 Relationship to other laws.

§ 84.100 Purpose.

The purpose of the regulations in this subpart is to implement subsection (h) of 42 U.S.C. 7675, including with respect to establishing requirements to control practices, processes, or activities regarding the servicing, repair, disposal, or installation of equipment, for purposes of maximizing reclaiming, minimizing the release of regulated substances from equipment, and ensuring the safety of technicians and consumers.

§ 84.102 Definitions.

For the terms not defined in this subpart but that are defined in § 84.3, the definitions in § 84.3 shall apply. For the purposes of this subpart C:

Certified technician means a technician that has been certified per the provisions at 40 CFR 82.161.

Comfort cooling means the refrigerant-containing appliances used for air conditioning to provide cooling in order to control heat and/or humidity in occupied facilities including but not limited to residential, office, and commercial buildings. Comfort cooling appliances include but are not limited to chillers, commercial split systems,

dual-function heat pumps, and packaged roof-top units.

Commercial refrigeration means the refrigerant-containing appliances used in the retail food and cold storage warehouse subsectors. Retail food appliances include the refrigerant-containing appliances found in supermarkets, convenience stores, restaurants, and other food service establishments. Cold storage includes the refrigerant-containing appliances used to store meat, produce, dairy products, and other perishable goods.

Component, as it relates to a refrigerant-containing appliance, means a part of the refrigerant circuit within an appliance including but not limited to compressors, condensers, evaporators, receivers, and all of its connections and subassemblies.

Custom-built means that the industrial process refrigeration equipment or any of its components cannot be purchased and/or installed without being uniquely designed, fabricated and/or assembled to satisfy a specific set of industrial process conditions.

Disposal, as it relates to refrigerant-containing equipment, means the process leading to and including:

(1) The discharge, deposit, dumping, or placing of any discarded refrigerant-containing equipment into or on any land or water;

(2) The disassembly of any refrigerant-containing equipment for discharge, deposit, dumping, or placing of its discarded component parts into or on any land or water;

(3) The vandalism of any refrigerant-containing equipment such that the refrigerant is released into the environment or would be released into the environment if it had not been recovered prior to the destructive activity;

(4) The disassembly of any refrigerant-containing equipment for reuse of its component parts; or

(5) The recycling of any refrigerant-containing equipment for scrap.

Disposal, as it relates to fire suppression equipment, means the process leading to and including:

(1) The discharge, deposit, dumping, or placing of any fire suppression equipment into or on any land or water;

(2) The disassembly of any fire suppression equipment for discharge, deposit, dumping, or placing of its discarded component parts into or on any land or water; or

(3) The disassembly of any fire suppression equipment for reuse of its component parts.

Equipment means any device that contains, uses, detects, or is otherwise

connected to or associated with a regulated substance or substitute for a regulated substance, including any component, system, refrigerant-containing appliance, and fire suppression equipment.

Fire suppression equipment means any device that is connected to or associated with a regulated substance or substitute for a regulated substance, including blends and mixtures, consisting in part or whole of a regulated substance or a substitute for a regulated substance, and that is used for fire suppression purposes. This term includes any such equipment, component, or system. This term does not include military equipment used in deployable and expeditionary situations. This term also does not include space vehicles as defined in 40 CFR 84.3.

Fire suppression technician means any person who in the course of servicing, repair, disposal, or installation of fire suppression equipment could be reasonably expected to violate the integrity of the fire suppression equipment and therefore release fire suppressants into the environment.

Follow-up verification test, as it relates to a refrigerant-containing appliance, means those tests that involve checking the repairs to an appliance after a successful initial verification test and after the appliance has returned to normal operating characteristics and conditions to verify that the repairs were successful. Potential methods for follow-up verification tests include but are not limited to the use of soap bubbles as appropriate, electronic or ultrasonic leak detectors, pressure or vacuum tests, fluorescent dye and black light, infrared or near infrared tests, and handheld gas detection devices.

Full charge, as it relates to a refrigerant-containing appliance, means the amount of refrigerant required for normal operating characteristics and conditions of the appliance as determined by using one or a combination of the following four methods:

(1) Use of the equipment manufacturer's determination of the full charge;

(2) Use of appropriate calculations based on component sizes, density of refrigerant, volume of piping, and other relevant considerations;

(3) Use of actual measurements of the amount of refrigerant added to or evacuated from the appliance, including for seasonal variances; and/or

(4) Use of an established range based on the best available data regarding the normal operating characteristics and conditions for the appliance, where the midpoint of the range will serve as the full charge.

Industrial process refrigeration means complex customized refrigerant-containing appliances that are directly linked to the processes used in, for example, the chemical, pharmaceutical, petrochemical, and manufacturing industries. This sector also includes industrial ice machines, appliances used directly in the generation of electricity, and ice rinks. Where one appliance is used for both industrial process refrigeration and other applications, it will be considered industrial process refrigeration equipment if 50 percent or more of its operating capacity is used for industrial process refrigeration.

Initial verification test, as it relates to a refrigerant-containing appliance, means those leak tests that are conducted after the repair is finished to verify that a leak or leaks have been repaired before refrigerant is added back to the appliance.

Installation means the process of setting up equipment for use, which may include steps such as completing the refrigerant circuit, including charging equipment with a regulated substance or substitute for a regulated substance, or connecting cylinders containing a regulated substance or a substitute for a regulated substance to a total flooding fire suppression system, such that the equipment can function and is ready for use for its intended purpose.

Leak inspection, as it relates to a refrigerant-containing appliance, means

the examination of an appliance to detect and determine the location of refrigerant leaks. Potential methods include but are not limited to ultrasonic tests, gas-imaging cameras, bubble tests as appropriate, or the use of a leak detection device operated and maintained according to manufacturer guidelines. Methods that determine whether the appliance is leaking refrigerant but not the location of a leak, such as standing pressure/vacuum decay tests, sight glass checks, viewing receiver levels, pressure checks, and charging charts, must be used in conjunction with methods that can determine the location of a leak.

Leak rate, as it relates to a refrigerant-containing appliance, means the rate at which an appliance is losing refrigerant, measured between refrigerant charges. The leak rate is expressed in terms of the percentage of the appliance's full charge that would be lost over a 12-month period if the current rate of loss were to continue over that period. The rate must be calculated using one of the following methods. The same method must be used for all appliances subject to the leak repair requirements located at an operating facility.

(1) *Annualizing Method*—(i) *Step 1*. Take the number of pounds of refrigerant added to the appliance to return it to a full charge, whether in one addition or in multiple additions related to same leak, and divide it by the number of pounds of refrigerant the appliance normally contains at full charge;

(ii) *Step 2*. Take the shorter of the number of days that have passed since the last day refrigerant was added or 365 days and divide that number by 365 days;

(iii) *Step 3*. Take the number calculated in Step 1 and divide it by the number calculated in Step 2; and

(iv) *Step 4*. Multiply the number calculated in Step 3 by 100 to calculate a percentage. This method is summarized in the following formula:

Formula 1 to paragraph (1)(iv)

$$\text{Leak rate} = \frac{\text{pounds of refrigerant added}}{\text{pounds of refrigerant in full charge}} \times \frac{365 \text{ days/year}}{\text{shorter of: \# days since refrigerant last added or 365 days}} \times 100\%$$

(% per year)

(2) *Rolling Average Method*—(i) *Step 1*. Take the sum of the pounds of refrigerant added to the appliance over the previous 365-day period (or over the

period that has passed since the last successful follow-up verification test showing all identified leaks in the

appliance were repaired, if that period is less than one year);

(ii) *Step 2*. Divide the result of Step 1 by the pounds of refrigerant the

appliance normally contains at full charge; and

(iii) *Step 3.* Multiply the result of Step 2 by 100 to obtain a percentage. This

method is summarized in the following formula:

Formula 2 to paragraph (2)(iii)

pounds of refrigerant added over past 365 days

(or since the last successful follow-up verification test showing all identified

$$\text{Leak rate} = \frac{\text{leaks in the appliance were repaired, if that period is less than one year}}{\text{pounds of refrigerant in full charge}} \times 100\%$$

(% per year)

Mothball, as it relates to a refrigerant-containing appliance, means to evacuate refrigerant from an appliance, or the affected isolated section or component of an appliance, to at least atmospheric pressure, and to temporarily shut down that appliance.

Motor vehicle means any vehicle which is self-propelled and designed for transporting persons or property on a street or highway, including but not limited to passenger cars, light-duty vehicles, and heavy-duty vehicles. This definition does not include a vehicle where final assembly of the vehicle has not been completed by the original equipment manufacturer.

Motor vehicle air conditioners (MVAC) means mechanical vapor compression refrigerant-containing appliances used to cool the driver's or passenger's compartment of any motor vehicle. This definition is intended to have the same meaning as in 40 CFR 82.32.

MVAC-like appliance means a mechanical vapor compression, open-drive compressor refrigerant-containing appliance with a full charge of 20 pounds or less of refrigerant used to cool the driver's or passenger's compartment of off-road vehicles. This includes, but is not limited to, the air-conditioning appliances found on agricultural or construction vehicles. This definition is intended to have the same meaning as in 40 CFR 82.152.

Normal operating characteristics and conditions, as it relates to a refrigerant-containing appliance, means appliance operating temperatures, pressures, fluid flows, speeds, and other characteristics, including full charge of the appliance, that would be expected for a given process load and ambient condition during normal operation. Normal operating characteristics and conditions are marked by the absence of atypical conditions affecting the operation of the appliance.

Owner or operator means any person who owns, leases, operates, or controls any equipment, or who controls or supervises any practice, process, or

activity that is subject to any requirement pursuant to this subpart.

Recover means the process by which a regulated substance, or where applicable, a substitute for a regulated substance, is (1) removed, in any condition, from equipment and (2) stored in an external container, with or without testing or processing the regulated substance or substitute for a regulated substance.

Recycling, when referring to fire suppression or fire suppressants, means the testing and/or reprocessing of regulated substances used in the fire suppression sector to certain purity standards.

Refrigerant means any substance, including blends and mixtures, consisting in part or whole of a regulated substance or a substitute for a regulated substance that is used for heat transfer purposes and provides a cooling effect.

Refrigerant circuit, as it relates to a refrigerant-containing appliance, means the parts of an appliance that are normally connected to each other (or are separated only by internal valves) and are designed to contain refrigerant.

Refrigerant-containing appliance means any device that contains and uses a regulated substance or substitute for a regulated substance as a refrigerant including but not limited to any air conditioner, MVAC, MVAC-like appliance, refrigerator, chiller, or freezer. For such devices with multiple circuits, each independent circuit is considered a separate appliance.

Refrigerant-containing equipment means equipment as defined in this subpart that contains, uses, or is otherwise connected to or associated with a regulated substance or substitute for a regulated substance that is used as a refrigerant. This definition includes refrigerant-containing components and refrigerant-containing appliances. This term does not include military equipment used in deployable and expeditionary situations. This term also does not include space vehicles as defined in 40 CFR 84.3.

Repackager means an entity that transfers regulated substances, either alone or in a blend, from one container to another container prior to sale or distribution or offer for sale or distribution. An entity that services system cylinders for use in fire suppression equipment and returns the same regulated substances to the same system cylinder it was recovered from after the system cylinder is serviced is not a repackager.

Repair, as it relates to a particular leak in a refrigerant-containing appliance, means making adjustments or other alterations to that refrigerant-containing appliance that have the effect of stopping leakage of refrigerant from that particular leak.

Reprocess means using procedures such as filtering, drying, distillation, and other chemical procedures to remove impurities from a regulated substance or a substitute for a regulated substance.

Retire, as it relates to a refrigerant-containing appliance, means the removal of the refrigerant and the disassembly or impairment of the refrigerant circuit such that the appliance as a whole is rendered unusable by any person in the future.

Retrofit, as it relates to a refrigerant-containing appliance, means to convert an appliance from one refrigerant to another refrigerant. Retrofitting includes the conversion of the appliance to achieve system compatibility with the new refrigerant and may include, but is not limited to, changes in lubricants, gaskets, filters, driers, valves, o-rings, or appliance components.

Seasonal variance, as it relates to a refrigerant-containing appliance, means the removal of refrigerant from an appliance due to a change in ambient conditions caused by a change in season, followed by the subsequent addition of an amount that is less than or equal to the amount of refrigerant removed in the prior change in season, where both the removal and addition of refrigerant occurs within one consecutive 12-month period.

Stationary refrigerant-containing equipment means refrigerant-containing equipment, as defined in this subpart, that is not an MVAC or an MVAC-like appliance, as defined in this subpart.

Substitute for a regulated substance means a substance that can be used in equipment in the same or similar applications as a regulated substance, to serve the same or a similar purpose, including but not limited to a substance used as a refrigerant in a refrigerant-containing appliance or as a fire suppressant in fire suppression equipment, provided that the substance is not a regulated substance or an ozone-depleting substance.

Technician, as it relates to any person who works with refrigerant-containing appliances, means any person who in the course of servicing, repair, or installation of a refrigerant-containing appliance (except MVACs) could be reasonably expected to violate the integrity of the refrigerant circuit and therefore release refrigerants into the environment. Technician also means any person who in the course of disposal of a refrigerant-containing appliance (except small appliances as defined in 40 CFR 82.152, MVACs, and MVAC-like appliances) could be reasonably expected to violate the integrity of the refrigerant circuit and therefore release refrigerants from the appliances into the environment. Activities reasonably expected to violate the integrity of the refrigerant circuit include but are not limited to: Attaching or detaching hoses and gauges to and from the appliance; adding or removing refrigerant; adding or removing components; and cutting the refrigerant line. Activities such as painting the appliance, rewiring an external electrical circuit, replacing insulation on a length of pipe, or tightening nuts and bolts are not reasonably expected to violate the integrity of the refrigerant circuit. Activities conducted on refrigerant-containing appliances that have been properly evacuated pursuant to 40 CFR 82.156 are not reasonably expected to release refrigerants unless the activity includes adding refrigerant to the appliance. Technicians could include but are not limited to installers, contractor employees, in-house service personnel, and owners and/or operators of refrigerant-containing appliances.

Virgin regulated substance means any regulated substance that has not had any bona fide use in equipment.

§ 84.104 Prohibitions.

(a) *Sale of recovered refrigerant.* No person may sell, distribute, or transfer to a new owner, or offer for sale, distribution, or transfer to a new owner,

any regulated substance used as a refrigerant in stationary refrigerant-containing equipment consisting in whole or in part of recovered regulated substances, unless the recovered regulated substance:

(1) Has been reclaimed by a person who has been certified as a reclaimer under 40 CFR 82.164 and has been reclaimed by being reprocessed to all of the specifications in appendix A to 40 CFR part 82, subpart F that are applicable to that regulated substance and verified to meet these specifications using the analytical methodology prescribed in section 5 of appendix A to 40 CFR part 82, subpart F; or

(2) Is sold, distributed, or transferred to a new owner, or offered for sale, distribution, or transfer to a new owner solely for the purposes of being reclaimed or destroyed.

(b) [Reserved]

§ 84.106 Leak repair.

(a) *Applicability.* This section applies to refrigerant-containing appliances with a full charge of 15 or more pounds of refrigerant where the refrigerant contains:

(1) A regulated substance,

(2) A substitute for a regulated substance that has a global warming potential greater than 53, based on the global warming potentials listed in table 1 of § 84.64(b).

(3) Notwithstanding the criteria in paragraphs (a)(1) and (2) of this section, the requirements of this section do not apply to:

(i) Appliances (as defined in 40 CFR 82.152) containing solely an ozone-depleting substance as listed in 40 CFR part 82, subpart A as a refrigerant;

(ii) Refrigerant-containing appliances used for the residential and light commercial air conditioning and heat pump subsector.

(4) The requirements of this section apply as of January 1, 2026.

(b) *Leak rate calculation.* Persons adding or removing refrigerant from a refrigerant-containing appliance must, upon conclusion of that installation, service, repair, or disposal, provide the owner or operator with documentation that meets the applicable requirements of paragraph (l)(2) of this section. The owner or operator must calculate the leak rate every time refrigerant is added to an appliance unless the addition is made immediately following a retrofit, installation of a new refrigerant-containing appliance, or qualifies as a seasonal variance.

(1) Where an owner or operator is using the annualizing method to calculate a leak rate for a refrigerant-containing appliance for the first time

after January 1, 2026, the calculation should substitute 365 days as the number of days since last refrigerant addition.

(2) Where an owner or operator is using the rolling average method to calculate a leak rate for a refrigerant-containing appliance for the first time after January 1, 2026, the calculation should substitute pounds of refrigerant added since January 1, 2026.

(3) An owner or operator may switch to a different leak rate calculation methodology only if the following requirements are met:

(i) The owner or operator has purchased or otherwise acquired an operating facility with one or more refrigerant-containing appliance(s) which was previously using a different leak rate calculation methodology than the methodology being used at other facilities owned or operated by the owner or operator;

(ii) The owner or operator has determined the refrigerant-containing appliance(s) at any operating facility for which the leak rate calculation methodology would change are not exceeding the applicable leak rate in paragraph (c)(2) of this section under either of the leak rate calculation methodologies; and

(iii) The owner or operator must retain a record of this change as described in paragraph (l)(3) of this section.

(c) *Requirement to address leaks through repair, or retrofitting or retiring a refrigerant-containing appliance.* (1) Owners or operators must repair leaks in refrigerant-containing appliances with a leak rate over the applicable leak rate in this paragraph in accordance with paragraphs (d) through (f) of this section unless the owner or operator elects to retrofit or retire the refrigerant-containing appliance in compliance with paragraphs (h) and (i) of this section. If the owner or operator elects to repair leaks but fails to bring the leak rate below the applicable leak rate, the owner or operator must create and implement a retrofit or retirement plan in accordance with paragraphs (h) and (i) of this section. Repairs must be conducted by a certified technician, as defined in this subpart.

(2) *Leak rates:*

(i) 20 percent leak rate for commercial refrigeration appliances;

(ii) 30 percent leak rate for industrial process refrigeration appliances; and

(iii) 10 percent leak rate for comfort cooling appliances, refrigerated transport appliances, or other refrigerant-containing appliances with a full charge of 15 or more pounds of

refrigerant not covered by paragraph (c)(2)(i) or (ii) of this section.

(d) *Appliance repair.* Owners or operators must identify and repair leaks in accordance with this paragraph within 30 days (or 120 days if an industrial process shutdown is required) of when refrigerant is added to a refrigerant-containing appliance exceeding the applicable leak rate in paragraph (c) of this section.

(1) A certified technician must conduct a leak inspection, as described in paragraph (g) of this section, to identify the location of leaks.

(2) Leaks must be repaired such that the leak rate of the refrigerant-containing appliance is brought below the applicable leak rate. This must be confirmed by the leak rate calculation performed upon the next refrigerant addition. Leak repairs will be presumed to be successful if, over the 12-month period after the date of a successful follow-up verification test, there is no further refrigerant addition or if the leak inspections required under paragraph (g) and/or automatic leak detection systems required by § 84.108 do not find any leaks in the appliance. Repairs of leaks must be documented by both an initial and a follow-up verification test or tests.

(3) The time frames in paragraphs (d) through (f) of this section are temporarily suspended when an appliance is mothballed. The time will resume on the day additional refrigerant is added to the refrigerant-containing appliance (or component of a refrigerant-containing appliance if the leaking component was isolated).

(e) *Verification tests.* The owner or operator must conduct both initial and follow-up verification tests on each leak that was repaired under paragraph (d) of this section.

(1) *Initial verification test.* Unless granted additional time, an initial verification test must be performed within 30 days (or 120 days if an industrial process shutdown is required) of a refrigerant-containing appliance exceeding the applicable leak rate in paragraph (c) of this section. An initial verification test must demonstrate that for leaks where repair attempts were made, the adjustments or alterations to the refrigerant-containing appliance have held.

(i) For repairs that can be completed without the need to open or evacuate the refrigerant-containing appliance, the test must be performed after the conclusion of the repairs and before any additional refrigerant is added to the refrigerant-containing appliance.

(ii) For repairs that require the evacuation of the refrigerant-containing

appliance or portion of the refrigerant-containing appliance, the test must be performed before adding any refrigerant to the refrigerant-containing appliance.

(iii) If the initial verification test indicates that the repairs have not been successful, the owner or operator may conduct as many additional repairs and initial verification tests as needed within the applicable time period.

(2) *Follow-up verification test.* A follow-up verification test must be performed within 10 days of the successful initial verification test or 10 days of the refrigerant-containing appliance reaching normal operating characteristics and conditions (if the refrigerant-containing appliance or isolated component was evacuated for the repair(s)). Where it is unsafe to be present or otherwise impossible to conduct a follow-up verification test when the system is operating at normal operating characteristics and conditions, the verification test must, where practicable, be conducted prior to the system returning to normal operating characteristics and conditions.

(i) A follow-up verification test must demonstrate that leaks where repair attempts were made are repaired. If the follow-up verification test indicates that the repairs have not been successful, the owner or operator may conduct as many additional repairs and verification tests as needed to bring the refrigerant-containing appliance below the leak rate within the applicable time period and to verify the repairs.

(ii) [Reserved]

(f) *Extensions to the appliance repair deadlines.* Owners or operators are permitted more than 30 days (or 120 days if an industrial process shutdown is required) to comply with paragraphs (d) and (e) of this section if they meet the requirements of paragraphs (f)(1) through (4) of this section or the refrigerant-containing appliance is mothballed. Extension requests must be signed by an authorized company official. The request will be considered approved unless EPA notifies the owners or operators otherwise.

(1) One or more of the following conditions must apply:

(i) The refrigerant-containing appliance is located in an area subject to radiological contamination or shutting down the refrigerant-containing appliance will directly lead to radiological contamination. Additional time is permitted to the extent needed to conduct and finish repairs in a safe working environment.

(ii) Requirements of other applicable Federal, State, local, or Tribal regulations make repairs within 30 days (or 120 days if an industrial process

shutdown is required) impossible. Additional time is permitted to the extent needed to comply with the pertinent regulations.

(iii) Components that must be replaced are not available within 30 days (or 120 days if an industrial process shutdown is required). Additional time is permitted up to 30 days after receiving delivery of the necessary components, not to exceed 180 days (or 270 days if an industrial process shutdown is required) from the date the refrigerant-containing appliance exceeded the applicable leak rate.

(2) Repairs to leaks that the technician has identified as significantly contributing to the exceedance of the leak rate and that do not require additional time must be completed and verified within the initial 30-day repair period (or 120-day repair period if an industrial process shutdown is required);

(3) The owner or operator must document all repair efforts and the reason for the inability to make all necessary repairs within the initial 30-day repair period (or 120-day repair period if an industrial process shutdown is required); and

(4) The owner or operator must request an extension from EPA electronically, using the Agency's applicable reporting platform, within 30 days (or 120 days if an industrial process shutdown is required) of the refrigerant-containing appliance exceeding the applicable leak rate in paragraph (c) of this section. Extension requests must include: Identification and address of the facility; the name of the owner or operator of the refrigerant-containing appliance; the leak rate; the method used to determine the leak rate and full charge; the date the refrigerant-containing appliance exceeded the applicable leak rate; the location of leak(s) to the extent determined to date; any repairs that have been performed thus far, including the date that repairs were completed; the reasons why more than 30 days (or 120 days if an industrial process shutdown is required) are needed to complete the repairs; an estimate of when the repairs will be completed; and a signature from an authorized company official. If the estimated completion date is to be extended, a new estimated date of completion and documentation of the reason for that change must be submitted to EPA within 30 days of identifying that the completion date must be extended. The owner or operator must keep a dated copy of these submissions.

(g) *Leak inspections.* (1) The owner or operator must conduct a leak inspection in accordance with the following schedule on any refrigerant-containing appliance exceeding the applicable leak rate in paragraph (c)(2) of this section.

(i) For commercial refrigeration and industrial process refrigeration appliances with a full charge of 500 or more pounds, leak inspections must be conducted once every three months after the date of a successful follow-up verification test, until the owner or operator can demonstrate through the leak rate calculations required under paragraph (b) of this section that the appliance has not leaked in excess of the applicable leak rate for four quarters in a row.

(ii) For commercial refrigeration and industrial process refrigeration appliances with a full charge of 15 or more pounds but less than 500 pounds, leak inspections must be conducted once per year after the date of a successful follow-up verification test, until the owner or operator can demonstrate through the leak rate calculations required under paragraph (b) of this section that the appliance has not leaked in excess of the applicable leak rate for one year.

(iii) For comfort cooling appliances and other appliances not covered by paragraphs (g)(1)(i) and (ii) of this section, leak inspections must be conducted once per year after the date of a successful follow-up verification test, until the owner or operator can demonstrate through the leak rate calculations required under paragraph (b) of this section that the appliance has not leaked in excess of the applicable leak rate for one year.

(2) Leak inspections must be conducted by a certified technician using method(s) determined by the certified technician to be appropriate for that refrigerant-containing appliance.

(3) All visible and accessible components of a refrigerant-containing appliance must be inspected, with the following exceptions:

(i) Where components are insulated, under ice that forms on the outside of equipment, underground, behind walls, or are otherwise inaccessible;

(ii) Where personnel must be elevated more than two meters above a support surface; or

(iii) Where components are unsafe to inspect, as determined by site personnel.

(4) Quarterly or annual leak inspections are not required on refrigerant-containing appliances, or portions of refrigerant-containing appliances, continuously monitored by an automatic leak detection system that

is audited or calibrated annually. An automatic leak detection system may directly detect refrigerant in air, monitor its surrounding in a manner other than detecting refrigerant concentrations in air, or monitor conditions of the appliance. An automatic leak detection system being used for this purpose must meet the requirements for automatic leak detection systems in § 84.108(c) through (g) and § 84.108(i).

(i) When an automatic leak detection system is only being used to monitor portions of a refrigerant-containing appliance, the remainder of the refrigerant-containing appliance continues to be subject to any applicable leak inspection requirements.

(ii) [Reserved]

(h) *Retrofit or retirement plans.* (1) The owner or operator must create a retrofit or retirement plan within 30 days of:

(i) A refrigerant-containing appliance leaking above the applicable leak rate in paragraph (c) of this section if the owner or operator intends to retrofit or retire rather than repair leaks;

(ii) A refrigerant-containing appliance leaking above the applicable leak rate in paragraph (c) of this section if the owner or operator fails to take any action to identify or repair leaks; or

(iii) A refrigerant-containing appliance continues to leak above the applicable leak rate after having conducted the required repairs and verification tests under paragraphs (d) and (e) of this section.

(2) A retrofit or retirement plan must, at a minimum, contain the following information:

(i) Identification and location of the refrigerant-containing appliance;

(ii) Type and full charge of the refrigerant used in the refrigerant-containing appliance;

(iii) Type and full charge of the refrigerant to which the refrigerant-containing appliance will be converted, if retrofitted;

(iv) Itemized procedure for converting the refrigerant-containing appliance to a different refrigerant, including changes required for compatibility with the new refrigerant, if retrofitted;

(v) Plan for the disposition of recovered refrigerant;

(vi) Plan for the disposition of the refrigerant-containing appliance, if retired; and

(vii) A schedule, not to exceed one year, for completion of the appliance retrofit or retirement.

(3) The retrofit or retirement plan must be signed by an authorized company official, dated, accessible at the site of the refrigerant-containing appliance in paper copy or electronic

format, and available for EPA inspection upon request.

(4) All identified leaks must be repaired as part of any retrofit under such a plan.

(5) A retrofit or retirement plan must be implemented as follows:

(i) Unless granted additional time, all work performed in accordance with the plan must be finished within one year of the plan's date (not to exceed 12 months from when the plan was finalized as required in paragraph (h)(1) of this section).

(ii) The owner or operator may request that EPA relieve it of the obligation to retrofit or retire a refrigerant-containing appliance if the owner or operator can establish within 180 days of the plan's date that the refrigerant-containing appliance no longer exceeds the applicable leak rate and if the owner or operator agrees in writing to repair all identified leaks within one year of the plan's date consistent with paragraphs (h)(4) and (h)(5)(i) of this section. The owner or operator must submit to EPA the retrofit or retirement plan as well as the following information: The date that the requirement to develop a retrofit or retirement plan was triggered; the leak rate; the method used to determine the leak rate and full charge; the location of the leak(s) identified in the leak inspection; a description of the repairs that have been completed; a description of repairs that have not been completed; a description of why repairs were not conducted within the time frames required under paragraphs (d) and (f) of this section; and a statement signed by an authorized company official that all identified leaks will be repaired and an estimate of when those repairs will be completed (not to exceed one year from date of the plan). The request will be considered approved unless EPA notifies the owner or operator within 60 days of receipt of the request that it is not approved.

(i) *Extensions to the one-year retrofit or retirement schedule.* Owners or operators may request more than one year to comply with paragraph (h) of this section if they meet the requirements of this paragraph. The request will be considered approved unless EPA notifies the owners or operators within 60 days of receipt of the request that it is not approved. The request must be submitted to EPA electronically, using the Agency's applicable reporting platform, within seven months of discovering the refrigerant-containing appliance exceeded the applicable leak rate. The request must include the identification of the refrigerant-containing appliance;

name of the owner or operator; the leak rate; the method used to determine the leak rate and full charge; the date the refrigerant-containing appliance exceeded the applicable leak rate; the location of leaks(s) to the extent determined to date; any repairs that have been finished thus far, including the date that repairs were finished; a plan to finish the retrofit or retirement of the refrigerant-containing appliance; the reasons why more than one year is necessary to retrofit or retire the refrigerant-containing appliance; the date of notification to EPA; a signature from an authorized company official; and an estimate of when the retrofit or retirement will be finished. A dated copy of the request must be available on-site in either electronic or paper copy. If the estimated completion date is to be revised, a new estimated date of completion and documentation of the reason for that change must be submitted to EPA electronically, using the Agency's applicable reporting platform, within 30 days. Additionally, the time frames in paragraph (h) of this section and this paragraph (i) are temporarily suspended when a refrigerant-containing appliance is mothballed. The time will resume running on the day additional refrigerant is added to the refrigerant-containing appliance (or component of a refrigerant-containing appliance if the leaking component was isolated).

(1) *Extensions available to industrial process refrigeration.* Owners or operators of industrial process refrigeration appliances may request additional time beyond the one-year period in paragraph (h) of this section to finish the retrofit or retirement under the following circumstances:

(i) Requirements of other applicable Federal, State, local, or Tribal regulations make a retrofit or retirement within one year impossible. Additional time is permitted to the extent needed to comply with the pertinent regulations;

(ii) The new or the retrofitted equipment is custom-built as defined in this subpart and the supplier of the appliance or one of its components has quoted a delivery time of more than 30 weeks from when the order is placed. The appliance or appliance components must be installed within 120 days after receiving delivery of the necessary parts;

(iii) The equipment or component is located in an area subject to radiological contamination and creating a safe working environment will require more than 30 weeks; or

(iv) After receiving an extension under paragraph (i)(1)(ii) of this section,

owners or operators may request additional time if necessary to finish the retrofit or retirement of the refrigerant-containing appliance. The request must be submitted to EPA before the end of the ninth month of the initial extension and must include the same information submitted for that extension, with any necessary revisions. A dated copy of the request must be available on-site in either electronic or paper copy. The request will be considered approved unless EPA notifies the owners or operators within 60 days of receipt of the request that it is not approved.

(2) [Reserved]

(j) *Chronically leaking appliances.*

Owners or operators of refrigerant-containing appliances containing 15 or more pounds of refrigerant that leak 125 percent or more of the full charge in a calendar year must submit a report containing the information required in paragraph (m)(4) of this section to EPA by March 1 of the subsequent year.

(k) *Purged refrigerant.* In calculating annual leak rates, purged refrigerant that is destroyed at a verifiable destruction efficiency of 98 percent or greater will not be counted toward the leak rate.

(l) *Recordkeeping.* All records identified in this paragraph must be kept for at least three years in electronic or paper format, unless otherwise specified.

(1) By January 1, 2026, or upon installation for refrigerant-containing appliances installed on or after January 1, 2026, owners or operators must determine the full charge of all refrigerant-containing appliances with 15 or more pounds of refrigerant and maintain the following information for each appliance until three years after the appliance is retired:

(i) The identification of the owner or operator of the refrigerant-containing appliance;

(ii) The address where the appliance is located;

(iii) The full charge of the refrigerant-containing appliance and the method for how the full charge was determined;

(iv) If using method 4 (using an established range) for determining full charge, records must include the range for the full charge of the refrigerant-containing appliance, its midpoint, and how the range was determined;

(v) Any revisions of the full charge, how they were determined, and the dates such revisions occurred; and

(vi) The date of installation.

(2) Owners or operators must maintain a record including the following information for each time a refrigerant-containing appliance with a full charge of 15 or more pounds is

installed, serviced, repaired, or disposed of, when applicable.

(i) The identity and location of the refrigerant-containing appliance;

(ii) The date of the installation, service, repair, or disposal performed;

(iii) The part(s) of the refrigerant-containing appliance being installed, serviced, repaired, or disposed;

(iv) The type of installation, service, repair, or disposal performed for each part;

(v) The name of the person performing the installation, service, repair, or disposal;

(vi) The amount and type of refrigerant added to, or in the case of disposal removed from, the appliance;

(vii) The full charge of the refrigerant-containing appliance; and

(viii) The leak rate and the method used to determine the leak rate (not applicable when disposing of the refrigerant-containing appliance, following a retrofit, installing a new refrigerant-containing appliance, or if the refrigerant addition qualifies as a seasonal variance).

(3) Owners or operators must maintain the following records of changes to the leak rate calculation method after a change in ownership or acquisition specified in paragraph (b)(3) of this section:

(i) Basic identification information (*i.e.*, owner or operator, facility name, facility address where appliance is located, and appliance ID or description);

(ii) The date the operating facility referenced in paragraph (b)(3)(i) was purchased or otherwise acquired;

(iii) The leak rates for all refrigerant-containing appliances at any operating facility for which the leak rate calculation methodology would change, listing the results for each leak rate calculation methods (the annualizing method and the rolling average method) separately;

(iv) The date the new leak rate calculation method is adopted; and

(v) The leak rate calculation method the owner or operator is using after the change.

(4) If the installation, service, repair, or disposal is done by someone other than the owner or operator, that person must provide a record containing the information specified in paragraph (l)(2)(i) through (l)(2)(vi) of this section, when applicable, to the owner or operator.

(5) Owners or operators must keep records of leak inspections that include the date of inspection, the method(s) used to conduct the leak inspection, a list of the location of each leak that was identified, and a certification that all

visible and accessible parts of the refrigerant-containing appliance were inspected. The certified technicians conducting the leak inspections must, upon conclusion of that service, provide the owner or operator of the refrigerant-containing appliance with documentation that meets these requirements.

(6) If using an automatic leak detection system, the owner or operator must maintain records regarding the installation and the annual audit and calibration of the system, a record of each date the monitoring system identified a leak, and the location of the leak.

(7) Owners or operators must maintain records of the dates and results of all initial and follow-up verification tests. Records must include the location of the refrigerant-containing appliance, the date(s) of the verification tests, the location(s) of all repaired leaks that were tested, the type(s) of verification test(s) used, and the results of those tests. The certified technicians conducting the initial or follow-up verification tests must, upon conclusion of that service, provide the owner or operator of the appliance with documentation that meets these requirements.

(8) Owners or operators must maintain retrofit or retirement plans developed in accordance with paragraph (h) of this section.

(9) Owners or operators must maintain retrofit and/or retirement extension requests submitted to EPA in accordance with paragraph (i) of this section.

(10) Owners or operators that suspend the deadlines in this section by mothballing a refrigerant-containing appliance must keep records documenting when the appliance was mothballed and when additional refrigerant was added to the appliance (or isolated component).

(11) Owners or operators who exclude purged refrigerants that are destroyed from annual leak rate calculations must maintain records to support the amount of refrigerant claimed as sent for destruction. Records must be based on a monitoring strategy that provides reliable data to demonstrate that the amount of refrigerant claimed to have been destroyed is not greater than the amount of refrigerant actually purged and destroyed and that the 98 percent or greater destruction efficiency is met. Records must include flow rate, quantity or concentration of the refrigerant in the vent stream, and periods of purge flow. Records must include:

(i) The identification of the facility and a contact person, including the address and telephone number;

(ii) A description of the refrigerant-containing appliance, focusing on aspects relevant to the purging of refrigerant and subsequent destruction;

(iii) A description of the methods used to determine the quantity of refrigerant sent for destruction and type of records that are being kept by the owners or operators where the appliance is located;

(iv) The frequency of monitoring and data-recording; and

(v) A description of the control device, and its destruction efficiency.

(12) Owners or operators that exclude additions of refrigerant due to seasonal variance from their leak rate calculation must maintain records stating that they are using the seasonal variance flexibility and documenting the amount added and removed under paragraph (l)(2) of this section.

(13) Owners or operators that submit reports to EPA in accordance with paragraph (m) of this section must maintain copies of the submitted reports and any responses from EPA.

(m) *Reporting.* All notifications must be submitted electronically using the Agency's applicable reporting platform.

(1) Owners or operators must notify EPA electronically, using the Agency's applicable reporting platform, in accordance with paragraph (f) of this section when seeking an extension of time to complete repairs.

(2) Owners or operators must notify EPA electronically, using the Agency's applicable reporting platform, in accordance with paragraph (h)(5)(ii) of this section when seeking relief from the obligation to retrofit or retire an appliance.

(3) Owners or operators must notify EPA electronically, using the Agency's applicable reporting platform, in accordance with paragraph (i) of this section when seeking an extension of time to complete the retrofit or retirement of an appliance.

(4) Owners or operators must report to EPA electronically, using the Agency's applicable reporting platform, the following information in accordance with paragraph (j) of this section for any refrigerant-containing appliance containing 15 or more pounds of refrigerant that leaks 125 percent or more of the full charge in a calendar year:

(i) Basic identification information (*i.e.*, owner or operator, facility name, facility address where appliance is located, and appliance ID or description);

(ii) Refrigerant-containing appliance type (comfort cooling or other, industrial process refrigeration, or commercial refrigeration);

(iii) Refrigerant type;

(iv) Full charge of appliance (pounds);

(v) Annual percent refrigerant loss;

(vi) Dates of refrigerant addition;

(vii) Amounts of refrigerant added;

(viii) Date of last successful follow-up verification test;

(ix) Explanation of cause refrigerant losses;

(x) Description of repair actions taken;

(xi) Whether a retrofit or retirement plan has been developed for the refrigerant-containing appliance and if so, the anticipated date of retrofit or retirement; and

(xii) A signed statement from an authorized company official.

(5) When excluding purged refrigerants that are destroyed from annual leak rate calculations, owners or operators must notify EPA electronically, using the Agency's applicable reporting platform, within 60 days after the first time the exclusion is used by the facility where the appliance is located. The report must include the information included in paragraph (l)(11) of this section and must be signed by an authorized company official.

§ 84.108 Automatic leak detection systems.

(a) Owners or operators of refrigerant-containing appliances used for industrial process refrigeration or commercial refrigeration with a full charge of 1,500 pounds or greater of a refrigerant containing a regulated substance or a substitute for a regulated substance with a global warming potential greater than 53 must install and use an automatic leak detection system in accordance with this section.

(1) If the refrigerant in a refrigerant-containing appliance contains a substitute for a regulated substance, whether the global warming potential of the substitute is greater than 53 will be determined as described in § 84.106(a)(2).

(2) [Reserved]

(b)(1) Owners and operators of refrigerant-containing appliances that are subject to the requirements under paragraph (a) of this section and that are installed on or after January 1, 2026, must install and use an automatic leak detection system upon installation of the refrigerant-containing appliance or within 30 days of installation of the refrigerant-containing appliance.

(2) Owners and operators of refrigerant-containing appliances that are subject to the requirements under paragraph (a) of this section and that

were installed on or after January 1, 2017, and before January 1, 2026, must install and use an automatic leak detection system by January 1, 2027.

(c) Automatic leak detection systems must be installed in accordance with manufacturer instructions.

(d) Automatic leak detection systems must be audited and calibrated annually.

(e) Automatic leak detection systems are required to monitor components located inside an enclosed building or structure.

(f) For automatic leak detection systems that directly detect the presence of a refrigerant in air, the system must:

(1) Have sensors or intakes placed so that they will continuously monitor the refrigerant concentrations in air in proximity to the compressor, evaporator, condenser, and other areas with a high potential for a refrigerant leak;

(2) Accurately detect a concentration level of 10 parts per million of vapor of the specific refrigerant or refrigerants used in the refrigerant-containing appliance(s); and

(3) Alert the owner or operator when a refrigerant concentration of 100 parts per million of vapor of the specific refrigerant or refrigerants used in the appliance(s) is reached.

(g) For automatic leak detection systems that monitor conditions of the refrigerant-containing appliance, the system must automatically alert the owner or operator when measurements indicate a loss of 50 pounds of refrigerant or 10 percent of the full charge, whichever is less.

(h) When an automatic leak detection system alerts an owner or operator of a leak as described in this section, owners and operators of refrigerant-containing appliances using automatic leak detection systems must comply with the requirements either in paragraph (h)(1) or in (h)(2) of this section and must also comply with paragraph (h)(3) of this section where applicable:

(1) Calculate the leak rate within 30 days (or 120 days where an industrial process shutdown would be necessary) of an alert and, if the leak rate is above the applicable leak rate as described in § 84.106(c)(2), comply with the full suite of leak repair provisions in § 84.106; or

(2) Preemptively repair the identified leak(s) before adding refrigerant to the appliance and then calculate the leak rate within 30 days (or 120 days where an industrial process shutdown would be necessary) of an alert. If the leak rate is above the applicable leak rate as described in § 84.106(c)(2), the owner or operator must comply with the full suite of leak repair provisions in § 84.106.

(3) Where a refrigerant-containing appliance using an automatic leak detection system is found to be leaking above the applicable leak rate as described in § 84.106(c)(2), and the automatic leak system is only being used to monitor portions of an appliance, the remainder of the appliance continues to be subject to any applicable leak inspection requirements, as described in § 84.106(g).

(i) *Recordkeeping.* The owner or operator must maintain records for at least three years in electronic or paper format, unless otherwise specified, regarding:

(1) The installation of the automatic leak detection system;

(2) The annual audit and calibration of the system;

(3) A record of each date the automatic leak detection system triggers an alert; and

(4) The location of the leak(s) which resulted in the alarm.

§ 84.110 Emissions from fire suppression equipment.

(a) As of January 1, 2026, no person installing, servicing, repairing, or disposing of fire suppression equipment containing a regulated substance may knowingly vent or otherwise release into the environment any regulated substances used in such equipment.

(1) Release of regulated substances during testing of fire suppression equipment is not subject to the prohibition under this paragraph (a) if the following four conditions are met:

(i) Equipment employing suitable alternative fire suppression agents are not available;

(ii) Release of fire suppression agent is essential to demonstrate equipment functionality;

(iii) Failure of the system or equipment would pose great risk to human safety or the environment; and

(iv) A simulant agent cannot be used in place of the regulated substance for testing purposes.

(2) The prohibition under this paragraph (a) does not apply to qualification and development testing during the design and development process of fire suppression equipment containing regulated substances when such tests are essential to demonstrate equipment functionality and when a suitable simulant agent cannot be used in place of the regulated substance for testing purposes.

(3) The prohibition under this paragraph (a) does not apply to the emergency release of regulated substances for the legitimate purpose of fire extinguishing, explosion inertion, or other emergency applications for which

the fire suppression equipment was designed.

(b) As of January 1, 2026, no owner or operator of fire suppression equipment containing regulated substances shall allow the release of regulated substances to occur as a result of failure to maintain such fire suppression equipment.

(c) As of January 1, 2030, recycled regulated substances must be used for the initial installation of new fire suppression equipment, including both total flooding systems and streaming applications, that is installed in the United States. As of January 1, 2026, recycled regulated substances must be used for the servicing and/or repair of existing fire suppression equipment in the United States, including both total flooding systems and streaming applications. Notwithstanding the prior sentences, if the fire suppression equipment does not use any regulated substance, this requirement does not apply. If the fire suppression equipment uses a regulated substance in combination with other fire suppression agents, this requirement will only apply to the regulated substance used.

(d) Any person who employs fire suppression technicians who install, service, repair, or dispose of fire suppression equipment containing regulated substances shall train technicians hired on or before January 1, 2026, on emissions reduction of regulated substances by June 1, 2026. Fire suppression technicians hired after January 1, 2026, shall be trained regarding emissions reduction of regulated substances within 30 days of hiring, or by June 1, 2026, whichever is later.

(1) The fire suppression technician training shall include an explanation of the purpose of the training requirement and also address the following:

(i) The significance of minimizing releases of regulated substances and ensuring technician safety;

(ii) An overview of regulated substances and environmental concerns with regulated substances, including discussion of other federal, State, local, or Tribal fire, building, safety, and environmental codes and standards;

(iii) A review of relevant regulations concerning regulated substances, including the requirements of this subpart that apply with respect to fire suppression equipment; and

(iv) Specific technical instruction relevant to avoiding unnecessary emissions of regulated substances during the servicing, repair, disposal, or installation of fire suppression equipment at the different types of facilities where the technician might

perform such work on fire suppression equipment.

(2) [Reserved]

(e) As of January 1, 2026, no person shall dispose of fire suppression equipment containing regulated substances except by either recovering the regulated substances themselves before sending the equipment for disposal or by leaving the regulated substances in the equipment and sending it for disposal to a facility, such as a fire suppression equipment manufacturer, a distributor, or a fire suppressant recycler.

(f) As of January 1, 2026, no person shall dispose of regulated substances used as a fire suppression agent except by sending it for recycling to a fire suppressant recycler or a reclaimer certified under 40 CFR 82.164, or by arranging for its destruction using one of the controlled processes listed in § 84.29.

(1) Any person using a device to recover, store, and/or transfer regulated substances used in fire suppression equipment must: evacuate the device used to recover, store, and/or transfer regulated substances prior to each use to prevent contamination, arrange for destruction of the recovered regulated substances as necessary; and collect and dispose of wastes from the recycling process.

(2) Any person using recovery and recycling equipment to recover regulated substances from fire suppression equipment must:

(i) Operate and maintain recovery and recycling equipment in accordance with manufacturer specifications to ensure that the equipment performs as specified;

(ii) Repair leaks in storage, recovery, recycling, and/or charging equipment used with regulated substances before use; and

(iii) Ensure that cross-contamination does not occur through the mixing of regulated substances that may be contained in similar cylinders.

(g)(1) As of January 1, 2026, any person who performs first fill of fire suppression equipment, service (e.g., recharge) of fire suppression equipment, and/or recycles regulated substances recovered from fire suppression equipment, such as equipment manufacturers, distributors, agent suppliers, or installers that recycle regulated substances, must submit a report to EPA annually covering the prior year's activity from January 1 through December 31. The first annual report must be submitted to the Agency on February 14, 2027, and subsequent annual reports must be submitted by February 14 of each subsequent year.

Each annual report must be submitted electronically, using the Agency's applicable reporting platform. Each annual report must contain basic identification information (i.e., owner name, facility name, facility address where equipment is located) and the following information for each regulated substance: the quantity of material (the combined mass of regulated substance and contaminants) sold for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment; the quantity of material (the combined mass of regulated substance and contaminants) in inventory onsite for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment broken out by recovered, recycled, and virgin; the total mass of each regulated substance sold for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment; the total mass of each regulated substance in inventory onsite for the purpose of installation of new fire suppression equipment and servicing and/or repair of existing fire suppression equipment broken out by recovered, recycled, and virgin; and the total mass of waste products the reporting entity sent for disposal, along with information about the disposal facility if waste is not processed by the reporting entity. A copy of the submitted reports must be maintained for three years in either electronic or paper format. If any entity reports information to EPA under § 84.31(j) that is also required to be reported under this paragraph, to the extent the information reported under § 84.31(j) overlaps with the information that must be reported under this paragraph, in lieu of reporting the same information twice, the entity may refer to the corresponding information reported under § 84.31(j) and explain how it satisfies the reporting requirements in completing the reporting under this paragraph.

(2) As of January 1, 2026, any person who employs fire suppression technicians who service, repair, install, or dispose of fire suppression equipment containing regulated substances must maintain an electronic or paper copy of the fire suppression technician training used to meet the requirements in paragraph (d) of this section and make that copy available to EPA upon request. These entities must document that they have provided training to personnel as specified in paragraph (d) of this section and must

maintain these records for three years after each training in either electronic or paper format.

(3) As of January 1, 2026, owners and operators of fire suppression equipment containing regulated substances must maintain records documenting that regulated substances are recovered from the fire suppression equipment before it is sent for disposal as specified in paragraph (e) of this section. Such records must be maintained for three years after the relevant equipment is sent for disposal in either electronic or paper format.

§ 84.112 Reclamation.

(a) *Reclamation Standard.* As of January 1, 2026, no person may sell, identify, or report refrigerant as being reclaimed for use in the installation, servicing, or repair of refrigerant-containing equipment if the regulated substance component of the resulting refrigerant contains more than 15 percent, by weight, of virgin regulated substance.

(b) *Bona fide use.* No person may sell, identify, or report refrigerant as being reclaimed if it contains any recovered regulated substance that has not had bona fide use in equipment, unless that refrigerant was removed from the heel or residue of a container that had a bona fide use in the servicing, repair, or installation of refrigerant-containing equipment.

(c) *Labeling.* As of January 1, 2026, reclaimers certified under 40 CFR 82.164 must affix a label to any container they fill that is being sold or distributed or offered for sale or distribution and that contains reclaimed regulated substances to certify that the contents do not exceed 15 percent, by weight, of virgin regulated substances.

(1) The label must read: "The contents of this container do not exceed the limit of 15 percent, by weight, on virgin regulated substance per 40 CFR 84.112(a)."

(2) The label must be:

(i) In English;

(ii) Durable and printed or otherwise labeled on, or affixed to, an external surface of the container;

(iii) Readily visible and legible;

(iv) Able to withstand open weather exposure without a substantial reduction in visibility or legibility; and

(v) Displayed on a background of contrasting color.

(d) *Recordkeeping.* As of January 1, 2026, reclaimers certified under 40 CFR 82.164 must generate a record to certify that the reclaimed regulated substance(s) being used to fill a container that will be sold or distributed or offered for sale or distribution do not

exceed 15 percent, by weight, of virgin regulated substances.

(1) The record must be generated electronically, in a format specified by EPA.

(2) The record must contain the following information:

(i) The name, address, contact person, email address, and phone number of the reclaimer certified under 40 CFR 82.164 who is making the certification;

(ii) The date the container was filled with reclaimed regulated substance(s);

(iii) The amount and name of the regulated substance(s) in the container(s);

(iv) Certification that the contents of the container are from a batch where the amount of virgin regulated substance(s) does not exceed 15 percent, by weight, of the total regulated substance(s);

(v) The unique serial number associated with the container(s) filled from the batch;

(vi) Identification of the batch of reclaimed regulated substance(s) used to fill the container(s); and

(vii) The percent, by weight, of virgin regulated substance(s) in the batch used to fill the container(s).

(3) The record must be maintained by the reclaimer certified under 40 CFR 82.164 for three years.

(e) *Servicing and/or repair.* As of January 1, 2029, the servicing and/or repair of refrigerant-containing equipment that contains a regulated substance must be done with reclaimed refrigerant that meets the requirements of 84.112(a)–(c) of this section if such equipment is in one or more of the following subsectors:

(1) Supermarket systems;

(2) Refrigerated transport; and

(3) Automatic commercial ice makers.

(f) *Reporting.* (1) Reclaimers, distributors, and wholesalers of reclaimed refrigerants that contain regulated substances that are sold or distributed for the intended purpose of servicing and/or repair of refrigerant-containing equipment in the subsectors listed in paragraph (e) of this section must submit a report to EPA electronically, using the Agency's applicable reporting platform, by February 14, 2027, covering activity from January 1 through December 31, 2026 and containing the following information: name and address of the company; contact person, email address, and phone number of the responsible party; the quantity of reclaimed refrigerant containing regulated substance(s) by the name and mass of reclaimed refrigerant(s); and indication of the specific subsector(s) where the reclaimed refrigerant(s) containing

regulated substance(s) are sold or distributed.

(2) Reclaimers, distributors, and wholesalers of reclaimed refrigerants that contain regulated substances that are sold or distributed for the intended purpose of servicing and/or repair of refrigerant-containing equipment in the subsectors listed in paragraph (e) of this section must submit a report to EPA electronically, using the Agency's applicable reporting platform, by February 14, 2028, covering activity from January 1 through December 31, 2027 and containing the following information: name and address of the company; contact person, email address, and phone number of the responsible party; the quantity of reclaimed refrigerant containing regulated substance(s) by the name and mass of reclaimed refrigerant(s); and indication of the specific subsector(s) where the reclaimed refrigerant(s) containing regulated substance(s) are sold or distributed.

§ 84.114 Exemptions.

(a) Notwithstanding the other provisions of this subpart, the regulations under this subpart do not apply to a regulated substance or a substitute for a regulated substance that is contained in a foam.

(b) Notwithstanding the other provisions of this subpart, the regulations under this subpart do not apply to two applications, mission-critical military end uses and on board aerospace fire suppression, as listed at § 84.13(a), for a year or years for which that application receives an application-specific allowance as defined at § 84.3.

§ 84.116 Requirements for disposable cylinders.

(a) As of January 1, 2028, any person who uses a disposable cylinder must send such disposable cylinder for further processing to remove the heel, as described in paragraphs (b) and (c) of this section, when:

(1) The disposable cylinder contains a regulated substance(s);

(2) The disposable cylinder was used in the servicing, repair, or installation of refrigerant-containing equipment or fire suppression equipment; and

(3) The person does not intend to use the disposable cylinder in future servicing, repair, or installation of refrigerant-containing equipment or fire suppression equipment.

(b) Except as provided in paragraphs (e) and (g) in this section, disposable cylinders that meet the criteria in paragraphs (a)(1), (a)(2), and (a)(3) of this section must be sent to:

(1) A reclaimer certified under 40 CFR 82.164;

(2) A fire suppressant recycler, if the disposable cylinder was used in the servicing, repair, or installation of fire suppression equipment;

(3) A final processor, such as a landfill operator or a scrap metal recycler, who is capable of removing the heel from disposable cylinders; or

(4) A refrigerant supplier (including but not limited to distributors and wholesalers), who is capable of removing the heel from disposable cylinders.

(c) Regulated substance(s) removed from heels of disposable cylinders by those entities identified in paragraphs (b)(3) and (b)(4) of this section, where those removed heels are or are not aggregated into a larger container, must be sent to a reclaimer certified under 40 CFR 82.164 or a fire suppressant recycler.

(1) Regulated substance(s) removed from heels of disposable cylinders that exhibit ignitability characteristics (per 40 CFR 261.21), where those removed heels are or are not aggregated into a larger container, must be sent to a reclaimer certified under 40 CFR 82.164 that is in compliance with the requirements at 40 CFR part 266, subpart Q.

(2) [Reserved]

(d) As of January 1, 2028, an entity as described in paragraphs (b)(1), (b)(2), (b)(3), or (b)(4) of this section who receives a disposable cylinder meeting the criteria in paragraphs (a)(1), (a)(2), and (a)(3) of this section must remove all remaining contents from the disposable cylinder prior to discarding the disposable cylinder.

(e) Disposable cylinders that meet the criteria in paragraphs (a)(1), (a)(2), and (a)(3) of this section may be discarded to a final processor without meeting the requirements in paragraphs (b) and (d) of this section, when:

(1) The heel was removed by a certified technician;

(2) The heel of the used disposable cylinder has been evacuated to a vacuum of 15 in-Hg prior to discarding the cylinder;

(3) The certified technician provides a certification statement, which certifies that the heel was evacuated to a vacuum of 15 in-Hg; states the name and address of the certified technician who evacuated the cylinder(s) and the date the cylinder(s) was/were evacuated; and is signed by the certified technician who evacuated the cylinder(s); and

(4) The certified technician discarding the cylinder to the final processor must provide the signed certification statement described in paragraph (e)(3) of this section to the final processor (which may include a landfill operator

or scrap metal recycler) when they discard the cylinder to the final processor.

(f) *Recordkeeping.* A final processor who receives a disposable cylinder as described in paragraph (e) of this section must maintain a record of the signed statement for three years.

(g) Small cans of refrigerant that contain no more than two pounds of refrigerant and that qualify for the exemption described in 40 CFR 82.154(c)(1)(ix) are not subject to the requirements in paragraphs (b) through (f) of this section.

§ 84.118 Treatment of data submitted under 40 CFR part 84, subpart C

(a) Except as otherwise provided in this section, 40 CFR 2.201 through 2.215 and 2.301 do not apply to data submitted under this subpart that EPA has determined through rulemaking to be either of the following:

(1) Emission data, as defined in 40 CFR 2.301(a)(2), determined in accordance with section 114(c) and 307(d) of the Clean Air Act; or

(2) Data not otherwise entitled to confidential treatment.

(b) Except as otherwise provided in paragraph (d) of this section, 40 CFR 2.201 through 2.208 and 2.301(c) and (d) do not apply to data submitted under this subpart that EPA has determined through rulemaking to be entitled to confidential treatment. EPA shall treat that information as confidential in accordance with the provisions of 40 CFR 2.211, subject to paragraph (d) of this section and 40 CFR 2.209.

(c) Upon receiving a request under 5 U.S.C. 552 for data submitted under this subpart that EPA has determined through rulemaking to be entitled to confidential treatment, the relevant Agency official shall furnish the requestor a notice that the information has been determined to be entitled to confidential treatment and that the request is therefore denied. The notice shall include or cite to the appropriate EPA determination.

(d) A determination made through rulemaking that information submitted under this subpart is entitled to confidential treatment shall continue in effect unless, subsequent to the confidentiality determination through rulemaking, EPA takes one of the following actions:

(1) EPA determines through a subsequent rulemaking that the information is emission data or data not otherwise entitled to confidential treatment; or

(2) The Office of General Counsel issues a final determination, based on the requirements of 5 U.S.C. 552(b)(4),

stating that the information is no longer entitled to confidential treatment because of change in the applicable law or newly discovered or changed facts. Prior to making such final determination, EPA shall afford the business an opportunity to submit comments on pertinent issues in the manner described by 40 CFR 2.204(e) and 2.205(b). If, after consideration of any timely comments submitted by the business, the Office of General Counsel makes a revised final determination that the information is not entitled to confidential treatment, the relevant agency official will notify the business in accordance with the procedures described in 40 CFR 2.205(f)(2).

§ 84.120 Relationship to other laws.

Section (k) of the AIM Act states that sections 113, 114, 304, and 307 of the Clean Air Act (42 U.S.C. 7413, 7414, 7604, 7607) shall apply to this section and any rule, rulemaking, or regulation promulgated by the Administrator pursuant to this section as though this section were expressly included in title VI of that Act (42 U.S.C. 7671 *et seq.*). Violation of this part is subject to Federal enforcement and the penalties laid out in section 113 of the Clean Air Act.

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

■ 4. In § 261.6, revise paragraph (a)(2) introductory text, and add paragraph (a)(2)(v) to read as follows:

§ 261.6 Requirements for recyclable materials.

(a) * * *

(2) The following recyclable materials are not subject to the requirements of this section but are regulated under subparts C through Q of part 266 of this chapter and all applicable provisions in parts 268, 270, and 124 of this chapter.

* * * * *

(v) Ignitable spent refrigerants recycled for reuse (40 CFR part 266, subpart Q).

* * * * *

Subpart M—Emergency Preparedness and Response for Management of Excluded Hazardous Secondary Materials

■ 5. In § 261.400, revise the introductory text and add paragraph (c) to read as follows:

§ 261.400 Applicability.

The requirements of this subpart apply to (1) those areas of an entity managing hazardous secondary materials excluded under § 261.4(a)(23) and/or (24) where such materials are generated or accumulated on site, and (2) facilities regulated under the standards at 40 CFR part 266, subpart Q that receive ignitable spent refrigerant from off-site and that are not transfer facilities that store the refrigerants for less than ten (10) days.

* * * * *

(c) Facilities receiving refrigerant from off-site under 40 CFR part 266, subpart Q that are not transfer facilities that store the refrigerants for less than ten (10) days must comply with §§ 261.410 and 261.420.

* * * * *

■ 6. In § 261.420, revise the section heading and introductory text to read as follows:

§ 261.420 Contingency planning and emergency procedures for facilities generating or accumulating more than 6,000 kg of hazardous secondary material or receiving ignitable spent refrigerants

A generator or an intermediate or reclamation facility that generates or accumulates more than 6,000 kg of hazardous secondary material, or a facility receiving refrigerant from off-site under 40 CFR part 266, subpart Q, that is not a transfer facility that stores the refrigerants for less than ten (10) days must comply with the following requirements:

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

■ 7. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, 6938 and 6939g.

Subpart A—General

■ 8. In § 262.14, revise paragraph (a)(5)(vi) to read as follows:

§ 262.14 Conditions for exemption for a very small quantity generator.

(a) * * *

(5) * * *

(vi) A facility which:

(A)(1) Beneficially uses or reuses, or legitimately recycles or reclaims its waste; or

(2) Treats its waste prior to beneficial use or reuse, or legitimate recycling or reclamation; and

(B) For ignitable spent refrigerants regulated under 40 CFR part 266 subpart Q, meets the requirements of that subpart.

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 9. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 3017, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

■ 10. Add subpart Q, consisting of §§ 266.600 through 266.602, to read as follows:

Subpart Q—Ignitable Spent Refrigerants Recycled for Reuse

Sec.

266.600 Purpose and applicability.

266.601 Definitions for this subpart.

266.602 Standards for ignitable spent refrigerant recycled for reuse under this subpart.

§ 266.600 Purpose and applicability.

(a) The purpose of this subpart is to reduce emissions of ignitable spent refrigerants to the lowest achievable level by maximizing the recovery and safe recycling for reuse of such refrigerants during the service, repair, and disposal of appliances.

(b) The requirements of this subpart operate in lieu of parts 260 through 270 of this chapter and apply to lower flammability spent refrigerants, as defined in § 266.601, where the refrigerant exhibits the hazardous waste characteristic of ignitability per § 261.21 of this chapter and is being recycled for reuse in the United States.

(c) These requirements do not apply to other ignitable spent refrigerants. Ignitable spent refrigerants not subject to this subpart are subject to all applicable requirements of parts 260 through 270 of this chapter when recovered (*i.e.*, removed from an appliance and stored in an external container) and/or disposed of.

§ 266.601 Definitions for this subpart.

For the purposes of this subpart, the following terms have the meanings given below:

(a) *Refrigerant* has the same meaning as defined in 40 CFR 82.152.

(b) *Ignitable spent refrigerant* is a used refrigerant that cannot be reused without first being processed, and that exhibits the hazardous characteristic of ignitability per § 261.21 of this chapter. Used refrigerants that can be legitimately reused without processing are not spent refrigerant.

(c) *Recycle for reuse*, when referring to an ignitable spent refrigerant, means to process the refrigerant to remove contamination and prepare it to be used again. “Recycle for reuse” does not include recycling that involves burning for energy recovery or use in a manner constituting disposal as defined in § 261.2(c) of this chapter, or sham recycling as defined in § 261.2(g) of this chapter.

(d) *Lower flammability spent refrigerant* means a spent refrigerant that is not considered highly flammable. Highly flammable refrigerants include but are not limited to the following chemicals: butane, isobutane, methane, propane, and/or propylene.

§ 266.602 Standards for ignitable spent refrigerant recycled for reuse under this subpart.

(a) Persons who recover (*i.e.*, remove from an appliance and store in an external container) and/or recycle ignitable spent refrigerants for reuse either for further use in equipment of the same owner, or in compliance with motor vehicle air conditioner (MVAC) standards in 40 CFR part 82, subpart B, or who send recovered refrigerant off-site to be recycled for reuse must:

(1) Recover and/or recycle for reuse the ignitable spent refrigerant using equipment that is certified for that type of refrigerant and appliance under §§ 82.36 and/or 82.158 of this chapter; and

(2) Not speculatively accumulate the ignitable spent refrigerant per § 261.1(c) of this chapter.

(b) Persons who receive ignitable spent refrigerants from off-site, and are not a transfer facility that stores the refrigerants for less than ten (10) days before sending the refrigerant to another site to be recycled for reuse, must:

(1) If recovering the refrigerant, recover the ignitable spent refrigerant using equipment that is certified for that type of refrigerant and appliance under § 82.36 of this chapter;

(2) Meet the applicable emergency preparedness and response requirements of 40 CFR part 261, subpart M; and

(3) Not speculatively accumulate the ignitable spent refrigerant per § 261.1(c) of this chapter.

(c) Persons receiving ignitable spent refrigerant from off-site to be recycled for reuse under this subpart must:

(1) Maintain certification by EPA under § 82.164 of this chapter;

(2) Meet the applicable emergency preparedness and response requirements of 40 CFR part 261, subpart M; and

(3) Starting with the calendar year beginning January 1, 2029, not speculatively accumulate the ignitable spent refrigerant per § 261.1(c) of this chapter.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 11. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart A—General Information

■ 12. In § 270.1, add paragraph (c)(2)(xi) to read as follows:

§ 270.1 Purpose and scope of the regulations in this part.

* * * * *

(c) * * *

(2) * * *

(xi) Recyclers of ignitable spent refrigerants subject to regulation under 40 CFR part 266, subpart Q.

* * * * *

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 13. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6926, and 6939g.

Subpart A—Requirements for Final Authorization

■ 14. In § 271.1 amend paragraph (j)(2) by:

■ a. In table 1 adding the entry “December 10, 2024” in chronological order.

■ b. In table 2 adding the entry “December 10, 2024” in chronological order.

The additions read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

(2) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
December 10, 2024	Standards for the Management of Ignitable Spent Refrigerants Recycled for Reuse.	[Federal Register citation of the final rule].	[Date of publication of the final rule in the Federal Register].

¹ These regulations implement HSWA only to the extent that they apply to tank systems owned or operated by small quantity generators, establish leak detection requirements for all new underground tank systems, and establish permitting standards for underground tank systems that cannot be entered for inspection.

² These regulations, including test methods for benzo(k)fluoranthene and technical standards for drip pads, implement HSWA only to the extent that they apply to the listing of Hazardous Waste No. F032, and wastes that are hazardous because they exhibit the Toxicity Characteristic. These regulations, including test methods for benzo(k)fluoranthene and technical standards for drip pads, do not implement HSWA to the extent that they apply to the listings of Hazardous Waste Nos. F034 and F035.

³ The following portions of this rule are not HSWA regulations: §§ 264.19 and 265.19 for final covers.

⁴ The following portions of this rule are not HSWA regulations: §§ 260.30, 260.31, 261.2.

⁵ These regulations implement HSWA only to the extent that they apply to the standards for staging piles and to §§ 264.1(j) and 264.101(d) of this chapter.

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
December 10, 2024	Standards for the Management of Ignitable Spent Refrigerants Recycled for Reuse.	3001(d)(4) 3004(n)	[Federal Register citation of the final rule].

¹ Note that the effective date was changed to Jan. 29, 1986 by the Nov. 29, 1985 rule.

² Note that the effective date was changed to Sept. 22, 1986 by the Mar. 24, 1986 rule.



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Part III

Office of Personnel Management

5 CFR Part 532

Prevailing Rate Systems; Change in Criteria for Defining Appropriated Fund
Federal Wage System Wage Areas; Proposed Rule

**OFFICE OF PERSONNEL
MANAGEMENT****5 CFR Part 532****[Docket ID: OPM–2024–0016]****RIN 3206–AO69****Prevailing Rate Systems; Change in
Criteria for Defining Appropriated Fund
Federal Wage System Wage Areas****AGENCY:** Office of Personnel
Management.**ACTION:** Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a rule to change the regulatory criteria used to define Federal Wage System (FWS) wage area boundaries and make changes in certain wage areas. The purpose of this change, which would affect around ten percent of the FWS workforce, is to make the FWS wage area criteria more similar to the General Schedule (GS) locality pay area criteria. This change is based on a December 2023 majority recommendation of the Federal Prevailing Rate Advisory Committee (FPRAC), the statutory national level labor-management committee that advises OPM on the administration of the FWS. A summary of this proposed rule may be found in the docket for this rulemaking at www.regulations.gov.

DATES: Send comments on or before December 10, 2024.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. Please arrange and identify your comments on the regulatory text by subpart and section number. All comments must be received by the end of the comment period for them to be considered. All comments and other submissions received generally will be posted at <https://regulations.gov>, without change, including any personal information provided. However, OPM retains discretion to redact personal or sensitive information, including but not limited to, personal or sensitive information pertaining to third parties.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at paypolicy@opm.gov.

SUPPLEMENTARY INFORMATION:**Executive Summary**

The prevailing rate system under 5 U.S.C. chapter 53, subchapter IV, is a uniform pay-setting system that covers FWS appropriated fund and nonappropriated fund employees.¹ OPM proposes to amend 5 CFR 532.211 to make the criteria OPM uses to define the geographic boundaries of FWS wage areas more similar to the GS locality pay area criteria and to define revised wage area boundaries in accordance with those revised criteria. These proposed changes would affect around 17,000 FWS employees, or around ten percent of the appropriated fund FWS workforce, by moving them to different wage areas and existing wage schedules.

Following several months of analysis and discussion of these proposed modifications to regulatory criteria, FPRAC² identified that around 15,000 FWS employees would be placed on higher wage schedules and around 2,000 employees would be placed on lower wage schedules as a result of these changes in policy. Employees who would be placed on a lower wage schedule would, in most cases, be able to retain their current rate of pay under current 5 CFR 536.301(a)(4) pay retention rules.³ Employees under temporary or term appointments and employees appointed after the changes would go into effect are not eligible for pay retention. Under this approach, counties that would be moved from one wage area to another would first be added to the gaining wage area's area of application and then be added to the

¹ The Nonappropriated Fund (NAF) employment system is partially within the FWS and managed separately from the appropriated fund system. NAF activities primarily employ food service workers and housekeepers on military bases. Under 5 U.S.C. 5343(a)(1)(B), NAF areas are not defined the same way as appropriated fund so FPRAC has not focused on NAF wage areas. NAF areas are only defined where employees are located. Under 5 CFR 532.219, each NAF wage area "shall consist of one or more survey areas along with nonsurvey areas, if any, having nonappropriated fund employees."

² The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal prevailing rate employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347. The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Director of OPM on the Governmentwide administration of the pay system for blue-collar Federal employees. Transcripts of FPRAC meetings can be found under the Federal Wage System section of OPM's website (<https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/#url=FPRAC>).

³ An employee receiving pay retention gets 50 percent of any general increases in pay in the maximum rate of the employee's grade at the time of the increase.

gaining wage area's survey area for the next suitable full-scale wage survey cycle. The specific timing of survey area changes is contained in the revised appendices to subpart B of 5 CFR part 532 of this proposed rule. Most FWS employees would experience no change in wage rates through these proposed changes.

**History and Differences Between FWS
Wage Areas and GS Locality Pay Areas**

There are two major job classification and pay systems in use by the Federal government. The GS covers around 1.5 million employees, and the FWS covers around 200,000 employees with around 170,000 in the appropriated fund system and around 30,000 in the nonappropriated fund system. Note that the nonappropriated fund system is not the subject of this proposed rule, which is limited to the appropriated fund system's wage area definition criteria and conforming geographic area definitions. Craft, trade, and laboring workers are covered by the FWS and are employed directly by the Federal government with wage levels set according to prevailing private sector rates. Although there are now only around 200,000 such employees in appropriated and nonappropriated fund activities, there were around 700,000 during the Vietnam War era when the FWS was established as a single job grading and pay system. Until 1965, each Federal agency had authority to determine local prevailing rates and establish wage area boundaries for its prevailing rate employees.

Consequently, prevailing rate employees at the same grade level in the same city working for different agencies received different wage rates. In 1965, President Lyndon B. Johnson addressed these inequities by ordering Federal agencies to coordinate their wage-setting activities under the leadership of the Civil Service Commission. The Commission established the National Wage Policy Committee (NWPC), which was composed of the heads of the major employing agencies and the heads of the major Federal employee unions, to seek advice on how to administratively combine separate agency pay systems into a Coordinated Federal Wage System (CFWS). The NWPC worked diligently and collaboratively to develop and recommend policies for the new CFWS.

In 1972, President Richard M. Nixon signed Public Law 92–392, the Prevailing Rate Systems Act, which established the current FWS. The FWS incorporated most of the existing administrative policies of the CFWS. Since 1972, the Commission and its successor agency, OPM, have been

responsible for overseeing the policies for administering the FWS after receiving advice from FPRAC. The FWS now covers about 170,000 appropriated fund craft, trade, and laboring employees. These employees are located in 130 separate wage areas throughout the country and in overseas locations. The geographic definitions of wage areas have remained largely the same since the late 1960s with changes occurring primarily as a result either of military base closures and realignments that left a wage area without enough FWS employees to participate in local wage surveys or of Metropolitan Statistical Area redefinitions.

Each FWS wage area consists of a survey area and area of application. A survey area includes the counties, cities, and towns where DOD, the lead agency for appropriated fund wage areas, collects and analyzes private sector wage data to produce annual wage schedules for each of the 130 wage areas. An area of application includes the survey area and nearby counties, cities, and towns where the wage schedules for a wage area also apply.

One of the key statutory principles underlying the FWS is that pay rates are to be maintained in line with prevailing levels of pay for comparable levels of work in the private sector within a local wage area. Because the FWS is a prevailing rate system, its wage schedules are market sensitive in the sense that the schedules are based on annual local wage surveys. However, all FWS wage schedules have been subject to appropriations legislation each year since FY 1979 to control maximum allowable adjustment amounts (“pay cap provision”) and since FY 2004 to provide for guaranteed minimum adjustment amounts based on the annual pay adjustments received by GS employees where they work (“floor increase provision”). The difference in rates of pay among wage areas reflects that the prevailing cost of labor varies by wage area as measured by annual local wage surveys carried out collaboratively by management and labor as required by law; however, the difference in rates also reflects the differential effects the appropriations provisions have had on the payable wage rates each year. This proposed rule assumes that the pay cap⁴ provision and floor increase provision will

continue in future years through appropriations legislation.

The geographic definitions of wage areas for FWS employees covered by the 5 CFR 532.211 wage area criteria are different than the pay areas for the 1.5 million employees under the GS. This is because the two pay systems evolved separately and have followed different criteria for defining pay area boundaries for the last 30 years. When the Federal Employees Pay Comparability Act of 1990 (FEPCA) was enacted to implement locality pay for the GS beginning in 1994, the legislation did not require that GS locality pay areas and FWS wage areas have the same geographic coverage. FEPCA did not specify the method for defining geographic pay area boundaries for GS locality pay areas. Instead, FEPCA established the Federal Salary Council (FSC), comprised of experts in pay and labor relations and representatives of employee organizations, to provide advice on how to best administer the GS locality pay system and close gaps between GS and non-Federal pay levels. The FSC meets annually.

FWS wage areas consist of a survey area containing a number of counties surrounding a major military installation or Department of Veterans Affairs (VA) Medical Center where the Department of Defense (DOD) measures prevailing private sector wage levels and an area of application containing additional counties where DOD does not collect wage data but wage schedules apply.

GS locality pay areas consist of a core set of counties generally mirroring the definition of a Combined Statistical Area (CSA) or Metropolitan Statistical Area (MSA), and in some cases, additional area of application counties that are added to the locality pay area based on analyses of regional commuting pattern data. The Bureau of Labor Statistics measures non-Federal labor costs in the locality pay areas and OPM determines overall pay disparities between GS and comparable non-Federal employment in the whole of each locality pay area on behalf of the President’s Pay Agent.⁵ As of 2024,

⁵ Section 5304(d)(1) of title 5, United States Code, authorizes the President to designate a Pay Agent. In Executive Order 12748, the President designated the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management to serve as the President’s Pay Agent. Under section 5304 of title 5, the Pay Agent provides for Federal Salary Council meetings, considers the recommendations of the Federal Salary Council, defines locality pay areas, and submits an annual report to the President on the locality pay program. The report compares rates of pay under the General Schedule to non-Federal pay, identifies areas in which a pay disparity exists and

there are 58 GS locality pay areas including a Rest of United States (RUS) area that covers the counties in the country that are not defined to individual locality pay areas. The FWS does not have this RUS concept for wage area definitions but instead has every county defined to an individual wage area’s area of application or survey area. We note that future changes to GS locality pay areas would not automatically apply to FWS wage areas. OPM, on advice from FPRAC, would review FWS wage areas when updates to CSA and/or MSA definitions are published by OMB or when there are significant changes to employment interchange measures. This policy is consistent with longstanding protocols OPM has followed to administer the FWS.

FPRAC Review and Recommendations

During the same period GS locality pay was being introduced in the early 1990s, FPRAC examined the differences in criteria between the GS and FWS, and by consensus, recommended that OPM not change the FWS criteria just for the sake of changing the criteria to make the systems look more similar. Locality pay for GS employees was a new and unproven concept at that time. Since that time, however, the differences in geographic pay area boundaries for the GS and FWS have increasingly raised concerns among employees, their unions, local management officials, and consequently members of Congress. For example, FPRAC heard testimony at its January 21, 2016, meeting from Congressional staff and local employees in support of a proposal introduced by an American Federation of Government Employees (AFGE) representative to review the geographic definitions of Monroe County, PA, including testimony that a high rate of commuting interchange—which triggered Monroe County’s reassignment to the New York-Newark GS locality pay area in 2005—also applies to the county’s blue-collar employees. 609th FPRAC Meeting transcript (available at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/federal-prevailing-rate-advisory-committee/meetingtranscript609.pdf>). More recently, FPRAC heard testimony from a military command representative of the Naval Support Activity, Monterey, California. The representative testified at the FPRAC 644th Meeting, during an extensive presentation, that

specifies the size of the disparity, makes recommendations for locality rates, and includes the views of the Federal Salary Council.

⁴ At the October 20th, 2022, FPRAC public meeting, the Committee recommended by consensus that OPM should seek elimination of an annual provision placed in the Financial Services and General Government Appropriations Act that establishes a statutory limitation each year on the maximum allowable FWS wage schedule adjustment (i.e., the “pay cap provision”).

the geographical pay differences between GS and FWS employees at Naval Support Activity Monterey impacted negatively the retention and recruitment of qualified employees. 644th FPRAC Meeting transcript (available at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/federal-prevailing-rate-advisory-committee/meeting-transcript-644.pdf>). In February 2024, the president of AFGE Local 1647 at Tobyhanna Army Depot, provided testimony at the FPRAC 650th Meeting regarding “long-standing inequity” between FWS and GS employees in Monroe County, PA. 650th FPRAC Meeting transcript (available at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/federal-prevailing-rate-advisory-committee/meeting-transcript650.pdf>).

The difference in GS and FWS pay area boundaries is most noticeable on the East Coast from Maine to Virginia and on the West Coast in California. In some cases, there are as many as six different FWS wage areas coinciding with a single non-RUS locality pay area for GS employees. For example, the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA GS locality pay area coincides with six different FWS wage areas—the Washington, District of Columbia, FWS wage area; the Baltimore, MD, FWS wage area; the Hagerstown-Martinsburg-Chambersburg, MD, FWS wage area; the Harrisburg, PA, FWS wage area; the Richmond, VA, FWS wage area; and the West Virginia FWS wage area. Conversely, a single wage area may coincide with multiple GS locality pay areas, which, due to the appropriations pay cap and floor increase provisions, can result in multiple, different wage schedules within the wage area. For example, the Central and Western Massachusetts wage area coincides with four different GS locality pay areas—the Albany-Schenectady, NY, GS locality pay area; the Boston-Worcester-Providence, MA-RI-NH-CT-ME, GS locality pay area; the Hartford-West Hartford, CT-MA, GS locality pay area; and RUS. As a result, FWS employees in the Central and Western Massachusetts wage area are paid from four separate wage schedules: (069R)—Central and Western Massachusetts (GS Locality—Boston-Worcester-Providence, MA-RI-NH-CT-ME (BOS)); (269R)—Central and Western Massachusetts (GS Locality—Rest of United States (RUS)); (469R)—Central and Western Massachusetts (GS Locality—Hartford-West Hartford, CT-MA (HAR)); and (669R)—Central and Western Massachusetts (GS Locality—

Albany-Schenectady, NY (AL)). Overall, there are 52 appropriated fund wage areas that only coincide with the GS RUS locality pay area. There are 10 wage areas that coincide with only one GS locality pay area other than RUS (e.g., the Alaska wage area coincides with the Alaska GS locality pay area; the Salinas-Monterey wage area coincides only with San Jose-San Francisco-Oakland, CA GS locality pay area; Baltimore wage area coincides only with the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA locality pay area). There are 68 FWS wage areas that coincide with multiple GS locality pay areas, including non-RUS and RUS. Therefore, not only are there differences in pay between FWS and GS employees working at the same location but also among FWS employees within the same wage area. The changes in this proposed rule would reduce the number of wage schedules that apply within a wage area as well as reduce inequities caused by maintaining different criteria for defining GS and FWS pay area boundaries.

In House Report 117–79⁶ accompanying the National Defense Authorization Act for Fiscal Year 2022, Congress encouraged OPM “to explore limiting the number of local wage areas defined within a GS Pay Locality to a single wage area.” Even before that, since around 2006, the labor and employing agency representative members of FPRAC discussed different methods for making FWS wage areas more similar to GS locality pay areas, though they have struggled to reach consensus on whether or how to effect changes that would be necessary to make pay area boundaries more similar. The labor organization members of the committee have expressed views that the differences in geographic treatment between the GS and FWS systems are inequitable and unsustainable when GS and FWS employees are working at the same Federal installation.

Given the scope and complexity of the recommended change in policy that would be required to limit the number of local wage areas defined within a GS locality pay area to a single wage area, as requested in the House Report language, FPRAC established a working group to study the technical and policy obstacles involved in positively addressing the issue. Over the course of 15 meetings, at which there was extensive discussion, the working group analyzed potential methods of using GS locality pay areas as a factor in defining

FWS wage areas. The differences in regulatory criteria used to define FWS wage areas versus criteria used to establish and define GS locality pay areas were among the challenges to aligning FWS wage areas with GS locality pay areas the working group encountered. The working group noted that CSAs were initially used as the basis for creating GS locality pay areas, but the FWS never used the CSAs to define wage areas. Extensive analyses by the working group of various FWS wage areas that split GS locality pay areas showed that, if the CSAs were used to define wage areas, most wage areas studied would be more like the GS locality pay areas. However, some FWS wage areas would still not coincide with GS locality pay areas by switching to using CSAs alone. As such, the working group then considered another criterion used in defining GS locality pay areas, employment interchange, and studied the effects of using such criterion in defining FWS wage areas, as well. The working group concluded that considering employment interchange between metropolitan areas or individual counties, as applicable, and using CSA definitions would make wage areas more similar to GS locality pay areas.

The FPRAC recommendation is limited to appropriated fund FWS wage area regulatory criteria and does not apply to nonappropriated fund regulatory criteria for defining wage area boundaries found in 5 CFR 532.219. The transcript of the December 21, 2023, meeting, expressing the views and concerns of the committee members expressed at that meeting, can be found on the OPM website at <https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/federal-wage-system/federal-prevailing-rate-advisory-committee/meetingtranscript649.pdf>.

After reviewing the FPRAC recommendation, including the minority views, OPM has concluded that the views of the majority of the committee’s members regarding the proposed amendments to 5 CFR 532.211 constitute a beneficial and equitable modernization of the FWS. OPM agrees with the committee that the primary differences in the criteria used to define GS and FWS pay area boundaries result from different ways of considering commuting patterns and metropolitan area definitions and how those relate to regional labor market integration. OPM’s existing regulatory criteria for defining wage area boundaries in 5 CFR 532.211 have remained the same since the early 1990s, except for a minor amendment in 2016 to keep newly defined military Joint Bases defined to a single wage area

⁶ House Report 117–79 can be found at <https://www.govinfo.gov/content/pkg/CRPT-117/hrpt79/pdf/CRPT-117hrpt79.pdf>.

and wage schedule. While the differences in geographic pay treatment made sense in the context of the development of the original pay systems, the interactions of GS and FWS statutory pay provisions have worked to create inequitable, unintended discrepancies in pay between similarly situated employees. Therefore, amending the wage area definition criteria following the FPRAC recommended method will address some of those differences in geographic pay treatment between the FWS and GS systems.

Historically, the FWS and GS pay systems have both considered commuting patterns data published by the Census Bureau but have done so differently. While the FWS has looked at commuting from a county to nearby local wage survey areas (out-commuting) to associate counties with major military installations or VA Medical Centers, the GS has looked at employment interchange (in-commuting and out-commuting) within a large metropolitan area. Use of out-commuting alone was based on a traditional tendency of people to live in areas outside a centralized metropolitan area and commute to the metropolitan area for work. Adopting employment interchange as a criterion for defining wage areas would better reflect contemporary commuting patterns within an economic region. The methods and criteria for defining CSAs and MSAs have also evolved over time to now be focused on regional employment interchange measures as identified through analysis of commuting patterns gathered by the Census Bureau. Today, a person working in a skilled trades occupation under the FWS such as Electronics Mechanic or Aircraft Mechanic likely works in a competitive labor market with commuting and recruitment patterns that are similar in geographic scope to those of an Accountant or Human Resources Manager, for example, under the GS system.⁷

The other primary difference between the current FWS and GS geographic pay area criteria is that the FWS has historically defined wage area

boundaries based in part on consideration of OMB-defined MSAs while not allowing for consideration of the larger CSAs. The concept of a CSA did not exist when the methods for creating FWS wage areas were established in the late 1960s. The legislative history for the Prevailing Rate Systems Act shows that Congress believed it would be inappropriate for there to be more than one wage area within the boundaries of an MSA. Although the Prevailing Rate Systems Act did not explicitly specify this, OPM's regulations have long indicated that wage areas should not split MSA boundaries.

CSAs also reflect economic relationships between communities within a region but do so on a broader geographic basis than for MSAs. A CSA is usually the combination of two or more MSAs within a region when they are sufficiently economically integrated. The GS locality pay system has defined locality pay areas based on these larger geographic areas since locality pay began. The proposed new wage area definitions in this rulemaking use the CSA and MSA definitions contained in OMB Bulletin No. 23–01, published July 21, 2023. Current FWS wage area definitions split the boundaries of many CSAs, but the changes in wage area criteria and revised wage area definitions based on the criteria in this proposed rule would address this.

Changes Proposed in This Rulemaking

Based on the December 2023 FPRAC recommendation, OPM is proposing the following changes to § 532.211, including changing the title of the section to “Criteria for appropriated fund wage areas.” As discussed previously in the section discussing the differences between FWS and GS, OPM proposes to revise paragraph (a)(1) to require OPM to include in survey areas all counties with 100 or more FWS employees and to consider CSAs and MSAs in the designation of survey areas. OPM also proposes to revise paragraph (a)(2) to include employment interchange measures as a criterion in determining whether to combine nonsurvey areas with survey areas.

OPM proposes to revise paragraph (b) to include, wherever possible, a recognized economic community such as a CSA, MSA, or a political unit such as a county or similar geographic entity. OPM would continue to be permitted to combine two or more economic communities or political units, or both, to constitute a single wage area.

OPM proposes to revise paragraph (c) to address not only when wage areas must be established, but also the

conditions under which wage areas must be maintained after being established. Because the original criteria for defining FWS wage areas were written decades ago when the FWS was first established, they focused on the initial development of a single system of wage areas out of several separate agency systems and did not define circumstances under which the newly established wage area boundaries would remain in place. This proposed language recognizes that wage area boundaries will be reexamined at times by FPRAC and OPM in consideration of the factors listed. This proposed rule would therefore revise paragraph (c) to include the word “maintained.”

OPM proposes to amend paragraph (c)(1) to provide for greater flexibility in the ability to establish or maintain wage areas where there is a sufficient number of employees and resources available to host local wage surveys, but the employees do not necessarily work in the same agency. Currently, this section requires a minimum of 100 employees of one agency subject to the regular schedule for a wage area to be established. Since the proposed language for paragraph (c) will now include conditions precedent to continuation of an existing wage area, removing the requirement that the minimum 100 wage grade employees be within the same agency will allow OPM to consider factors such as intermittent fluctuations in the number of wage employees and prevailing rate principles when determining whether a wage area should be maintained. This proposed rule would therefore revise paragraph (c)(1) to specify that one of the criteria for a wage area to be maintained is if there are a minimum of 100 wage employees subject to the regular schedule and the agency involved indicates that a local installation has the capacity to do the survey.

OPM proposes to amend paragraph (d)(1) to list the factors that will be considered when determining whether or not adjacent wage areas should be combined. FPRAC would continue to provide OPM with recommendations on application of these factors. This proposed rule would therefore revise paragraph (d)(1) to allow adjacent economic communities or political units meeting the separate wage area criteria described previously in paragraphs (b) and (c) to be combined through consideration of “local commuting patterns such as employment interchange measures, distance, transportation facilities, geographic features; similarities in overall population, employment, and the kinds

⁷ The goal of the FWS is to maintain Federal trade, craft, and laboring employee pay rates in line with prevailing private sector pay levels for comparable work within a local wage area. To accomplish this goal, DoD conducts annual surveys to collect wage data from private sector establishments in each FWS wage area. By law, the cost of labor within a wage area, rather than the cost of living, determines FWS pay rates. If the wage area does not reflect commuting and recruitment patterns, then the full-scale wage survey within that area will also not capture prevailing private sector pay levels within the economically integrated area.

and sizes of private industrial establishments; and other factors relevant to the process of determining and establishing rates of pay for wage employees at prevailing wage levels.”

OPM proposes to delete paragraphs (d)(1)(i)-(iii) and (d)(2) as they are no longer necessary and to redesignate paragraph (d)(3) as paragraph (d)(2).

Based on the proposed changes to the regulatory criteria for establishing and maintaining wage areas, OPM is proposing conforming amendments to Appendix C to subpart B of part 532—Appropriated Fund Wage and Survey Areas. This appendix serves to list wage areas and their geographic coverage including the portion of each wage area where a lead agency gathers wage data (the survey area) and the rest of the wage area (the area of application) where the lead agency does not gather wage data but where the wage area’s wage schedules apply. Paragraphs (1), (2), and (3) would be revised to include “a similar geographic entity” as an all-encompassing phrase for recognized geographic units other than county units or independent cities. Paragraphs (1) and (2) would be revised to include Combined Statistical Area or Metropolitan Statistical Area as examples of broader geographic areas used to establish wage area titles.

DOD has requested certain changes in wage survey order months to allow balancing of the wage survey workload throughout the year. As such, in Appendix A to subpart B of part 532, OPM is proposing to revise, under the State of Arkansas, the listing of the beginning month of survey from “August” to “July” for the Little Rock wage area; revise under the State of California the listings of the beginning month of survey from “September” to “November” and “even year” to “odd year” for the Los Angeles wage area; revise under the State of California the listings of the beginning month of survey from “September” to “October” and “odd year” to “even year” for the San Francisco wage area; revise under the District of Columbia, the listing of the beginning month of survey from “August” to “July” for the Washington, DC, wage area; revise under the State of Florida the listing of the beginning month of survey from “January” to “May” for the Miami-Dade wage area; revise under the State of Louisiana the listings of the beginning month of survey from “November” to “June” and “odd year” to “even year” for the New Orleans wage area; revise under the State of Minnesota the listing of the beginning month of survey from “March” to “April” for the Minneapolis-St. Paul wage area; revise

under the State of New York the listing of the beginning month of survey from “February” to “April” for the Rochester wage area; revise under the State of Oregon the listing of the beginning month of survey from “August” to “July” for the Portland wage area; revise under the State of Pennsylvania the listing of the beginning month of survey from “January” to “May” for the Harrisburg wage area; and revise under the State of Texas the listing of the beginning month of survey from “August” to “July” for the Wichita Falls, Texas-Southwestern Oklahoma wage area.

As a result of the proposed changes to the regulatory criteria for defining and maintaining wage areas, the geographic boundaries of numerous wage areas would change. This proposed rule would result in OPM abolishing 12 of the 130 current appropriated fund FWS wage areas, 89 wage areas would be affected, and there would be no changes in the wage area definitions of 41 wage areas. Certain cities, counties, or portions of counties that coincide with GS locality pay areas would move to expanded wage areas based on the application of the new criteria. Because 12 wage areas would be abolished, certain additional cities, counties, or portions of counties that coincide with the RUS locality pay area would also be redefined to existing wage areas.

FPRAC has recommended that OPM use counties to define survey and nonsurvey areas in FWS wage areas in New England instead of cities and/or townships. FPRAC has also recommended that OPM use legacy county boundaries to define FWS survey and nonsurvey areas in the State of Connecticut instead of Connecticut Planning Regions to maintain consistency with the geographic entities used for GS locality pay areas. Defining FWS wage areas by using county or county-equivalent boundaries in New England, rather than New England cities and towns, would be more consistent with how most FWS wage areas are defined and may improve the statistical accuracy of wage survey analyses.

The proposed changes in specific appropriated fund FWS wage area definitions are described below in the section on Redefined FWS Wage Areas.

In certain instances, OPM is proposing delayed implementation dates for adding counties to the survey areas of wage areas that are gaining counties. This is necessary because it takes DOD, the lead agency for FWS wage surveys, a number of months to develop the statistical and logistical specifications for local wage surveys. The changes in wage area names, areas

of application, and survey areas are detailed below in the section on Redefined FWS Wage Areas.

Based on longstanding practice when abolishing wage areas and moving counties from one wage area to another, FWS employees in locations that would be defined to different wage areas would be placed on the existing wage schedules for those wage areas on the first day of the first applicable pay period beginning on or after the effective date of the final rule that would be published after this proposed rule. The movements of counties from an existing wage area to a different wage area are noted in detail below in the section on Redefined FWS Wage Areas.

The implementation dates for new local wage surveys in expanded wage areas would vary by wage area accounting for, in certain cases, factors including the wage survey workload for the DOD wage survey staff. In particular, a survey area county that is removed from a current wage area that is being eliminated, and defined to a different wage area that is being continued but revised in the existing regulation, would initially be added to the area of application of the gaining wage area rather than being defined directly to the survey area. The county would subsequently be incorporated into the relevant wage area’s survey area based on the timing of full-scale local wage surveys. This would allow DOD sufficient time to plan for conducting full-scale wage surveys in survey areas that would expand significantly, in some cases doubling, in geographic size. It is anticipated that future wage schedule adjustments will continue to follow longstanding appropriations law provisions providing for annual adjustments that are both capped at the average GS increase amount (the “pay cap provision”) while providing for the same percentage adjustment received by GS employees in each employment location (“the floor increase provision”). The statutory floor increase provision would continue to prevent any decreases in wage schedules as has been the case for prevailing rate system employees since FY 2004. The statutory pay cap provision would also continue to prevent existing wage schedules from increasing above the amount established as the cap each year, except in cases where the floor increase would provide for a greater increase.

OPM believes that its proposed approach—in which the proposed changes to the wage areas could be implemented soon after publication of the final rule—is operationally feasible. Payroll providers typically are able to implement changes to wage area

designations quickly and do not require a great deal of lead time. In fact, changes to wage area designations are typically effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final rule adjusting a wage area. Further, and importantly, a short implementation timeframe would allow employees to immediately benefit from the updated wage area definitions.

OPM's proposed approach is also consistent with past practice. Currently OPM defines wage areas through a routine, consistent, and mechanical process to comply with the area definition criteria OPM establishes in 5 CFR 532.211 and based on FPRAC recommendations. For example, when OPM abolished the Newburgh, NY wage area in 2016 to comply with an existing MSA criterion and expanded the New York wage area to encompass most of the Newburgh wage area, the movement of counties into the New York area of application was not delayed beyond the effective date of the final regulations. OPM did not establish a new policy where the merging of the Newburgh wage area into the New York wage area would be delayed until an entirely new wage survey could be conducted in the slightly enlarged New York survey area. The statutory pay cap and floor increase provisions continued to be applied to the wage schedules for the New York wage area. Likewise, when OPM abolished the Portland, ME, wage area in 2015 and added its counties to the Portsmouth, NH, wage area, OPM did not delay the merging of the Portland wage area into the Portsmouth wage area until an entirely new wage survey could be conducted in the enlarged wage area. In this case, the Portland survey area was carried over in its entirety to the Portsmouth survey area for the next full scale wage survey. The statutory pay cap and floor increase provisions continued to be applied to wage schedule adjustments in the enlarged Portsmouth wage area.

OPM recognizes, however, that, even though the overall budgetary impact of this rule is relatively small (*i.e.*, 1% of FWS payroll—see the Expected Impact of this Rulemaking section of this rule), the budgetary impact at the local level in some cases would be considerable and any unplanned increase in payroll can be challenging to manage.

OPM therefore requests comment on the appropriate implementation timeframe. An alternative implementation option could provide for a delayed effective date of the final regulation, such that OPM's regulatory amendments—including the new boundary criteria, and, therefore, the

new wage schedules—would not go into effect until after a set period of time. The other aspects of OPM's proposal would remain unchanged.

Another alternative implementation plan, which a minority of FPRAC committee members suggested but which is inconsistent with past practice when revising wage areas, would defer the implementation of the revised criteria until DOD had the opportunity to conduct new wage surveys for the impacted areas based on the new criteria. For example, amendments to the Boston wage area might not go into effect until October 2026 while amendments would not go into effect in the Birmingham, AL, wage area until April 2028. Under this approach, the existing wage areas would be abolished and new wage areas established using the revised criteria as new surveys are completed, on a rolling basis.

OPM invites comments on the implementation timeline and any alternative implementation plans and encourages commenters to address any implementation concerns with any alternative plans.

The following wage area changes would be necessary, based on extensive FPRAC review and subsequent recommendations, to best fit the newly revised wage area definition criteria. As noted earlier, these changes are primarily driven by the adoption of the proposed regulatory criteria changing to follow CSA definitions, by not allowing a CSA to be divided between two or more wage areas, rather than just MSA definitions, and by allowing consideration of employment interchange data when analyzing and applying regional commuting information. These proposed changes do not merely adopt GS locality pay area definitions into the FWS but instead rely on FWS criteria being more similar to GS criteria. Indeed, because the GS and FWS continue to be separate statutory pay systems, there will continue to be differences in certain wage area definitions and the FWS will not use a catch-all RUS concept as is used for the GS locality pay system.

The proposed changes in regulatory criteria would have no impact on the following FWS wage areas: Dothan, AL; Alaska, AK; Phoenix, AZ; Tucson, AZ; Little Rock, AR; Pensacola, FL; Hawaii, HI; Boise, ID; Cedar Rapids-Iowa City, IA; Des Moines, IA; Wichita, KS; Lake Charles-Alexandria, LA; New Orleans, LA; Augusta, ME; Central and Northern Maine; Biloxi, MS; Jackson, MS; Meridian, MS; Northern Mississippi; Montana; Omaha, NE; Las Vegas, NV; Central North Carolina; North Dakota; Tulsa, OK; Puerto Rico; Columbia, SC;

Eastern South Dakota; Eastern Tennessee; Memphis, TN; Austin, TX; El Paso, TX; Houston-Galveston-Texas City, TX; Texarkana, TX; Western Texas; Wichita Falls, Texas-Southwestern Oklahoma; Utah; Southwestern Washington-Eastern Oregon; Spokane, WA; and Wyoming.

Redefined FWS Wage Areas

Anniston-Gadsden, AL, Wage Area

With the redefinition of Calhoun, Etowah, and Talladega, AL, to the Birmingham-Cullman-Talladega, AL, area of application, the Anniston-Gadsden, AL, wage area would lose all of its survey area counties. This proposed rule would abolish the Anniston-Gadsden wage area and redefine its remaining counties to the Birmingham-Cullman-Talladega, AL, wage area, Huntsville, AL, wage area, and Atlanta, GA, wage area.

Birmingham, AL, Wage Area

This proposed rule would change the name of the Birmingham, AL, wage area to the Birmingham-Cullman-Talladega, AL, wage area. This proposed rule would redefine the following counties to the Birmingham-Cullman-Talladega, AL, wage area based on the application of the new criteria:

- Calhoun, Etowah, and Talladega Counties, AL, from the Anniston-Gadsden, AL, survey area to the Birmingham-Cullman-Talladega, AL, area of application. These counties would subsequently be moved to the Birmingham-Cullman-Talladega, AL, survey area effective for local wage surveys beginning in January 2028;
- Clay County, AL, from the Anniston-Gadsden, AL, area of application to the Birmingham-Cullman-Talladega, AL, area of application based on employment interchange measures favoring the Birmingham-Cullman-Talladega, AL, wage area;
- Coosa County, AL, from the Columbus, GA, area of application to the Birmingham-Cullman-Talladega, AL, area of application because Coosa County is part of the Birmingham-Cullman-Talladega, AL, CSA;
- Winston County, AL, from the Huntsville, AL, area of application to the Birmingham-Cullman-Talladega, AL, area of application based on employment interchange measures favoring the Birmingham-Cullman-Talladega, AL, wage area over the Huntsville wage area.

• Coosa County, AL, from the Columbus, GA, area of application to the Birmingham-Cullman-Talladega, AL, area of application because Coosa County is part of the Birmingham-Cullman-Talladega, AL, CSA;

• Winston County, AL, from the Huntsville, AL, area of application to the Birmingham-Cullman-Talladega, AL, area of application based on employment interchange measures favoring the Birmingham-Cullman-Talladega, AL, wage area over the Huntsville wage area.

Huntsville, AL, Wage Area

This proposed rule would redefine the following counties to and away from

the Huntsville, AL, wage area based on the application of the new criteria:

- DeKalb County, AL, from the Anniston-Gadsden, AL, area of application to the Huntsville, AL, area of application because DeKalb County, AL, is part of the Huntsville-Decatur-Albertville, AL-TN, CSA;
- Winston County, AL, from the Huntsville, AL, area of application to the Birmingham-Cullman-Talladega, AL, area of application based on employment interchange measures favoring the Birmingham-Cullman-Talladega, AL, wage area over the Huntsville, AL, wage area;
- Jackson County, AL, from the Huntsville, AL, area of application to the Nashville, TN, area of application. Jackson County is part of the Chattanooga-Cleveland-Dalton, TN-GA-AL, CSA. Most of this CSA is currently defined to the Nashville wage area.
- Franklin, Lawrence, and Moore Counties, TN, from the Huntsville, AL, area of application to the Nashville, TN, area of application because these counties are part of the Nashville-Davidson-Murfreesboro, TN, CSA.

Northeastern Arizona, AZ, Wage Area

This proposed rule would also redefine the following county away from the Northeastern Arizona wage area based on the application of the new criteria:

- McKinley County, NM, from the Northeastern Arizona survey area to the Albuquerque-Santa Fe-Los Alamos, NM, area of application based on employment interchange measures being more favorable to the Albuquerque-Santa Fe-Los Alamos, NM, than to the Northeastern Arizona wage area. This county would subsequently be moved to the Albuquerque-Santa Fe-Los Alamos, NM, survey area effective for local wage surveys beginning in April 2027.

Fresno, CA, Wage Area

This proposed rule would redefine the following counties to and away from the Fresno, CA, wage area based on the application of the new criteria:

- Madera County, CA, (Devils Postpile National Monument portion) from the Reno, NV, area of application to the Fresno, CA, area of application because Madera County is part of the Fresno-Hanford-Corcoran, CA, CSA;
- Madera County, CA, (Yosemite National Park portion) from the Stockton, CA, area of application to the Fresno, CA, area of application because Madera County is part of the Fresno-Hanford-Corcoran, CA, CSA;
- Mariposa County, CA, from the Stockton, CA, area of application to the

Fresno, CA, area of application based on employment interchange measures favoring the Fresno, CA, wage area more than the San Jose-San Francisco-Oakland, CA, wage area;

- Tuolumne County, CA, (Yosemite National Park portion only) from the Stockton, CA, area of application to the Fresno, CA, area of application so that Yosemite National Park is not split across multiple wage areas;
- Kern County, CA, (does not include China Lake Naval Weapons Center, Edwards Air Force Base, and portions occupied by Federal activities in Boron (City)) from the Fresno, CA, area of application to the Los Angeles, CA, area of application based on employment interchange measures favoring the Los Angeles, CA, wage area more than the Fresno, CA, wage area.

Los Angeles, CA, Wage Area

This proposed rule would redefine the following counties to and within the Los Angeles, CA, wage area based on application of the new criteria:

- Kern County, CA, (does not include China Lake Naval Weapons Center, Edwards Air Force Base, and portions occupied by Federal activities in Boron (City)) from the Fresno, CA, area of application to the Los Angeles, CA, area of application because Kern County is part of the Los Angeles-Long Beach, CA, CSA;
- Riverside County, CA, (does not include the Joshua Tree National Monument portion) from the San Bernardino-Riverside-Ontario, CA, survey area to Los Angeles, CA, area of application because Riverside County is part of the Los Angeles-Long Beach, CA, CSA;
- Riverside County, CA, to the Los Angeles, CA, survey area effective for local wage surveys beginning in November 2026 because more than 100 FWS employees work in Riverside County;
- San Bernardino County, CA, (only that portion occupied by, and south and west of, the Angeles and San Bernardino National Forests) from the San Bernardino-Riverside-Ontario, CA, survey area to Los Angeles, CA, area of application;
- San Bernardino County, CA, to the Los Angeles, CA, survey area effective for local wage surveys beginning in November 2026 because more than 100 FWS employees work in San Bernardino County;
- Kern County, CA, to the Los Angeles, CA, survey area effective for local wage surveys beginning in November 2026 because more than 100 FWS employees work in Kern County;

- Santa Barbara County, CA, from the Santa Barbara, CA, survey area to the Los Angeles, CA, area of application based on employment interchange measures being most favorable to the Los Angeles, CA, wage area. This county would subsequently be moved to the Los Angeles, CA, survey area effective for local wage surveys beginning in November 2026;

- San Luis Obispo County, CA, from the Santa Barbara, CA, area of application to the Los Angeles, CA, area of application based on employment interchange measures favoring the Los Angeles, CA, wage area;

- Orange and Ventura Counties, CA, to the Los Angeles, CA, survey area effective for local wage surveys beginning in November 2026 because more than 100 FWS employees work in each county.

Sacramento, CA, Wage Area

This proposed rule would change the name of the Sacramento, CA, wage area to the Sacramento-Roseville, CA, wage area. This proposed rule would redefine the following counties away from the Sacramento, CA, wage area based on the application of the new criteria:

- Alpine County, CA, from the Sacramento, CA, area of application to the Reno, NV, area of application. Alpine County is part of the Reno-Carson City-Gardnerville Ranchos, NV-CA, CSA;
- Del Norte County, CA, from the Sacramento, CA, area of application to the Southwestern Oregon area of application. Del Norte County is part of the Brookings-Crescent City, OR-CA, CSA, and employment interchange measures for this CSA favor the Southwestern Oregon wage area over the Sacramento-Roseville, CA, wage area.

Salinas-Monterey, CA, Wage Area

With the redefinition of Monterey County, CA, to the San Jose-San Francisco-Oakland, CA, wage area, the Salinas-Monterey, CA, wage area would lose the entirety of its survey area. This proposed rule would abolish the Salinas-Monterey wage area, which contains no additional counties.

San Bernardino-Riverside-Ontario, CA, Wage Area

With the redefinition of Riverside County (does not include the Joshua Tree National Monument portion) and San Bernardino County (only that portion occupied by, and south and west of, the Angeles and San Bernardino National Forests), CA, the San Bernardino-Riverside-Ontario, CA, wage area would lose the entirety of its survey

area. This proposed rule would abolish the San Bernardino-Riverside-Ontario, CA, wage area, which contains no additional counties.

San Diego, CA, Wage Area

This proposed rule would redefine the following county within the San Diego, CA, wage area based on application of the new criteria:

- Yuma County, AZ, to the San Diego, CA, survey area effective for local wage surveys beginning in September 2027 because more than 100 FWS employees work in Yuma County.

San Francisco, CA, Wage Area

This proposed rule would change the name of the San Francisco, CA, wage area to the San Jose-San Francisco-Oakland, CA, wage area. This proposed rule would redefine the following counties to the San Jose-San Francisco-Oakland, CA, wage area based on the application of the new criteria:

- Monterey County, CA, from the Salinas-Monterey, CA, survey area to the San Jose-San Francisco-Oakland, CA, area of application based on employment interchange measures favoring the San Jose-San Francisco-Oakland, CA, wage area. This county would subsequently be moved to the San Jose-San Francisco-Oakland, CA, survey area effective for local wage surveys beginning in October 2027;
- San Joaquin County, CA, from the Stockton, CA, survey area to the San Jose-San Francisco-Oakland area of application because San Joaquin County is part of the San Jose-San Francisco-Oakland, CA, CSA. This county would subsequently be moved to the San Jose-San Francisco-Oakland, CA, survey area effective for local wage surveys beginning in October 2027;
- Merced and Stanislaus Counties, CA, from the Stockton, CA, area of application to the San Jose-San Francisco-Oakland, CA, area of application because these counties are part of the San Jose-San Francisco-Oakland, CA, CSA;
- Tuolumne (not including Yosemite National Park portion) and Calaveras Counties, CA, from the Stockton, CA, area of application to the San Jose-San Francisco-Oakland, CA, area of application based on employment interchange measures favoring the San Jose-San Francisco-Oakland, CA, wage area over the Fresno, CA, wage area.

Santa Barbara, CA, Wage Area

With the redefinition of Santa Barbara County, CA, to the Los Angeles, CA, wage area, the Santa Barbara, CA, wage area would lose the entirety of its survey area. This proposed rule would abolish

the Santa Barbara wage area and redefine Santa Barbara and San Luis Obispo Counties, CA, to the Los Angeles, CA, wage area.

Stockton, CA, Wage Area

With the redefinition of San Joaquin County, CA, to the San Jose-San Francisco-Oakland, CA, wage area, the Stockton, CA, wage area would lose the entirety of its survey area. This proposed rule would abolish the Stockton, CA, wage area and redefine its remaining counties to either the Fresno or San Jose-San Francisco-Oakland, CA, wage areas.

Denver, CO, Wage Area

This proposed rule would redefine the following county to the Denver, CO, wage area based on application of the new criteria:

- Lincoln County, CO, from the Southern Colorado area of application to the Denver, CO, area of application based on employment interchange measures favoring the Denver, CO, wage area.

Southern Colorado, CO, Wage Area

This proposed rule would redefine the following county away from the Southern Colorado wage area based on application of the new criteria:

- Lincoln County, CO, from the Southern Colorado area of application to the Denver, CO, area of application based on employment interchange measures favoring the Denver, CO, wage area over the Southern Colorado wage area.

New Haven-Hartford, CT, Wage Area

This proposed rule would move the following counties to and away from the New Haven-Hartford, CT, wage area based on application of the new criteria:

- The entirety of the Springfield-Amherst Town-Northampton, MA, CSA, would be defined to the New Haven-Hartford, CT, wage area based on employment interchange measures favoring the New Haven-Hartford, CT, wage area. To effectuate this change, the following towns, cities, and counties that are part of the Springfield-Amherst Town-Northampton CSA would be redefined in the following manner:

- Hampden County, MA (the portion that contains the cities and towns of Agawam, Chicopee, East Longmeadow, Feeding Hills, Hampden, Holyoke, Longmeadow, Ludlow, Monson, Palmer, Southwick, Springfield, Three Rivers, Westfield, West Springfield, and Wilbraham, MA), from the Central and Western Massachusetts survey area to the New Haven-Hartford, CT, area of application;

- Hampden County, MA (the portion that contains the cities and towns of Blandford, Brimfield, Chester, Granville, Holland, Montgomery, Russell, Tolland, and Wales, MA), from the Central and Western Massachusetts area of application to the New Haven-Hartford, CT, area of application;

- Hampden County, MA (entire county), to the New Haven-Hartford, CT, survey area effective for local wage surveys beginning in April 2027;

- Hampshire County, MA (the portion that contains the cities and towns of Easthampton, Granby, Hadley, Northampton, and South Hadley, MA), from the Central and Western Massachusetts survey area to the New Haven-Hartford, CT, area of application;

- Hampshire County, MA (the portion that contains the cities and towns of Amherst, Belchertown, Chesterfield, Cummington, Goshen, Hatfield, Huntington, Middlefield, Pelham, Plainfield, Southampton, Ware, Westhampton, Williamsburg, and Worthington, MA), from the Central and Western Massachusetts area of application to the New Haven-Hartford, CT, area of application;

- Hampshire County, MA (entire county), to the New Haven-Hartford survey area effective for local wage surveys beginning in April 2027;

- Franklin County, MA, from the Central and Western Massachusetts area of application to the New Haven-Hartford, CT, area of application;

- Fairfield County, CT, from the New Haven-Hartford, CT, area of application to the New York-Newark, NY, area of application because all FWS employees who work in Fairfield County are located in the New York-Newark, NY-NJ-CT-PA, CSA;

- New London County, CT, from the New London, CT, survey area to the New Haven-Hartford, CT, area of application because New London County is part of the New Haven-Hartford-Waterbury, CT, CSA. This county would subsequently be moved to the New Haven-Hartford, CT, survey area effective for local wage surveys beginning in April 2027.

- Windham County, CT, from the Central and Western Massachusetts area of application to the New Haven-Hartford, CT, area of application.

New London, CT, Wage Area

With the redefinition of New London County, CT, to the New Haven-Hartford, CT, survey area, the New London, CT, wage area would lose the entirety of its survey area. This proposed rule would abolish the New London, CT, wage area, which contains no additional counties.

Washington, DC, Wage Area

This proposed rule would change the name of the Washington, DC, wage area to the Washington-Baltimore-Arlington wage area listed under the District of Columbia. This proposed rule would redefine the following cities and counties to the Washington-Baltimore-Arlington wage area based on application of the new criteria:

- The entirety of the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA, CSA, would be defined to the Washington-Baltimore-Arlington wage area. To effectuate this change, the following cities and counties that are part of the Washington-Baltimore-Arlington CSA would be redefined in the following manner:
 - Baltimore (city), MD, and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, MD, from the Baltimore, MD, survey area to the Washington-Baltimore-Arlington area of application. This city and these counties would subsequently be moved to the Washington-Baltimore-Arlington survey area effective for local wage surveys beginning in July 2027;
 - Queen Anne's County, MD, from the Baltimore, MD, area of application to the Washington-Baltimore-Arlington area of application;
 - Washington County, MD, from the Hagerstown-Martinsburg-Chambersburg, MD, survey area to the Washington-Baltimore-Arlington area of application. This county would subsequently be moved to the Washington-Baltimore-Arlington survey area effective for local wage surveys beginning in July 2027;
 - Franklin County, PA, from the Hagerstown-Martinsburg-Chambersburg, MD, survey area to the Washington-Baltimore-Arlington area of application. This county would subsequently be moved to the Washington-Baltimore-Arlington survey area effective for local wage surveys beginning in July 2027;
 - Berkeley County, WV, from the Hagerstown-Martinsburg-Chambersburg, MD, survey area to the Washington-Baltimore-Arlington area of application. This county would subsequently be moved to the Washington-Baltimore-Arlington survey area effective for local wage surveys beginning in July 2027;
 - Winchester (city), VA, and Frederick County, VA, from the Hagerstown-Martinsburg-Chambersburg, MD, area of application to the Washington-Baltimore-Arlington area of application;
 - Hampshire and Morgan Counties, WV, from the Hagerstown-Martinsburg-Chambersburg, MD, area of application to the Washington-Baltimore-Arlington area of application;

- Orange County, VA, from the Richmond, VA, area of application to the Washington-Baltimore-Arlington area of application;
- Dorchester and Talbot Counties, MD, from the Wilmington, DE, area of application to the Washington-Baltimore-Arlington area of application;
 - The entirety of the Harrisonburg-Staunton-Stuarts Draft, VA, CSA, would be defined to the Washington-Baltimore-Arlington wage area based on employment interchange measures favoring the Washington-Baltimore-Arlington wage area. To effectuate this change, the following cities and counties that are part of the Harrisonburg-Staunton-Stuarts Draft CSA would be redefined in the following manner:
 - Harrisonburg (city) and Rockingham (does not include the Shenandoah National Park portion) County, VA, from the Hagerstown-Martinsburg-Chambersburg, MD, area of application to the Washington-Baltimore-Arlington area of application;
 - Staunton and Waynesboro (cities), VA, and Augusta (does not include the Shenandoah National Park portion) County, VA, from the Roanoke, VA, area of application to the Washington-Baltimore-Arlington area of application;
 - Allegany and Garrett Counties, MD, would be defined from the Hagerstown-Martinsburg-Chambersburg, MD, area of application to the Washington-Baltimore-Arlington area of application based on employment interchange rates favoring the Washington-Baltimore-Arlington wage area;
 - Fulton County, PA, would be defined from the Hagerstown-Martinsburg-Chambersburg, MD, area of application to the Washington-Baltimore-Arlington area of application based on employment interchange measures favoring the Washington-Baltimore-Arlington wage area;
 - Page (does not include the Shenandoah National Park portion) and Shenandoah Counties, VA, would be defined from the Hagerstown-Martinsburg-Chambersburg, MD, area of application to the Washington-Baltimore-Arlington area of application based on employment interchange measures favoring the Washington-Baltimore-Arlington wage area;
 - Hardy and Mineral Counties, WV, would be defined from the Hagerstown-Martinsburg-Chambersburg, MD, area of application to the Washington-Baltimore-Arlington area of application based on employment interchange measures favoring the Washington-Baltimore-Arlington wage area;
 - Caroline and Westmoreland Counties, VA, would be defined from

the Richmond, VA, area of application to the Washington-Baltimore-Arlington area of application based on employment interchange measures favoring the Washington-Baltimore-Arlington wage area over the Richmond wage area;

- Caroline and Kent Counties, MD, would be defined from the Wilmington, DE, area of application to the Washington-Baltimore-Arlington area of application based on employment interchange measures favoring the Washington-Baltimore-Arlington wage area;
- King George County, VA, would be defined to the Washington-Baltimore-Arlington survey area because more than 100 FWS employees work in King George County, effective for local wage surveys beginning in July 2027.

Cocoa Beach-Melbourne, FL, Wage Area

This proposed rule would redefine Indian River County, FL, from the Cocoa Beach area of application to the Miami-Port St. Lucie-Fort Lauderdale area of application because Indian River County is part of the Miami-Port St. Lucie-Fort Lauderdale, FL, CSA.

Jacksonville, FL, Wage Area

This proposed rule would redefine the following counties to and within the Jacksonville, FL, wage area based on the application of the new criteria:

- Polk County, FL, from the Tampa-St. Petersburg, FL, area of application to the Jacksonville, FL, area of application;
- Columbia, Orange, and Sumter Counties, FL, to the Jacksonville, FL, survey area because more than 100 FWS employees work in each of these counties, effective for local wage surveys beginning in January 2027;
- Camden County, GA, to the Jacksonville, FL, survey area because more than 100 FWS employees work in Camden County, effective for local wage surveys beginning in January 2027.

Miami, FL, Wage Area

This proposed rule would change the name of the Miami, FL, wage area to the Miami-Port St. Lucie-Fort Lauderdale, FL, wage area. This proposed rule would redefine the following counties to and within the Miami, FL, wage area based on the application of the new criteria:

- Indian River County, FL, from the Cocoa Beach-Melbourne, FL, area of application to the Miami-Port St. Lucie-Fort Lauderdale, FL, area of application because Indian River County is part of the Miami-Port St. Lucie-Fort Lauderdale, FL, CSA;
- Lee County, FL, from the Tampa-St. Petersburg, FL, area of application to the

Miami-Port St. Lucie-Fort Lauderdale, FL, area of application. Lee County is part of the Cape Coral-Fort Myers-Naples, FL, CSA, and employment interchange measures for this CSA favor the Miami-Port St. Lucie-Fort Lauderdale, FL, wage area over the Tampa-St. Petersburg, FL, wage area;

- Palm Beach County, FL, to the Miami-Port St. Lucie-Fort Lauderdale, FL, survey area because it has over 100 FWS employees, effective for local wage surveys beginning in January 2027.

Panama City, FL, Wage Area

This proposed rule would redefine the following county to the Panama City, FL, wage area based on the application of the new criteria:

- Decatur County, GA, from the Albany, GA, area of application to the Panama City, FL, area of application.

Tampa-St. Petersburg, FL, Wage Area

This proposed rule would redefine the following counties away from the Tampa-St. Petersburg, FL, wage area based on the application of the new criteria:

- Lee County, FL, from the Tampa-St. Petersburg, FL, area of application to the Miami-Port St. Lucie-Fort Lauderdale, FL, area of application. Lee County is part of the Cape Coral-Fort Myers-Naples, FL, CSA, and employment interchange measures for this CSA favor the Miami-Port St. Lucie-Fort Lauderdale, FL, wage area over the Tampa-St. Petersburg, FL, wage area;
- Polk County, FL, from the Tampa-St. Petersburg, FL, area of application to the Jacksonville, FL, area of application.

Albany, GA, Wage Area

This proposed rule would redefine the following counties to and away from the Albany, GA, wage area based on the application of the new criteria:

- Quitman, Schley, and Webster Counties, GA, from the Columbus, GA, area of application to the Albany, GA, wage area based on employment interchange measures being most favorable to the Albany, GA, wage area;
- Decatur County, GA, from the Albany, GA, area of application to the Panama City, FL, area of application.

Atlanta, GA, Wage Area

The proposed rule would redefine the following counties to and away from the Atlanta, GA, wage area based on the application of the new criteria:

- Cherokee, Cleburne, and Randolph Counties, AL, from the Anniston-Gadsden, AL, area of application to the Atlanta, GA, area of application based on employment interchange measures favoring the Atlanta wage area;

- Elbert, Hart, and Taliaferro Counties, GA, from the Augusta, GA, area of application to the Atlanta, GA, area of application based on employment interchange measures favoring the Atlanta, GA, wage area over the Augusta, GA, wage area;

- Putnam County, GA, from the Macon, GA, area of application to the Atlanta, GA, area of application based on employment interchange measures favoring the Atlanta, GA, wage area over the Macon, GA, wage area;

- Upson County, GA, from the Macon, GA, area of application to the Atlanta, GA, area of application because Upson County is part of the Atlanta-Athens-Clarke County-Sandy Springs, GA-AL, CSA;

- Chambers County, AL, from the Columbus, GA, area of application to the Atlanta, GA, area of application because Chambers County is part of the Atlanta-Athens-Clarke County-Sandy Springs, GA-AL, CSA;

- Troup County, GA, from the Columbus, GA, area of application to the Atlanta, GA, area of application because Troup County is part of the Atlanta-Athens-Clarke County-Sandy Springs, GA-AL, CSA;

- The entirety of the Columbus-Auburn-Opelika, GA-AL, CSA, from the Columbus, GA, wage area to the Atlanta, GA, wage area based on employment interchange measures favoring the Atlanta, GA, wage area over the Montgomery-Selma, AL, wage area. To effectuate this change, the following counties, which comprise the Columbus-Auburn-Opelika CSA, would be redefined in the following manner:

- Lee, Macon, and Russell Counties, AL, from the Columbus, GA, survey area to the Atlanta, GA, area of application. These counties would subsequently be moved to the Atlanta, GA, survey area effective for local wage surveys beginning in May 2027;

- Chattahoochee and Muscogee Counties, GA, from the Columbus, GA, survey area to the Atlanta, GA, area of application. (Muscogee County, GA, includes the area referred to as Columbus County, GA, in previous wage area definitions.) These counties would subsequently be moved to the Atlanta, GA, survey area effective for local wage surveys beginning in May 2027;

- Tallapoosa County, AL, from the Columbus, GA, area of application to the Atlanta, GA, area of application;

- Harris, Marion, Stewart, and Talbot Counties, GA, from the Columbus, GA, area of application to the Atlanta, GA, area of application;

- Chattooga, Murray, and Whitfield Counties, GA, from the Atlanta, GA,

area of application to the Nashville, TN, area of application.

Augusta, GA, Wage Area

The proposed rule would redefine the following counties to and away from the Augusta, GA, wage area based on application of the new criteria:

- Elbert, Hart, and Taliaferro Counties, GA, from the Augusta, GA, area of application to the Atlanta, GA, area of application based on employment interchange measures favoring the Atlanta, GA, wage area over the Augusta, GA, wage area.

Columbus, GA, Wage Area

This wage area is being decreased in size under this proposed rule and would be renamed the Montgomery-Selma, AL, wage area and move the wage area listing alphabetically under the State of Alabama. This proposed rule would redefine the following counties away from the Columbus, GA, wage area based on the application of the new criteria:

- Quitman, Schley, and Webster Counties, GA, from the Columbus, GA, area of application to the Albany, GA, wage area based on employment interchange measures favoring the Albany wage area;

- Chambers County, AL, from the Columbus, GA, area of application to the Atlanta, GA, area of application because Chambers County is part of the Atlanta-Athens-Clarke County-Sandy Springs, GA-AL, CSA;

- Troup County, GA, from the Columbus, GA, area of application to the Atlanta, GA, area of application because Troup County is part of the Atlanta-Athens-Clarke County-Sandy Springs, GA-AL, CSA;

- The entirety of the Columbus-Auburn-Opelika, GA-AL, CSA, from the Columbus, GA, wage area to the Atlanta, GA, wage area based on employment interchange measures favoring the Atlanta wage area over the Montgomery-Selma, AL, wage area. To effectuate this change, the following counties, which comprise the Columbus-Auburn-Opelika CSA, would be redefined in the following manner:

- Lee, Macon, and Russell Counties, AL, from the Columbus, GA, survey area to the Atlanta, GA, area of application. These counties would subsequently be moved to the Atlanta, GA, survey area effective for local wage surveys beginning in May 2027;

- Chattahoochee and Muscogee Counties, GA, from the Columbus, GA, survey area to the Atlanta, GA, area of application. (Muscogee County, GA, includes the area referred to as Columbus County, GA, in previous

wage area definitions.) These counties would subsequently be moved to the Atlanta, GA, survey area effective for local wage surveys beginning in May 2027;

- Tallapoosa County, AL, from the Columbus, GA, area of application to the Atlanta, GA, area of application;
- Harris, Marion, Stewart, and Talbot Counties, GA, from the Columbus, GA, area of application to the Atlanta, GA, area of application;
- Coosa County, AL, from the Columbus, GA, area of application to the Birmingham-Cullman-Talladega, AL, area of application because Coosa County is part of the Birmingham-Cullman-Talladega, AL, CSA;
- Taylor County, GA, from the Columbus, GA, area of application to the Macon, GA, area of application based on employment interchange measures favoring the Macon, GA, wage area.

Macon, GA, Wage Area

The proposed rule would redefine the following county to the Macon, GA, wage area based on application of the new criteria:

- Taylor County, GA, from the Columbus, GA, area of application to the Macon, GA, area of application based on employment interchange measures favoring the Macon, GA, wage area.

Savannah, GA, Wage Area

The proposed rule would redefine the following counties to and within the Savannah, GA, wage area based on application of the new criteria:

- Beaufort County, SC (the portion north of Broad River), from the Charleston, SC, area of application to the Savannah, GA, area of application. Beaufort County is part of the Hilton Head Island-Bluffton-Port Royal, SC, MSA, and employment interchange measures for this MSA favor the Savannah, GA, wage area over the Charleston, SC, wage area;
- Beaufort County, SC, to the Savannah, GA, survey area effective for local wage surveys beginning in May 2027 because more than 100 FWS employees work in Beaufort County.

Bloomington-Bedford-Washington, IN, Wage Area

This proposed rule would change the name of the Bloomington-Bedford-Washington, IN, wage area to the Evansville-Henderson, IN, wage area. This proposed rule would redefine the following counties away from the Bloomington-Bedford-Washington, IN, wage area based on application of the new criteria:

- Jackson County, IN, from the Bloomington-Bedford-Washington, IN, area of application to the Indianapolis-Carmel-Muncie, IN, area of application because Jackson County is part of the Indianapolis-Carmel-Muncie, IN, CSA;
- Lawrence and Monroe Counties, IN, from the Bloomington-Bedford-Washington, IN, survey area to the Indianapolis-Carmel-Muncie, IN, area of application. Lawrence and Monroe Counties are in the Bloomington-Bedford, IN, CSA, and employment interchange measures for this CSA favor the Indianapolis-Carmel-Muncie, IN, wage area over the Evansville-Henderson, IN, wage area. These counties would subsequently be moved from to the Indianapolis-Carmel-Muncie, IN, survey area effective for local wage surveys beginning in October 2026;
- Owen County, IN, from the Bloomington-Bedford-Washington, IN, area of application to the Indianapolis-Carmel-Muncie, IN, area of application. Owen County is in the Bloomington-Bedford, IN, CSA, and employment interchange measures for this CSA favor the Indianapolis-Carmel-Muncie, IN, wage area over the Evansville-Henderson, IN, wage area;
- Livingston County, KY, from the Bloomington-Bedford-Washington, IN, area of application to the Nashville, TN, area of application. Livingston County is part of the Paducah-Mayfield, KY-IL, CSA, and employment interchange measures for this CSA favor the Nashville, TN, wage area over the Evansville-Henderson, IN, wage area.

Central Illinois, IL, Wage Area

This proposed rule would change the name of the Central Illinois wage area to the Bloomington-Pontiac, IL, wage area. This proposed rule would redefine the following counties to and away from the Central Illinois wage area based on application of the new criteria:

- Livingston County, IL, from the Chicago, IL, area of application to the Bloomington-Pontiac, IL, area of application because Livingston County is part of the Bloomington-Pontiac, IL, CSA;
- Morgan and Scott Counties, IL, from the St. Louis, MO, area of application to the Bloomington-Pontiac, IL, area of application. Morgan and Scott Counties are part of the Springfield-Jacksonville-Lincoln, IL, CSA, and employment interchange measures for this CSA favor the Bloomington-Pontiac, IL, wage area over the St. Louis, MO, wage area.

Chicago, IL, Wage Area

This proposed rule would change the name of the Chicago, IL, wage area to

the Chicago-Naperville, IL, wage area. This proposed rule would redefine the following counties to and away from the Chicago, IL, wage area based on the application of the new criteria:

- Bureau and Putnam Counties, IL, from the Davenport-Rock Island-Moline, IA, area of application to the Chicago-Naperville, IL, area of application because these counties are part of the Chicago-Naperville, IL-IN-WI, CSA;
- Livingston County, IL, from the Chicago area of application to the Bloomington-Pontiac, IL, area of application because Livingston County is part of the Bloomington-Pontiac CSA;
- Lee County, IL from the Chicago area of application to the Davenport-Moline, IA, area of application. Lee County is part of the Dixon-Sterling, IL, CSA, and employment interchange measures for this CSA favor the Davenport-Moline wage area over the Chicago-Naperville wage area.

Ft. Wayne-Marion, IN, Wage Area

This proposed rule would define the following counties away from the Ft. Wayne-Marion, IN, wage area based on application of the new criteria:

- Allen, Mercer, and Van Wert Counties, OH, from the Ft. Wayne-Marion, IN, area of application to the Dayton, OH, area of application. Allen, Mercer, and Van Wert Counties are part of the Lima-Van Wert-Celina, OH, CSA, and employment interchange measures for this CSA favor the Dayton, OH, wage area over the Ft. Wayne-Marion, IN, wage area;
- Grant County, IN, from the Ft. Wayne-Marion, IN, survey area to the Indianapolis-Carmel-Muncie, IN, area of application based on employment interchange measures favoring the Indianapolis-Carmel-Muncie, IN, wage area over the Ft. Wayne-Marion, IN, wage area. The county would subsequently be moved to the Indianapolis-Carmel-Muncie, IN, survey area effective for local wage surveys beginning in October 2026;
- Miami County, IN, from the Ft. Wayne-Marion, IN, area of application to the Indianapolis-Carmel-Muncie, IN, area of application because Miami county is part of the Indianapolis-Carmel-Muncie, IN, CSA. Over 100 FWS employees work in Miami County, and the county would subsequently be moved to the Indianapolis-Carmel-Muncie, IN, survey area effective for local wage surveys beginning in October 2026;
- White County, IN, from the Ft. Wayne-Marion, IN, area of application to the Indianapolis-Carmel-Muncie, IN, area of application. White County is part of the Lafayette-West Lafayette-

Frankfort, IN, CSA, and employment interchange measures for this CSA favor the Indianapolis-Carmel-Muncie, IN, wage area over the Ft. Wayne-Marion, IN, wage area;

- Blackford County, IN, from the Ft. Wayne-Marion, IN, area of application to the Indianapolis-Carmel-Muncie, IN, area of application based on employment interchange measures favoring the Indianapolis-Carmel-Muncie, IN, wage area over the Ft. Wayne-Marion, IN, wage area.

Indianapolis, IN, Wage Area

This proposed rule would change the name of the Indianapolis, IN, wage area to the Indianapolis-Carmel-Muncie, IN, wage area. This proposed rule would define the following counties to and within the Indianapolis, IN, wage area based on application of the new criteria:

- Randolph County, IN, from the Dayton, OH, area of application to the Indianapolis-Carmel-Muncie, IN, area of application based on employment interchange measures favoring the Indianapolis-Carmel-Muncie, IN, wage area over the Dayton, OH, wage area;

- Wayne County, IN, from the Dayton, OH, area of application to the Indianapolis-Carmel-Muncie, IN, area of application. Wayne County is part of the Richmond-Connersville, IN, CSA, and employment interchange measures for this CSA favor the Indianapolis-Carmel-Muncie, IN, wage area over the Dayton, OH, wage area;

- Lawrence and Monroe Counties, IN, from the Bloomington-Bedford-Washington, IN, survey area to the Indianapolis-Carmel-Muncie, IN, area of application. Lawrence and Monroe Counties are in the Bloomington-Bedford, IN, CSA, and employment interchange measures for this CSA favor the Indianapolis-Carmel-Muncie, IN, wage area over the Evansville-Henderson, IN, wage area. These counties would subsequently be moved to the Indianapolis-Carmel-Muncie, IN, survey area effective for local wage surveys beginning in October 2026;

- Owen County, IN, from the Bloomington-Bedford-Washington, IN, area of application to the Indianapolis-Carmel-Muncie, IN, area of application. Owen County is in the Bloomington-Bedford, IN, CSA, and employment interchange measures for this CSA favor the Indianapolis-Carmel-Muncie, IN, wage area over the Evansville-Henderson, IN, wage area;

- Jackson County, IN, from the Bloomington-Bedford-Washington, IN, area of application to the Indianapolis-Carmel-Muncie, IN, area of application because Jackson County is part of the Indianapolis-Carmel-Muncie, IN, CSA;

- Grant County, IN, from the Ft. Wayne-Marion, IN, survey area to the Indianapolis-Carmel-Muncie, IN, area of application based on employment interchange measures favoring the Indianapolis-Carmel-Muncie, IN, wage area over the Ft. Wayne-Marion, IN, wage area. Grant County would subsequently be moved to the Indianapolis-Carmel-Muncie, IN, survey area effective for local wage surveys beginning in October 2026;

- Miami County, IN, from the Ft. Wayne-Marion, IN, area of application to the Indianapolis-Carmel-Muncie, IN, area of application because Miami County is part of the Indianapolis-Carmel-Muncie, IN, CSA. Because more than 100 FWS employees work in Miami County, the county would subsequently be moved to the Indianapolis-Carmel-Muncie, IN, survey area effective for local wage surveys beginning in October 2026;

- White County, IN, from the Ft. Wayne-Marion, IN, area of application to the Indianapolis-Carmel-Muncie, IN, area of application. White County is part of the Lafayette-West Lafayette-Frankfort, IN, CSA, and employment interchange measures for this CSA favor the Indianapolis-Carmel-Muncie, IN, wage area over the Ft. Wayne-Marion, IN, wage area;

- Blackford County, IN, from the Ft. Wayne-Marion, IN, area of application to the Indianapolis-Carmel-Muncie, IN, area of application based on employment interchange measures favoring the Indianapolis-Carmel-Muncie, IN, wage area over the Ft. Wayne-Marion, IN, wage area;

- Jennings County, IN, from the Louisville, KY, area of application to the Indianapolis-Carmel-Muncie, IN, area of application based on employment interchange measures favoring the Indianapolis-Carmel-Muncie, IN, wage area over the Louisville, KY, wage area.

- Vigo County, IN, to the Indianapolis-Carmel-Muncie, IN, survey area because the county has over 100 FWS employees effective for local wage surveys beginning in October 2026.

Davenport-Rock Island-Moline, IA, Wage Area

This proposed rule would change the name of the Davenport-Rock Island-Moline, IA, wage area to the Davenport-Moline, IA, wage area. This proposed rule would define the following counties to and away from the Davenport-Rock Island-Moline, IA, wage area based on application of the new criteria:

- Lee County, IL from the Chicago, IL, area of application to the Davenport-Moline, IA, area of application. Lee

County is part of the Dixon-Sterling, IL, CSA, and employment interchange measures for this CSA favor the Davenport-Moline, IA, wage area over the Chicago-Naperville, IL, wage area;

- Bureau and Putnam Counties, IL, from the Davenport-Rock Island-Moline, IA, area of application to the Chicago-Naperville, IL, area of application because these counties are part of the Chicago-Naperville, IL-IN-WI, CSA;

- Adams County, IL, from the Davenport-Rock Island-Moline, IA, area of application to the St. Louis, MO, area of application. Adams County is part of the Quincy-Hannibal, IL-MO, CSA, and employment interchange measures for this CSA favor the St. Louis, MO, wage area over the Davenport-Moline, IA, wage area.

Topeka, KS, Wage Area

The current Topeka, KS, wage area would become smaller under this proposed rule and would be renamed as the Manhattan, KS, wage area. This proposed rule would redefine the following counties away from and within the Topeka, KS, wage area based on application of the new criteria:

- Jefferson, Osage, and Shawnee Counties, KS, from the Topeka, KS, survey area to the Kansas City, MO, area of application. Jefferson, Osage, and Shawnee Counties are part of the Topeka, KS, MSA, and employment interchange measures for this MSA favor the Kansas City wage area. These counties would subsequently be moved to the Kansas City, MO, survey area effective for local wage surveys beginning in October 2026;

- Jackson and Wabaunsee Counties, KS, from the Topeka, KS, area of application to the Kansas City, MO, area of application. Jackson and Wabaunsee Counties are part of the Topeka, KS, MSA, and employment interchange measures for this MSA favor the Kansas City, MO, wage area;

- Riley County, KS, to the Manhattan, KS, survey area effective for local wage surveys beginning in November 2027 because the county has over 100 FWS employees.

Lexington, KY, Wage Area

This proposed rule would redefine the following counties away from the Lexington, KY, wage area based on application of the new criteria:

- Owen and Robertson Counties, KY, from the Lexington area of application to the Cincinnati-Wilmington, OH, area of application based on employment interchange measures favoring the Cincinnati-Wilmington, OH, wage area over the Lexington, KY, wage area.

Louisville, KY, Wage Area

This proposed rule would define the following county away from the Louisville, KY, wage area based on application of the new criteria:

- Jennings County, IN, from the Louisville, KY, area of application to the Indianapolis-Carmel-Muncie, IN, area of application based on employment interchange measures favoring the Indianapolis-Carmel-Muncie, IN, wage area over the Louisville, KY, wage area.

Shreveport, LA, Wage Area

This proposed rule would redefine the following county away from the Shreveport, LA, wage area based on application of the new criteria:

- Cherokee County, TX, from the Shreveport, LA, area of application to the Dallas-Fort Worth, TX, area of application. Cherokee County is part of the Tyler-Jacksonville, TX, CSA, and employment interchange measures for this CSA favor the Dallas-Fort Worth, TX, wage area over the Shreveport, LA, wage area.

Baltimore, MD, Wage Area

With the redefinition of Baltimore (city) and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties, MD, to the Washington-Baltimore-Arlington survey area, the Baltimore wage area would lose the entirety of its survey area. This proposed rule would abolish the Baltimore wage area and redefine its remaining counties to the Washington-Baltimore-Arlington wage area.

Hagerstown-Martinsburg-Chambersburg, MD, Wage Area

With the redefinition of Washington County, MD; Franklin County, PA; and Berkeley County, WV, to the Washington-Baltimore-Arlington survey area, the Hagerstown-Martinsburg-Chambersburg, MD, wage area would lose the entirety of its survey area. This proposed rule would abolish the Hagerstown-Martinsburg-Chambersburg, MD, wage area and redefine its remaining counties to the Washington-Baltimore-Arlington wage area.

Boston, MA, Wage Area

This proposed rule would change the name of the Boston, MA, wage area to the Boston-Worcester-Providence, MA, wage area. The Boston wage area is currently defined primarily by New England cities and towns rather than by counties with some counties divided between wage areas. This proposed rule would redefine the following counties to and within the Boston, MA, wage area based on the application of the new criteria:

- Coos County, NH, from the Portsmouth, NH, area of application to the Boston-Worcester-Providence, MA, area of application due to employment interchange measures favoring the Boston-Worcester-Providence, MA, wage area;
- Rockingham County, NH, would be part of the Boston-Worcester-Providence, MA, wage area because Rockingham County is part of the Boston-Worcester-Providence, MA-RI-NH, CSA. To effectuate this change, the cities and towns that comprise Rockingham County, NH, would be redefined in the following manner:
 - Rockingham County, NH (all cities and towns except Newton, Plaistow, Salem, and Westville, NH), would be redefined from the Portsmouth, NH, survey area to the Boston-Worcester-Providence, MA, area of application;
 - Rockingham County, NH (the portion that contains the cities and towns of Newton, Plaistow, Salem, and Westville, NH), would be redefined from the Portsmouth, NH, area of application to the Boston-Worcester-Providence, MA, area of application;
 - Rockingham County, NH, in its entirety would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026;
 - Strafford County, NH, would be redefined from the Portsmouth, NH, survey area to the Boston-Worcester-Providence, MA, area of application because Strafford County is part of the Boston-Worcester-Providence, MA-RI-NH, CSA. Strafford County would subsequently be moved to the Boston-Worcester-Providence survey area effective for local wage surveys beginning in August 2026;
 - Belknap, Hillsborough, and Merrimack Counties, NH, would be redefined from the Central and Western Massachusetts area of application to the Boston-Worcester-Providence, MA, area of application because these counties are part of the Boston-Worcester-Providence, MA-RI-NH, CSA;
 - Cheshire County, NH, would be redefined from the Central and Western Massachusetts area of application to the Boston-Worcester-Providence, MA, area of application. Cheshire County is part of the Keene-Brattleboro, NH-VT, CSA, and employment interchange measures for this CSA favor the Boston-Worcester-Providence, MA, wage area;
 - Carroll, Grafton, and Sullivan Counties, NH, would be redefined from the Central and Western Massachusetts area of application to the Boston-Worcester-Providence, MA, area of application based on employment interchange measures favoring the

Boston-Worcester-Providence, MA, wage area;

- Androscoggin, Cumberland, Sagadahoc, and York Counties, ME, would be redefined from the Portsmouth, NH, survey area to the Boston-Worcester-Providence, MA, area of application area. Androscoggin, Cumberland, Sagadahoc, and York Counties, ME, are part of the Portland-Lewiston-South Portland, ME, CSA, and employment interchange measures for this CSA favors defining it to the Boston-Worcester-Providence, MA, wage area. These counties would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026;
- Franklin and Oxford Counties, ME, would be redefined from the Portsmouth, NH, area of application to the Boston-Worcester-Providence, MA, area of application based on employment interchange measures favoring the Boston-Worcester-Providence, MA, wage area;
- Barnstable County, MA, would be defined to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026 because the county has over 100 FWS employees;
- Bristol County, MA, would be defined in its entirety to the Boston-Worcester-Providence, MA, wage area because it is part of the Boston-Worcester-Providence, MA-RI-NH, CSA. To effectuate this change, the following cities and towns in Bristol County would be redefined in the following manner:
 - Bristol County, MA (the portion that contains the town the cities and towns of Attleboro, Fall River, North Attleboro, Rehoboth, Seekonk, Somerset, Swansea, and Westport, MA), would be redefined from the Narragansett Bay, RI, survey area to the Boston-Worcester-Providence, MA, area of application;
 - Bristol County, MA (the portion that contains the cities and towns of Acushnet, Berkley, Dartmouth, Dighton, Fairhaven, Freetown, Mansfield, New Bedford, Norton, Raynham, and Taunton, MA), from the Narragansett Bay, RI, area of application to the Boston-Worcester-Providence, MA, area of application;
 - Bristol County, MA, would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026.
 - Essex County, MA, in its entirety would be part of the Boston-Worcester-Providence, MA, survey area because the county is part of the Boston-

Worcester-Providence, MA—RI—NH, CSA, and portions of the county are currently included the Boston and Portsmouth survey areas. To effectuate this change, the following cities and towns in Essex County would be redefined:

- Essex County, MA (the portion that contains the cities and towns of Andover, Essex, Gloucester, Ipswich, Lawrence, Methuen, Rockport, and Rowley, MA), would be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026;

- Essex County, MA (the portion that contains the cities and towns of Amesbury, Georgetown, Groveland, Haverhill, Merrimac, Newbury, Newburyport, North Andover, Salisbury, South Byfield, and West Newbury, MA), would be redefined from the Portsmouth, NH, survey area to the Boston-Worcester-Providence, MA, area of application. Essex County, MA (the portion that contains the cities and towns of Amesbury, Georgetown, Groveland, Haverhill, Merrimac, Newbury, Newburyport, North Andover, Salisbury, South Byfield, and West Newbury, MA), would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026.

- Middlesex County, MA, in its entirety would be part of the Boston-Worcester-Providence, MA, survey area because the county is part of the Boston-Worcester-Providence, MA—RI—NH, CSA, and portions of the county are included in a survey area. To effectuate this change, the following cities and towns in Middlesex County would be redefined:

- Middlesex County, MA (the portion that contains the cities and towns of Ayer, Billerica, Chelmsford, Dracut, Dunstable, Groton, Hopkinton, Hudson, Littleton, Lowell, Marlborough, Maynard, Pepperell, Stow, Tewksbury, Tyngsborough, and Westford, MA), would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026;

- Middlesex County, MA (the portion that contains the cities and towns of Ashby, Shirley, and Townsend, MA), would be redefined from the Central and Western Massachusetts area of application to the Boston-Worcester-Providence, MA, area of application. Middlesex County, MA (the portion that contains the cities and towns of Ashby, Shirley, and Townsend, MA), would be subsequently moved to the Boston-Worcester-Providence, MA, survey area

effective for local wage surveys beginning in August 2026.

- Norfolk County, MA, in its entirety would be part of the Boston-Worcester-Providence, MA, survey area because the county is part of the Boston-Worcester-Providence, MA—RI—NH, CSA, and portions of the county are included in a survey area. To effectuate this change, the following cities and towns in Norfolk County would be redefined:

- Norfolk County, MA (the portion that contains the town of Avon, MA) would be defined to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026;

- Norfolk County, MA (the portion that contains the cities and towns of Caryville, Plainville, and South Bellingham, MA) from the Narragansett Bay, RI, survey area to the Boston-Worcester-Providence, MA, area of application. Norfolk County, MA (the portion that contains the cities and towns of Caryville, Plainville, and South Bellingham, MA) would subsequently be defined to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026.

- Plymouth County, MA (nonsurvey area part), would be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026 because the county has more than 100 FWS workers;

- Worcester County, MA, in its entirety would be part of the Boston-Worcester-Providence, MA, survey area because the county is part of the Boston-Worcester-Providence, MA—RI—NH, CSA, and portions of the county are included in a survey area. To effectuate this change, the following cities and towns in Worcester County would be redefined:

- Worcester County, MA (the portion that contains the cities and towns of Blackstone and Millville, MA) would be redefined from the Narragansett Bay, RI, survey area to the Boston-Worcester-Providence, MA, area of application. Worcester County, MA (the portion that contains the cities and towns of Blackstone and Millville, MA) would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026;

- Worcester County, MA (the portion that contains the cities and towns of Warren and West Warren, MA) would be redefined from the Central and Western Massachusetts survey area to the Boston-Worcester-Providence, MA, area of application. Worcester County,

MA (the portion that contains the cities and towns of Warren and West Warren, MA) would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026;

- Worcester County, MA (all cities and towns except Blackstone, Millville, Warren, and West Warren, MA) would be redefined from the Central and Western Massachusetts area of application to the Boston-Worcester-Providence, MA, area of application. Worcester County, MA (all cities and towns except Blackstone, Millville, Warren, and West Warren, MA) would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026.

- Bristol County, RI, from the Narragansett Bay, RI, survey area to the Boston-Worcester-Providence, MA, area of application because Bristol County, RI, is part of the Boston-Worcester-Providence, MA—RI—NH, CSA. Bristol County, RI, would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026.

- Kent County, RI, would be part of the Boston-Worcester-Providence, MA, wage area because the county is part of the Boston-Worcester-Providence, MA—RI—NH, CSA. To effectuate this change, the cities and towns that comprise Kent County, RI, would be redefined in the following manner:

- Kent County, RI (the portion that contains the cities and towns of Anthony, Coventry, East Greenwich, Greene, Warwick, and West Warwick, RI), would be redefined from the Narragansett Bay, RI, survey area to the Boston-Worcester-Providence, MA, area of application;

- Kent County, RI (the portion that contains the town of West Greenwich, RI), would be redefined from the Narragansett Bay, RI, area of application to the Boston-Worcester-Providence, MA, area of application;

- Kent County, RI, would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026.

- Newport County, RI, would be redefined from the Narragansett Bay, RI, survey area to the Boston-Worcester-Providence, MA, area of application because the county is part of the Boston-Worcester-Providence, MA—RI—NH, CSA. Newport County, RI, would subsequently be moved to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026;

- Providence County, RI, would be part of the Boston-Worcester-Providence, MA, wage area because the county is part of the Boston-Worcester-Providence, MA–RI–NH, CSA. To effectuate this change, the cities and towns that comprise Providence County would be redefined in the following manner:

- Providence County, RI (the portion that contains the cities and towns of Ashton, Burrillville, Central Falls, Cranston, Cumberland, Cumberland Hill, East Providence, Esmond, Forestdale, Greenville, Harrisville, Johnston, Lincoln, Manville, Mapleville, North Providence, North Smithfield, Oakland, Pascoag, Pawtucket, Providence, Saylesville, Slatersville, Smithfield, Valley Falls, Wallum Lake, and Woonsocket, RI), would be redefined from the Narragansett Bay, RI, survey area to the Boston-Worcester-Providence, MA, area of application;

- Providence County, RI (the portion that contains the cities and towns of Foster, Glocester, and Scituate, RI), would be redefined from the Narragansett Bay, RI, area of application to the Boston-Worcester-Providence, MA, area of application;

- Providence County, RI, would subsequently be moved in its entirety to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026.

- Washington County, RI, would be part of the Boston-Worcester-Providence, MA, wage area because the county is part of the Boston-Worcester-Providence, MA–RI–NH, CSA. To effectuate this change, the cities and towns that comprise Washington County would be redefined in the following manner:

- Washington County, RI (the portion that contains the cities and towns of Davisville, Galilee, Lafayette, Narragansett, North Kingstown, Point Judith, Quonset Point, Saundertown, and Slocum, RI), would be redefined from the Narragansett Bay, RI, survey area to the Boston-Worcester-Providence, MA, area of application;

- Washington County, RI (the portion that contains the cities and towns of Charlestown, Exeter, Hopkinton, New Shoreham, Richmond, South Kingstown, and Westerly, RI), would be redefined from the Narragansett Bay, RI, area of application to the Boston-Worcester-Providence, MA, area of application;

- Washington County, RI, would subsequently be moved in its entirety to the Boston-Worcester-Providence, MA, survey area effective for local wage surveys beginning in August 2026.

- Windham County, VT, would be redefined from the Central and Western Massachusetts area of application to the Boston-Worcester-Providence, MA, area of application. Windham County is part of the Keene-Brattleboro, NH-VT, CSA, and employment interchange measures for this CSA favor the Boston-Worcester-Providence, MA, wage area;

- Orange and Windsor Counties, VT, would be redefined from the Central and Western Massachusetts area of application to the Boston-Worcester-Providence, MA, area of application based on employment interchange measures favoring the Boston-Worcester-Providence, MA, wage area.

Central and Western Massachusetts, MA, Wage Area

With the redefinition of Hampden and Hampshire Counties, MA, to the New Haven-Hartford, CT, wage area and Worcester County, MA, to the Boston-Worcester-Providence, MA, wage area, the Central and Western Massachusetts wage area would lose the entirety of its survey area. This proposed rule would abolish the Central and Western Massachusetts wage area and redefine its remaining counties to neighboring wage areas.

Detroit, MI, Wage Area

This proposed rule would change the name of the Detroit, MI, wage area to the Detroit-Warren-Ann Arbor, MI, wage area. This proposed rule would redefine the following counties to, away from, and within the Detroit, MI, wage area based on application of the new criteria:

- Jackson County, MI, from the Southwestern Michigan area of application to the Detroit-Warren-Ann Arbor, MI, area of application based on employment interchange measures favoring the Detroit-Warren-Ann Arbor, MI, wage area;

- Ottawa County, OH, from the Detroit, MI, area of application to the Cleveland-Akron-Canton, OH, area of application because Ottawa County is part of the Cleveland-Akron-Canton, OH, CSA;

- Lucas County, OH, and Washtenaw County, MI, to the Detroit-Warren-Ann Arbor, MI, survey area effective for local wage surveys beginning in January 2027 because more than 100 FWS employees work in each county.

Northwestern Michigan Wage Area

This proposed rule would redefine the following counties to the Northwestern Michigan wage area based on application of the new criteria:

- Florence and Marinette Counties, WI, from the Southwestern Wisconsin area of application to the Northwestern

Michigan area of application. Florence and Marinette Counties are part of the Marinette-Iron Mountain, WI-MI, CSA, and distance criteria for this CSA favor the Northwestern Michigan wage area over the Southwestern Wisconsin wage area.

Southwestern Michigan Wage Area

This proposed rule would define the following county away from the Southwestern Michigan wage area based on application of the new criteria:

- Jackson County, MI, from the Southwestern Michigan area of application to the Detroit-Warren-Ann Arbor, MI, area of application based on employment interchange measures favoring the Detroit-Warren-Ann Arbor, MI, wage area.

Duluth, MN, Wage Area

This proposed rule would redefine the follow county away from the Duluth, MN, wage area based on application of the new criteria:

- Pine County, MN, from the Duluth, MN, area of application to the Minneapolis-St. Paul, MN, area of application based on employment interchange measures favoring the Minneapolis-St. Paul, MN, wage area over the Duluth, MN, wage area.

Minneapolis-St. Paul, MN, Wage Area

This proposed rule would redefine the following counties to and within the Minneapolis-St. Paul, MN, wage area based on application of the new criteria:

- Pine County, MN, from the Duluth, MN, area of application to the Minneapolis-St. Paul, MN, area of application based on employment interchange measures favoring the Minneapolis-St. Paul, MN, wage area over the Duluth, MN, wage area;

- Winona County, MN, from the Southwestern Wisconsin area of application to the Minneapolis-St. Paul, MN, area of application. Winona County is part of the Rochester-Austin-Winona, MN, CSA, and employment interchange measures for this CSA favor the Minneapolis-St. Paul, MN, wage area over the Southwestern Wisconsin wage area;

- Morrison and Stearns Counties, MN, to the Minneapolis-St. Paul, MN, survey area effective for local wage surveys beginning in April 2027 because more than 100 FWS employees work in each county.

Kansas City, MO, Wage Area

This proposed rule would redefine the following counties to, away from, and within the Kansas City, MO, wage area based on application of the new criteria:

- Jefferson, Osage, and Shawnee Counties, KS, from the Topeka, KS, survey area to the Kansas City, MO, area of application. Jefferson, Osage, and Shawnee Counties are part of the Topeka, KS, MSA, and employment interchange measures for this MSA favor the Kansas City wage area. These counties would subsequently be moved to the Kansas City, MO, survey area effective for local wage surveys beginning in October 2026;
- Jackson and Wabaunsee Counties, KS, from the Topeka, KS, area of application to the Kansas City, MO, area of application. Jackson and Wabaunsee Counties are part of the Topeka, KS, MSA, and employment interchange measures for this MSA favor the Kansas City, MO, wage area;
- Cooper and Howard Counties, MO, from the Kansas City, MO, area of application to the St. Louis, MO, area of application. Cooper and Howard Counties are part of the Columbia-Jefferson City-Moberly, MO, CSA, and employment interchange measures for this CSA favor the St. Louis, MO, wage area over the Kansas City, MO, wage area;
- Johnson County, MO, to the Kansas City, MO, survey area effective for local wage surveys beginning in October 2026 because more than 100 FWS employees work in Johnson County.

St. Louis, MO, Wage Area

This proposed rule would redefine the following counties to, away from, and within the St. Louis, MO, wage area based on application of the new criteria:

- Adams County, IL, from the Davenport-Rock Island-Moline, IA, area of application to the St. Louis, MO, area of application. Adams County is part of the Quincy-Hannibal, IL-MO, CSA, and employment interchange measures for this CSA favor the St. Louis, MO, wage area over the Davenport-Moline, IA, wage area.
- Cooper and Howard Counties, MO, from the Kansas City, MO, area of application to the St. Louis, MO, area of application. Cooper and Howard Counties are part of the Columbia-Jefferson City-Moberly, MO, CSA, and employment interchange measures for this CSA favor the St. Louis, MO, wage area over the Kansas City, MO, wage area;
- Mississippi and Scott Counties, MO, from the Southern Missouri area of application to the St. Louis, MO, area of application. Mississippi and Scott Counties are part of the Cape Girardeau-Sikeston, MO-IL, CSA, and employment interchange measures for this CSA favor the St. Louis, MO, wage area over the Southern Missouri wage area;

- Iron and Madison Counties, MO, from the Southern Missouri area of application to the St. Louis, MO, area of application based on employment interchange measures favoring the St. Louis, MO, wage area over the Southern Missouri wage area;
- Morgan and Scott Counties, IL, from the St. Louis, MO, area of application to the Bloomington-Pontiac, IL, area of application. Morgan and Scott counties are part of the Springfield-Jacksonville-Lincoln, IL, CSA, and employment interchange measures for this CSA favor the Bloomington-Pontiac, IL, wage area over the St. Louis, MO, wage area;
- Massac County, IL, from the St. Louis, MO, area of application to the Nashville, TN, area of application. Massac County is part of the Paducah-Mayfield, KY-IL, CSA, and employment interchange measures for this CSA favor the Nashville, TN, wage area over the St. Louis, MO, wage area;
- Boone County, MO, to the St. Louis, MO, survey area effective for local wage surveys beginning in October 2026 because more than 100 FWS employees work in Boone County;
- Williamson County, IL, to the St. Louis, MO, survey area effective for local wage surveys beginning in October 2026 because more than 100 FWS employees work in Williamson County.

Southern Missouri Wage Area

This proposed rule would redefine the following counties away from the Southern Missouri wage area based on application of the new criteria:

- Mississippi and Scott Counties, MO, from the Southern Missouri area of application to the St. Louis, MO, area of application. Mississippi and Scott Counties are part of the Cape Girardeau-Sikeston, MO-IL, CSA, and employment interchange measures for this CSA favor the St. Louis, MO, wage area over the Southern Missouri wage area;
- Iron and Madison Counties, MO, from the Southern Missouri area of application to the St. Louis, MO, area of application based on employment interchange measures favoring the St. Louis, MO, wage area over the Southern Missouri wage area.

Reno, NV, Wage Area

This proposed rule would redefine the following counties to, away from, and within the Reno, NV, wage area based on application of the new criteria:

- Alpine County, CA, from the Sacramento, CA, area of application to the Reno, NV area of application because Alpine County is part of the Reno-Carson City-Gardnerville Ranchos, NV-CA, CSA;

- Madera County, CA (Devils Postpile National Monument portion) from the Reno, NV, area of application to the Fresno, CA, area of application because Madera County is part of the Fresno-Hanford-Corcoran, CA, CSA;
- Lassen County, CA, to the Reno, NV, survey area effective for local wage surveys beginning in March 2026 because more than 100 FWS employees work in Lassen County.

Portsmouth, NH, Wage Area

With the redefinition of Androscoggin, Cumberland, Sagadahoc, and York Counties, ME; Essex County, MA; and Rockingham and Stafford Counties, NH, to the Boston-Worcester-Providence, MA, survey area, the Portsmouth, NH, wage area would lose the entirety of its survey area. This proposed rule would abolish the Portsmouth, NH, wage area and redefine its remaining counties to neighboring wage areas.

Albuquerque, NM, Wage Area

This proposed rule would change the name from the Albuquerque, NM, wage area to the Albuquerque-Santa Fe-Los Alamos, NM, wage area. This proposed rule would also redefine the following county to the Albuquerque-Santa Fe-Los Alamos wage area based on the application of the new criteria:

- McKinley County, NM, from the Northeastern Arizona survey area to the Albuquerque-Santa Fe-Los Alamos, NM, area of application based on employment interchange measures being more favorable to the Albuquerque-Santa Fe-Los Alamos, NM, than to the Northeastern Arizona wage area. This county would subsequently be moved to the Albuquerque-Santa Fe-Los Alamos, NM, survey area effective for local wage surveys beginning in April 2027.

Albany-Schenectady-Troy, NY, Wage Area

This proposed rule would change the name of the Albany-Schenectady-Troy, NY, wage area to the Albany-Schenectady, NY, wage area. The proposed rule would redefine the following counties to and from the Albany-Schenectady-Troy, NY, wage area based on the application of the new criteria:

- Berkshire County, MA, from the Central and Western Massachusetts area of application to the Albany-Schenectady, NY, area of application based on employment interchange measures favoring the Albany-Schenectady, NY, wage area;
- Bennington and Rutland Counties, VT, from the Central and Western

Massachusetts area of application to the Albany-Schenectady, NY, area of application based on employment interchange measures favoring the Albany-Schenectady, NY, wage area;

- Hamilton County, NY, from the Syracuse-Utica-Rome, NY, area of application to the Albany-Schenectady, NY, area of application based on employment interchange measures favoring the Albany-Schenectady, NY, wage area over the Syracuse-Utica-Rome, NY, wage area;

- Ulster County, NY, from the Albany-Schenectady-Troy, NY, area of application to the New York-Newark, NY, area of application because Ulster County is part of the New York-Newark, NY-NJ-CT-PA, CSA.

Buffalo, NY, Wage Area

The proposed rule would redefine the following counties to the Buffalo, NY, wage area based on application of the new criteria:

- Allegany and Wyoming Counties, NY, from the Rochester, NY, area of application to the Buffalo area of application based on employment interchange measures favoring the Buffalo wage area over the Rochester wage area.

New York, NY, Wage Area

This proposed rule would change the name of the New York, NY, wage area to the New York-Newark, NY, wage area. This proposed rule would redefine the following counties to and within the New York-Newark, NY, wage area based on application of the new criteria:

- Fairfield County, CT, from the New Haven-Hartford, CT, area of application to the New York-Newark, NY, area of application because all FWS employees who work in Fairfield County are located in the New York-Newark, NY-NJ-CT-PA, CSA;

- Mercer County, NJ, from the Philadelphia, PA, area of application to the New York-Newark, NY, area of application because Mercer County is part of the New York-Newark, NY-NJ-CT-PA, CSA;

- Warren County, NJ, from the Philadelphia, PA, area of application to the New York-Newark, NY, area of application. Warren County is part of the Allentown-Bethlehem-East Stroudsburg, PA-NJ, CSA and employment interchange measures for this CSA favor the New York-Newark, NY, wage area;

- Sullivan County, NY, from the Scranton-Wilkes-Barre, PA, area of application to the New York-Newark, NY, area of application because Sullivan County is part of the New York-Newark, NY-NJ-CT-PA, CSA;

- Ulster County, NY, from the Albany-Schenectady-Troy, NY, area of application to the New York-Newark, NY, area of application because Ulster County is part of the New York-Newark, NY-NJ-CT-PA, CSA;

- Carbon, Lehigh, and Northampton Counties, PA, from the Philadelphia, PA, area of application to the New York-Newark, NY, area of application. Carbon, Lehigh, and Northampton Counties are part of the Allentown-Bethlehem-East Stroudsburg, PA-NJ, CSA and employment interchange measures for this CSA favor the New York-Newark, NY, wage area;

- Monroe County, PA, from the Scranton-Wilkes-Barre, PA, survey area to the New York-Newark, NY, area of application. Monroe County is part of the Allentown-Bethlehem-East Stroudsburg, PA-NJ, CSA and employment interchange measures for this CSA favor the New York-Newark, NY, wage area. This county would subsequently be moved to the New York-Newark, NY, survey area effective for local wage surveys beginning in January 2028;

- Wayne County, PA, from the Scranton-Wilkes-Barre, PA, area of application to the New York-Newark, NY, area of application. Although analysis of some of the wage area criteria, such as distance, for Wayne County favors defining it to the Scranton-Wilkes-Barre, PA, wage area the United States Penitentiary Canaan, in Wayne County, is just 36 miles away from Tobyhanna Army Depot, the largest Federal employer in Northeastern Pennsylvania which will be defined to the New York-Newark, NY, wage area. GS employees at USP Canaan and Tobyhanna Army Depot are in the New York-Newark, NY-NJ-CT-PA GS locality pay area based on employment interchange measures.

OPM is therefore making a decision to move Wayne County to the New York-Newark, NY, wage area's area of application based on an analysis of all of revised wage area criteria;

- Monmouth and Ocean Counties, NJ, to the New York-Newark, NY, survey area effective for local wage surveys beginning in January 2028 because more than 100 FWS employees work in each county;

- Dutchess County, NY, to the New York-Newark, NY, survey area effective for local wage surveys beginning in January 2028 because more than 100 FWS employees work in Dutchess County.

Northern New York Wage Area

This proposed rule would redefine the following counties to the Northern

New York wage area based on application of the new criteria:

- Washington County, VT, from the Central and Western Massachusetts area of application to the Northern New York area of application. Washington County is part of the Burlington-South Burlington-Barre, VT, CSA, and employment interchange measures for this CSA favor the Northern New York wage area;

- Addison, Caledonia, Essex, Lamoille, and Orleans Counties, VT, from the Central and Western Massachusetts area of application to the Northern New York area of application because employment interchange measures favor the Northern New York wage area.

Rochester, NY, Wage Area

The proposed rule would redefine the following counties away from the Rochester, NY, wage area based on application of the new criteria:

- Allegany and Wyoming Counties, NY, from the Rochester, NY, area of application to the Buffalo, NY, area of application based on employment interchange measures favoring the Buffalo, NY, wage area over the Rochester, NY, wage area.

Syracuse-Utica-Rome, NY, Wage Area

The proposed rule would redefine the following county away from the Syracuse-Utica-Rome, NY, wage area based on application of the new criteria:

- Hamilton County, NY, from the Syracuse-Utica-Rome, NY, wage area to the Albany-Schenectady, NY, wage area based on employment interchange measures favoring the Albany-Schenectady, NY, wage area over the Syracuse-Utica-Rome, NY, wage area.

Asheville, NC, Wage Area

The proposed rule would redefine the following counties away from the Asheville, NC, wage area based on application of the new criteria:

- Alexander, Burke, Caldwell, Catawba, and McDowell Counties, NC, from the Asheville area of application to the Charlotte-Concord, NC, area of application because these counties are part of the Charlotte-Concord, NC-SC, CSA.

Charlotte, NC, Wage Area

This proposed rule would change the name of the Charlotte, NC, wage area to the Charlotte-Concord, NC, wage area. The proposed rule would redefine the following counties to the Charlotte-Concord, NC, wage area based on application of the new criteria:

- Alexander, Burke, Caldwell, Catawba, and McDowell Counties, NC,

from the Asheville, NC, area of application to the Charlotte-Concord, NC, area of application because these counties are part of the Charlotte-Concord, NC-SC, CSA.

Southeastern North Carolina Wage Area

This proposed rule would redefine the following counties away from the Southeastern North Carolina wage area based on application of the new criteria:

- Horry County, SC from the Southeastern North Carolina area of application to the Charleston, SC, area of application. Horry County is part of the Myrtle Beach-Conway, SC, CSA, and employment interchange measures for this CSA favor the Charleston, SC, wage area over the Southeastern North Carolina wage area;
- Dare County, NC, from the Southeastern North Carolina area of application to the Virginia Beach-Chesapeake, VA, area of application because Dare County is part of the Virginia Beach-Chesapeake, VA-NC, CSA;
- Hertford and Tyrrell Counties, NC, from the Southeastern North Carolina area of application to the Virginia Beach-Chesapeake, VA, area of application based on employment interchange measures favoring the Virginia Beach-Chesapeake, VA, wage area over the Southeastern North Carolina wage area.

Cincinnati, OH, Wage Area

This proposed rule would change the name of the Cincinnati, OH, wage area to the Cincinnati-Wilmington, OH, wage area. This proposed rule would redefine the following counties to the Cincinnati-Wilmington, OH, wage area based on application of the new criteria:

- Clinton County, OH, from the Dayton, OH, area of application to the Cincinnati-Wilmington, OH, area of application because Clinton County is part of the Cincinnati-Wilmington, OH-KY-IN, CSA;
- Owen and Robertson Counties, KY, from the Lexington, KY, area of application to the Cincinnati-Wilmington, OH, area of application based on employment interchange measures favoring the Cincinnati-Wilmington, OH, wage area over the Lexington, KY, wage area;
- Lewis County, KY, from the West Virginia area of application to the Cincinnati-Wilmington, OH, area of application based on employment interchange measures favoring the Cincinnati-Wilmington, OH, wage area.

Cleveland, OH, Wage Area

This proposed rule would change the name of the Cleveland, OH, wage area

to the Cleveland-Akron-Canton, OH, wage area. The proposed rule would redefine the following counties to, away from, and within the Cleveland, OH, wage area based on application of the new criteria:

- Coshocton County, OH, from the Columbus, OH, area of application to the Cleveland-Akron-Canton, OH, area of application because Coshocton County is part of the Cleveland-Akron-Canton, OH, CSA;
- Ottawa County, OH, from the Detroit, MI, area of application to the Cleveland-Akron-Canton, OH, area of application because Ottawa County is part of the Cleveland-Akron-Canton, OH, CSA;
- Tuscarawas County, OH, from the Pittsburgh, PA, area of application to the Cleveland-Akron-Canton, OH, area of application because Tuscarawas County is part of the Cleveland-Akron-Canton, OH, CSA;
- Crawford and Richland Counties, OH, from the Columbus, OH, area of application to the Cleveland-Akron-Canton, OH, area of application. Crawford and Richland Counties are part of the Mansfield-Ashland-Bucyrus, OH, CSA, and employment interchange measures for this CSA favor the Cleveland-Akron-Canton, OH, wage area over the Columbus-Marion-Zanesville wage area;
- Holmes County, OH, from the Columbus, OH, area of application to the Cleveland-Akron-Canton, OH, area of application based on employment interchange measures favoring the Cleveland-Akron-Canton, OH, wage area over the Columbus-Marion-Zanesville, OH, wage area;
- Seneca County, OH, from the Cleveland, OH, area of application to the Columbus-Marion-Zanesville, OH, area of application. Seneca County is part of the Findlay-Tiffin, OH, CSA, and employment interchange measures for this CSA favor the Columbus-Marion-Zanesville, OH, wage area over the Cleveland-Akron-Canton, OH, wage area;
- Mercer County, PA, from the Cleveland, OH, area of application to the Pittsburgh, PA, area of application because Mercer County is part of the Pittsburgh-Weirton-Steubenville, PA-OH-WV, CSA;
- Mahoning County, OH, to the Cleveland-Akron-Canton, OH, survey area effective for local wage surveys beginning in April 2027 because the county has over 100 FWS employees.

Columbus, OH, Wage Area

This proposed rule would change the name of the Columbus, OH, wage area to the Columbus-Marion-Zanesville,

OH, wage area. The proposed rule would redefine the following counties to, away from, and within the Columbus, OH, wage area based on application of the new criteria:

- Athens County, OH, from the West Virginia area of application to the Columbus-Marion-Zanesville, OH, area of application because Athens County is part of the Columbus-Marion-Zanesville CSA;
- Logan County, OH, from the Dayton, OH, area of application to the Columbus-Marion-Zanesville, OH, area of application because Logan County is part of the Columbus-Marion-Zanesville, OH, CSA;
- Seneca County, OH, from the Cleveland, OH, area of application to the Columbus-Marion-Zanesville, OH, area of application. Seneca County is part of the Findlay-Tiffin, OH, CSA, and employment interchange measures for this CSA favor the Columbus-Marion-Zanesville, OH, wage area over the Cleveland-Akron-Canton, OH, wage area;
- Morgan, Noble, Pike, and Vinton Counties, OH, from the West Virginia area of application to the Columbus-Marion-Zanesville, OH, area of application based on employment interchange measures favoring the Columbus-Marion-Zanesville, OH, wage area;
- Coshocton County, OH, from the Columbus, OH, area of application to the Cleveland-Akron-Canton, OH, area of application because Coshocton County is part of the Cleveland-Akron-Canton, OH, CSA;
- Crawford and Richland Counties, OH, from the Columbus, OH, area of application to the Cleveland-Akron-Canton, OH, area of application. Crawford and Richland Counties are part of the Mansfield-Ashland-Bucyrus, OH, CSA, and employment interchange measures for this CSA favor the Cleveland-Akron-Canton, OH, wage area over the Columbus-Marion-Zanesville, OH, wage area;
- Holmes County, OH, from the Columbus, OH, area of application to the Cleveland-Akron-Canton, OH, area of application based on employment interchange measures favoring the Cleveland-Akron-Canton, OH, wage area over the Columbus-Marion-Zanesville, OH, wage area;
- Ross County, OH, to the Columbus-Marion-Zanesville OH, survey area effective for local wage surveys beginning in January 2027 because the county has over 100 FWS employees.

Dayton, OH, Wage Area

This proposed rule would redefine the following counties to and away from

the Dayton, OH, wage area based on application of the new criteria:

- Allen, Mercer, and Van Wert Counties, OH, from the Ft. Wayne-Marion, IN, area of application to the Dayton, OH, area of application. Allen, Mercer, and Van Wert Counties are part of the Lima-Van Wert-Celina, OH, CSA, and employment interchange measures for this CSA favor the Dayton, OH, wage area over the Ft. Wayne-Marion, IN, wage area;

- Clinton County, OH, from the Dayton, OH, area of application to the Cincinnati-Wilmington, OH, area of application because Clinton County is part of the Cincinnati-Wilmington, OH-KY-IN, CSA;

- Logan County, OH, from the Dayton, OH, area of application to the Columbus-Marion-Zanesville, OH, area of application because Logan County is part of the Columbus-Marion-Zanesville CSA;

- Wayne County, IN, from the Dayton, OH, area of application to the Indianapolis-Carmel-Muncie, IN, area of application. Wayne County is part of the Richmond-Connersville, IN, CSA, and employment interchange measures for this CSA favor the Indianapolis-Carmel-Muncie, IN, wage area over the Dayton, OH, wage area;

- Randolph County, IN, from the Dayton, OH, area of application to the Indianapolis-Carmel-Muncie, IN, area of application based on employment interchange measures favoring the Indianapolis-Carmel-Muncie, IN, wage area over the Dayton, OH, wage area.

Oklahoma City, OK, Wage Area

This proposed rule would redefine the following counties away from the Oklahoma City, OK, wage area based on application of the new criteria:

- Bryan County, OK, from the Oklahoma City, OK, area of application to the Dallas-Fort Worth, TX, area of application because Bryan County is part of the Dallas-Fort Worth, TX-OK, CSA;

- Carter and Love Counties, OK, from the Oklahoma City, OK, area of application to the Dallas-Fort Worth, TX, area of application based on employment interchange measures favoring the Dallas-Fort Worth, TX, wage area over the Oklahoma City, OK, wage area.

Portland, OR, Wage Area

This proposed rule would change the name of the Portland, OR, wage area to the Portland-Vancouver-Salem, OR, wage area. The proposed rule would redefine the following counties to and away from the Portland, OR, wage area based on application of the new criteria:

- Linn and Benton Counties, OR, from the Southwestern Oregon area of application to the Portland-Vancouver-Salem, OR, area of application because these counties are part of the Portland-Vancouver-Salem, OR, CSA;

- Pacific County, WA, from the Portland, OR area of application to the Seattle-Tacoma, WA, area of application based on employment interchange measures favoring the Seattle-Tacoma, WA, wage area over the Portland-Vancouver-Salem, OR, wage area.

Southwestern Oregon, OR, Wage Area

This proposed rule would redefine the following counties to and away from the Southwestern Oregon wage area based on application of the new criteria:

- Del Norte County, CA, from the Sacramento, CA, area of application to the Southwestern Oregon area of application. Del Norte County is part of the Brookings-Crescent City, OR-CA, CSA, and employment interchange measures for this CSA favor the Southwestern Oregon wage area over the Sacramento-Roseville, CA, wage area;

- Linn and Benton Counties, OR, from the Southwestern Oregon area of application to the Portland-Vancouver-Salem, OR, area of application because these counties are part of the Portland-Vancouver-Salem CSA.

Harrisburg, PA, Wage Area

This proposed rule would change the name of the Harrisburg, PA, wage area to the Harrisburg-York-Lebanon, PA, wage area. Because Adams and York Counties, PA, are part of the Harrisburg-York-Lebanon, PA, CSA they would be defined to this wage area rather than to the Washington-Baltimore-Arlington, DC, wage area to avoid splitting the CSA. Adams and York Counties are defined to the Washington-Baltimore-Arlington GS locality pay area based on a Federal Salary Council recommendation and Pay Agent decision to keep the counties defined to that locality pay area after a new GS locality pay area was established for Harrisburg. The proposed rule would redefine the following counties to, away from, and within the Harrisburg, PA, wage area based on application of the new criteria:

- Northumberland, Snyder, and Union Counties, PA, from the Harrisburg, PA, area of application to the Scranton-Wilkes-Barre, PA, area of application. Northumberland, Snyder, and Union Counties are part of the Bloomsburg-Berwick-Sunbury, PA, CSA, and employment interchange measures for this CSA favor the Scranton-Wilkes-Barre, PA, wage area;

- Clinton County, PA, from the Pittsburgh, PA, area of application to the Harrisburg-York-Lebanon, PA, area of application. Clinton County is part of the Williamsport-Lock Haven, PA, CSA, and employment interchange measures for this CSA favor the Harrisburg-York-Lebanon, PA, wage area;

- Lycoming County (does not include the Allenwood Federal Prison Camp portion) from the Scranton-Wilkes-Barre, PA, area of application to the Harrisburg-York-Lebanon, PA, area of application. Lycoming County is part of the Williamsport-Lock Haven, PA, CSA, and employment interchange measures for this CSA favor the Harrisburg-York-Lebanon, PA, wage area;

- Berks County, PA, from the Harrisburg, PA, area of application to the Philadelphia-Reading-Camden, PA, area of application because Berks County is part of the Philadelphia-Reading-Camden, PA-NJ-DE-MD, CSA;

- Schuylkill County, PA, from the Harrisburg, PA, area of application to the Philadelphia-Reading-Camden, PA, area of application based on employment interchange measures favoring the Philadelphia-Reading-Camden, PA, wage area over the Harrisburg-York-Lebanon, PA, wage area;

- Union County, PA, to the Harrisburg-Lebanon-York, PA, survey area effective for local wage surveys beginning in May 2026 because the county has over 100 FWS employees.

Philadelphia, PA, Wage Area

This proposed rule would change the name of the Philadelphia, PA, wage area to the Philadelphia-Reading-Camden, PA, wage area. This proposed rule would redefine the following counties to and away from the Philadelphia, PA, wage area based on application of the new criteria:

- Kent and New Castle Counties, DE, from the Wilmington, DE, survey area to the Philadelphia-Reading-Camden, PA, area of application because Kent and New Castle Counties are part of the Philadelphia-Reading-Camden, PA-NJ-DE-MD, CSA. These counties would subsequently be moved to the Philadelphia-Reading-Camden, PA, survey area effective for local wage surveys beginning in October 2027;

- Sussex County, DE, from the Wilmington, DE, area of application to the Philadelphia-Reading-Camden, PA, area of application because employment interchange measures favor the Philadelphia-Reading-Camden, PA, wage area;

- Cecil County, MD, from the Wilmington, DE, survey area to the Philadelphia-Camden-Reading, PA, area

of application because Cecil County is part of the Philadelphia-Reading-Camden, PA-NJ-DE-MD, CSA. This county would subsequently be moved to the Philadelphia-Reading-Camden, PA, survey area effective for local wage surveys beginning in October 2027;

- Somerset, Wicomico, and Worcester (does not include the Assateague Island portion) Counties, MD, from the Wilmington, DE, area of application to the Philadelphia-Reading-Camden, PA, area of application. Somerset, Wicomico, and Worcester Counties, MD, are part of the Salisbury-Ocean Pines, MD, CSA;

- Salem County, NJ, from the Wilmington, DE, survey area to the Philadelphia-Reading-Camden, PA, area of application because Salem County is part of the Philadelphia-Reading-Camden, PA-NJ-DE-MD, CSA. This county would subsequently be moved to the Philadelphia-Reading-Camden, PA, survey area effective for local wage surveys beginning in October 2027;

- Berks County, PA, from the Harrisburg, PA, area of application to the Philadelphia-Reading-Camden, PA, area of application because Berks County is part of the Philadelphia-Reading-Camden, PA-NJ-DE-MD, CSA;

- Schuylkill County, PA, from the Harrisburg, PA, area of application to the Philadelphia-Reading-Camden, PA, area of application because employment interchange measures favor the Philadelphia-Reading-Camden, PA, wage area;

- Mercer County, NJ, from the Philadelphia, PA, area of application to the New York-Newark, NY, area of application because Mercer County is part of the New York-Newark, NY-NJ-CT-PA, CSA;

- Warren County, NJ, from the Philadelphia, PA, area of application to the New York-Newark, NY, area of application. Warren County is part of the Allentown-Bethlehem-East Stroudsburg, PA-NJ, and employment interchange measures for this CSA favor the New York-Newark, NY, wage area;

- Carbon, Lehigh, and Northampton Counties, PA, from the Philadelphia, PA, area of application to the New York-Newark, NY, area of application. Carbon, Lehigh, and Northampton Counties are part of the Allentown-Bethlehem-East Stroudsburg, PA-NJ, and employment interchange measures for this CSA favor the New York-Newark, NY, wage area.

Pittsburgh, PA, Wage Area

This proposed rule would redefine the following counties to, away from, and within the Pittsburgh, PA, wage

area based on application of the new criteria:

- Mercer County, PA, from the Cleveland, OH, area of application to the Pittsburgh, PA, area of application because Mercer County is part of the Pittsburgh-Weirton-Steubenville, PA-OH-WV, CSA;

- Tuscarawas Counties, OH, from the Pittsburgh, PA, area of application to the Cleveland-Akron-Canton, OH, area of application because Tuscarawas County is part of the Cleveland-Akron-Canton, OH, CSA;

- Clinton County, PA, from the Pittsburgh, PA, area of application to the Harrisburg-York-Lebanon, PA, area of application. Clinton County is part of the Williamsport-Lock Haven, PA, CSA, and employment interchange measures for this CSA favor the Harrisburg-York-Lebanon, PA, wage area;

- Cambria County, PA, to the Pittsburgh, PA, survey area effective for local wage surveys beginning in July 2027 because more than 100 FWS employees work in Cambria County.

Scranton-Wilkes-Barre, PA, Wage Area

This proposed rule would redefine the following counties away from the Scranton-Wilkes-Barre, PA, wage area based on application of the new criteria:

- Sullivan County, NY, from the Scranton-Wilkes-Barre, PA, area of application to the New York-Newark, NY, area of application because Sullivan County is part of the New York-Newark, NY-NJ-CT-PA, CSA;

- Lycoming County (does not include the Allenwood Federal Prison Camp portion) from the Scranton-Wilkes-Barre, PA, area of application to the Harrisburg-York-Lebanon, PA, area of application. Lycoming County is part of the Williamsport-Lock Haven, PA, CSA, and employment interchange measures for this CSA favor the Harrisburg-York-Lebanon, PA, wage area;

- Monroe County, PA, from the Scranton-Wilkes-Barre, PA, survey area to the New York-Newark, NY, area of application. Monroe County is part of the Allentown-Bethlehem-East Stroudsburg, PA-NJ, CSA and employment interchange measures for this CSA favor the New York-Newark, NY, wage area. This county would subsequently be moved to the New York-Newark, NY, survey area effective for local wage surveys beginning in January 2028;

- Northumberland, Snyder, and Union Counties, PA, from the Harrisburg, PA, area of application to the Scranton-Wilkes-Barre, PA, area of application. Northumberland, Snyder, and Union Counties are part of the Bloomsburg-Berwick-Sunbury, PA,

CSA, and employment interchange measures for this CSA favor the Scranton-Wilkes-Barre, PA, wage area;

- Wayne County, PA, from the Scranton-Wilkes-Barre area of application to the New York-Newark area of application as explained for the New York-Newark wage area definition above.

Narragansett Bay, RI, Wage Area

With the redefinition of Bristol, Norfolk, and Worcester Counties, MA; and Bristol, Kent, Newport, Providence and Washington Counties, RI, to the Boston-Worcester-Providence, MA, survey area, the Narragansett Bay, RI, wage area would lose the entirety of its survey area. This proposed rule would abolish the Narragansett Bay, RI, wage area and redefine its remaining counties to the Boston-Worcester-Providence, MA, wage area.

Charleston, SC, Wage Area

The proposed rule would redefine the following counties to and away from the Charleston, SC, wage area based on application of the new criteria:

- Horry County, SC from the Southeastern North Carolina area of application to the Charleston, SC, area of application. Horry County is part of the Myrtle Beach-Conway, SC, CSA, and employment interchange measures for this CSA favor the Charleston, SC, wage area over the Southeastern North Carolina wage area;

- Beaufort County, SC (the portion north of Broad River), from the Charleston, SC, area of application to the Savannah, GA, area of application. Beaufort County is part of the Hilton Head Island-Bluffton-Port Royal, SC, MSA, and employment interchange measures for this MSA favor the Savannah, GA, wage area over the Charleston, SC, wage area. Beaufort County would subsequently be moved to the Savannah, GA, survey area effective for local wage surveys beginning in May 2027 because more than 100 FWS employees work in Beaufort County.

Nashville, TN, Wage Area

This proposed rule would redefine the following counties to the Nashville, TN, wage area based on the application of the new criteria:

- Jackson County, AL, from the Huntsville, AL, area of application to the Nashville, TN, area of application. Jackson County is part of the Chattanooga-Cleveland-Dalton, TN-GA-AL, CSA. Most of this CSA is currently defined to the Nashville wage area;

- Chattooga, Murray, and Whitfield Counties, GA, from the Atlanta-, GA,

area of application to the Nashville, TN, area of application;

- Massac County, IL, from the St. Louis, MO, area of application to the Nashville, TN, area of application. Massac County is part of the Paducah-Mayfield, KY-IL, CSA, and employment interchange measures for this CSA favor the Nashville, TN, wage area over the St. Louis, MO, wage area;

- Livingston County, KY, from the Bloomington-Bedford-Washington, IN, area of application to the Nashville, TN, area of application. Livingston County is part of the Paducah-Mayfield, KY-IL, CSA, and employment interchange measures for this CSA favor the Nashville, TN, wage area over the Evansville-Henderson, IN, wage area.

- Franklin, Lawrence, and Moore Counties, TN, from the Huntsville, AL, area of application to the Nashville, TN, area of application because these counties are part of the Nashville-Davidson-Murfreesboro, TN, CSA.

Corpus Christi, TX, Wage Area

This proposed rule would change the name of the Corpus Christi, TX, wage area to the Corpus Christi-Kingsville-Alice, TX, wage area. The proposed rule would redefine the following counties to and within the Corpus Christi, TX, wage area based on application of the new criteria:

- Duval County, TX, from the San Antonio, TX, area of application to the Corpus Christi-Kingsville-Alice, TX, area of application based on employment interchange measures favoring the Corpus Christi-Kingsville-Alice, TX, wage area over the San Antonio, TX, wage area;

- Hidalgo County, TX, to the Corpus Christi-Kingsville-Alice, TX, survey area effective for local wage surveys beginning in June 2026 because the county has over 100 FWS employees.

Dallas-Fort Worth, TX, Wage Area

The proposed rule would redefine the following counties to the Dallas-Fort Worth, TX, wage area based on application of the new criteria:

- Bryan County, OK, from the Oklahoma City, OK, area of application to the Dallas-Fort Worth, TX, area of application because Bryan County is part of the Dallas-Fort Worth, TX-OK, CSA;

- Carter and Love Counties, OK, from the Oklahoma City, OK, area of application to the Dallas-Fort Worth, TX, area of application based on employment interchange measures favoring the Dallas-Fort Worth wage area over the Oklahoma City, OK, wage area;

- Cherokee County, TX, from the Shreveport, LA, area of application to the Dallas-Fort Worth, TX, area of application. Cherokee County is part of the Tyler-Jacksonville, TX, CSA, and employment interchange measures for this CSA favor the Dallas-Fort Worth, TX, wage area over the Shreveport, LA, wage area;

- Hill County, TX, from the Waco, TX, area of application to the Dallas-Fort Worth, TX, area of application based on employment interchange measures favoring the Dallas-Fort Worth, TX, wage area over the Waco, TX, wage area.

San Antonio, TX, Wage Area

The proposed rule would redefine the following counties away from the San Antonio, TX, wage area based on application of the new criteria:

- Duval County, TX, from the San Antonio, TX, area of application to the Corpus Christi-Kingsville-Alice, TX, area of application based on employment interchange measures favoring the Corpus Christi-Kingsville-Alice, TX, wage area over the San Antonio, TX, wage area.

Waco, TX, Wage Area

This proposed rule would redefine the following county away from the Waco, TX, wage area based on application of the new criteria:

- Hill County, TX, from the Waco, TX, area of application to the Dallas-Fort Worth, TX, area of application based on employment interchange measures favoring the Dallas-Fort Worth, TX, wage area over the Waco, TX, wage area.

Norfolk-Portsmouth-Newport News-Hampton, VA, Wage Area

This proposed rule would change the name of the Norfolk-Portsmouth-Newport News-Hampton, VA, wage area to the Virginia Beach-Chesapeake, VA, wage area. This proposed rule would redefine the following counties to and within the Norfolk-Portsmouth-Newport News-Hampton, VA, wage area based on application of the new criteria:

- Dare County, NC, from the Southeastern North Carolina area of application to the Virginia Beach-Chesapeake, VA, area of application because Dare County is part of the Virginia Beach-Chesapeake, VA-NC, CSA;

- Hertford and Tyrrell Counties, NC, from the Southeastern North Carolina area of application to the Virginia Beach-Chesapeake, VA, area of application based on employment interchange measures favoring the Virginia Beach-Chesapeake, VA, wage

area over the Southeastern North Carolina wage area;

- Middlesex County, VA, from the Richmond, VA, area of application to the Virginia Beach-Norfolk, VA, wage area because employment interchange measures favor the Virginia Beach-Norfolk, VA, wage area over the Richmond, VA, wage area;

- Pasquotank County, NC, to the Virginia Beach-Chesapeake, VA, survey area effective for local wage surveys beginning in May 2026 because more than 100 FWS employees work in Pasquotank County.

Richmond, VA, Wage Area

This proposed rule would redefine the following counties away from the Richmond, VA, wage area based on application of the new criteria:

- Orange County, VA, from the Richmond, VA, area of application to the Washington-Baltimore-Arlington area of application because Orange County is part of the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA, CSA;

- Caroline and Westmoreland Counties, VA, from the Richmond, VA, area of application to the Washington-Baltimore-Arlington area of application because employment interchange measures favor the Washington-Baltimore-Arlington wage area over the Richmond, VA, wage area;

- Middlesex County, VA, from the Richmond, VA, area of application to the Virginia Beach-Chesapeake, VA, wage area because employment interchange measures favor the Virginia Beach-Chesapeake, VA, wage area over the Richmond, VA, wage area.

Roanoke, VA, Wage Area

This proposed rule would redefine the following counties away from the Roanoke, VA, wage area based on application of the new criteria:

- Staunton and Waynesboro (cities), VA, and Augusta (does not include the Shenandoah National Park portion) County, VA, from the Roanoke, VA, area of application to the Washington-Baltimore-Arlington area of application. Staunton and Waynesboro (cities) and Augusta County are in the Harrisonburg-Staunton-Stuarts Draft, VA, CSA, and employment interchange measures for this CSA favor the Washington-Baltimore-Arlington wage area.

Seattle-Everett-Tacoma, WA, Wage Area

This proposed rule would change the name of the Seattle-Everett-Tacoma, WA, wage area to the Seattle-Tacoma, WA, wage area. This proposed rule would redefine the following counties to and within the Seattle-Everett-

Tacoma, WA, wage area based on application of the new criteria:

- Pacific County, WA, from the Portland, OR, area of application to the Seattle-Tacoma, WA, area of application based on employment interchange measures favoring the Seattle-Tacoma, WA, wage area over the Portland-Vancouver-Salem, OR, wage area;
- Island County, WA, to the Seattle-Tacoma, WA, survey area effective for local wage surveys beginning in September 2026 because more than 100 FWS employees work in Island County.

West Virginia, WV, Wage Area

This proposed rule would redefine the following counties away from the West Virginia, WV, wage area based on application of the new criteria:

- Lewis County, KY, from the West Virginia area of application to the Cincinnati-Wilmington, OH, area of application based on employment interchange measures favoring the Cincinnati-Wilmington, OH, wage area;
- Athens County, OH, from the West Virginia area of application to the Columbus-Marion-Zanesville, OH, area of application because Athens County is part of the Columbus-Marion-Zanesville CSA;
- Morgan, Noble, Pike, and Vinton Counties, OH, from the West Virginia area of application to the Columbus-Marion-Zanesville, OH, area of application based on employment interchange measures favoring the Columbus-Marion-Zanesville, OH, wage area.

Madison, WI, Wage Area

This proposed rule would redefine the following counties away from the Madison, WI, wage area based on application of the new criteria:

- Dodge and Jefferson Counties, WI, from the Madison, WI, area of application to the Milwaukee-Racine-Waukesha, WI, area of application because Dodge and Jefferson Counties are part of the Milwaukee-Racine-Waukesha, WI, CSA.

Milwaukee, WI, Wage Area

This proposed rule would change the name of the Milwaukee, WI, wage area to the Milwaukee-Racine-Waukesha, WI, wage area. This proposed rule would redefine the following counties to the Milwaukee-Racine-Waukesha, WI, wage area based on application of the new criteria:

- Dodge and Jefferson Counties, WI, from the Madison, WI, area of application to the Milwaukee-Racine-Waukesha area of application because Dodge and Jefferson Counties are part of

the Milwaukee-Racine-Waukesha, WI, CSA;

- Menominee and Shawano Counties, WI, from the Southwestern Wisconsin area of application to the Milwaukee-Racine-Waukesha, WI, area of application. Menominee and Shawano Counties are part of the Green Bay-Shawano, WI, CSA, and employment interchange measures for this CSA favor the Milwaukee-Racine-Waukesha, WI, wage area over the Southwestern Wisconsin wage area.

Southwestern Wisconsin Wage Area

This proposed rule would redefine the following counties away from the Southwestern Wisconsin wage area based on application of the new criteria:

- Menominee and Shawano Counties, WI, from the Southwestern Wisconsin area of application to the Milwaukee-Racine-Waukesha, WI, area of application. Menominee and Shawano Counties are part of the Green Bay-Shawano, WI, CSA, and employment interchange measures for this CSA favor the Milwaukee-Racine-Waukesha, WI, wage area over the Southwestern Wisconsin wage area;
- Winona County, MN, from the Southwestern Wisconsin area of application to the Minneapolis-St. Paul, MN, area of application. Winona County is part of the Rochester-Austin-Winona, MN, CSA, and employment interchange measures for this CSA favor the Minneapolis-St. Paul, MN, wage area over the Southwestern Wisconsin wage area;
- Florence and Marinette Counties, WI, from the Southwestern Wisconsin area of application to the Northwestern Michigan area of application. Florence and Marinette Counties are part of the Marinette-Iron Mountain, WI-MI, CSA, and distance criteria for this CSA favor the Northwestern Michigan wage area over the Southwestern Wisconsin wage area.

Miscellaneous Corrections

In addition, this proposed rule would make the following minor corrections to the spellings of certain names in current wage area listings:

- Revise the name of “Case” County, IN, in the Fort-Wayne-Marion, IN, wage area to read “Cass.”
- Revise the name of “Lagrange” County, IN, in the Fort-Wayne-Marion, IN, wage area to read “LaGrange.”
- Revise the name of “Holly Spring” National Forest portion of the Pontotoc County, MS, in the Northern Mississippi wage area to read “Holly Springs.”
- Revise the name of “La Moure” County, ND, in the North Dakota wage area to read “LaMoure.”

- Revise the name of “Leflore” County, OK, in the Tulsa, OK, wage area to read “Le Flore.”

- Revise the name of “De Witt” County, TX, in the San Antonio, TX, wage area to read “DeWitt.”

- Revise the name of “Lunenburg” County, VA, in the Richmond, VA, wage area to read “Lunenburg.”

- Delete the name of “South Boston”, VA, from the list of area of application cities in the Roanoke, VA, FWS wage area. In 1995, South Boston, VA, changed from city status to town status and was incorporated into Halifax County, VA.

- Delete the name of “Clifton Forge,” VA, from the list of area of application cities in the Roanoke, VA, FWS wage area. In 2001, Clifton Forge, VA, changed from city status to town status and was incorporated into Halifax County, VA.

- Delete the name of “Bedford,” VA, from the list of area of application cities in the Roanoke, VA, FWS wage area. In 2013, Bedford, VA, reverted from city status to town status and was incorporated into Bedford County, VA.

- Delete the entry “Assateague Island Part of Worcester County” from the list of area of application counties in the Virginia Beach-Chesapeake, VA, wage area and replace it with “Worcester (Only includes the Assateague Island portion)” to be consistent with how we list other counties.

- Revise the name of “Shannon County”, SD, in the Wyoming, WY, FWS wage area because the name of Shannon County is now Oglala Lakota County.

Expected Impact of This Rulemaking

1. Statement of Need

OPM is issuing this proposed rule pursuant to its authority to issue regulations governing the FWS in 5 U.S.C. 5343. The purpose of these proposed changes is to address longstanding inequities between the Federal government’s two main pay systems. While the pay systems are different in some ways, the concept of geographic pay differentials based on local labor market conditions is a key feature of both systems. In limited circumstances, such as with Adams and York Counties, PA, “this proposed rule would not result in all non-RUS locality pay areas no longer including more than one FWS wage area. The Harrisburg, PA, wage area, would continue to coincide with the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA and the Harrisburg-Lebanon, PA GS locality pay areas. As stated previously, Adams and York Counties, PA, are currently part of

the Washington-Baltimore-Arlington GS locality pay area, based on a Federal Salary Council recommendation and Pay Agent decision to keep these counties defined to that locality pay area after a new GS locality pay area was later established for Harrisburg. Adams and York Counties would continue to be defined to the Harrisburg, PA, wage area because they are part of the Harrisburg-York-Lebanon, PA CSA and to avoid splitting this CSA as would be required by the proposed regulatory criteria.

2. Impact

Per available data, OPM expects such a change would impact approximately 17,000 FWS employees nationwide or about 10 percent of the appropriated fund FWS workforce. The proposed amendments to current regulatory criteria used to define and maintain FWS wage areas would result in numerous changes in the composition of many of these wage areas. As a result, several FWS wage areas would no longer be viable separately, and the counties in those abolished wage areas would have to be defined to another wage area.

Most employees affected by this approach would receive increases in pay, but some would be placed on pay retention if moved to a lower wage schedule. As such, about 85 percent of the affected employees (roughly 14,500 employees) would receive pay increases, about 11 percent (roughly 1,800 employees) would be placed on pay retention, around 3 percent (about 500 employees) would be placed at a lower wage level, and around 1 (less than 200 employees) percent would see no change in their wage level.

This proposed rule would primarily affect FWS employees of DOD and its components, although employees of many other agencies, including the VA, would be impacted. For example, the Anniston-Gadsden, AL, wage area would be abolished and most of its counties would be added to the Birmingham-Cullman-Talladega, AL wage area. FWS employees working in these counties would see their pay increased at most grades. For example, at grades WG-01 through WG-04 there would be no change in pay while at grades WG-05 through WG-15, pay increases would vary from \$.72 per hour to \$5.99 per hour. Likewise, based on these proposed changes, Monroe County, PA, would be moved to the New York, NY wage area. As such, pay increases for FWS employees in Monroe County would vary from \$.49 per hour at grade WG-01 to \$7.85 per hour at grade WG-15. However, the

Washington, DC, Baltimore, MD, and parts of the Hagerstown-Martinsburg-Chambersburg, MD, wage areas would be combined into a revised Washington, DC, based wage area. If this proposed rule is finalized, FWS employees would be moved to the existing Washington, DC, wage schedule, which would result in placement on a wage schedule with lower rates than in the current Baltimore and Hagerstown wage areas at lower grade levels, principally at the VA Medical Centers in these areas. For example, WG-2, step 2, for the Washington, DC, wage schedule is currently \$18.47 per hour whereas it is \$24.51 per hour for Baltimore, which would be around a \$6 an hour decrease once a final rule would go into effect. Nonetheless, most employees would retain their current wage rates if they are not under temporary or term appointments. There are around 35 employees at the Baltimore VA Medical Center under temporary appointments who would see an actual reduction in pay if their appointments were not changed to be permanent. At higher wage grades, employees would receive higher rates under a Washington, DC, based wage schedule.

The Department of the Army, the only FPRAC member voting against the majority recommendation, filed a minority report (Attachment 1⁸), as permitted by the Committee rules. According to the minority report, the FPRAC recommendation would cause “profound changes to the FWS pays system.” In fact, as previously stated, the proposed change affects about 10 percent of FWS appropriated fund workers, and there would still be 118 separate appropriated fund wage areas versus 130 today. The changes are limited in scope with most FWS employees seeing no impact at all on their wage levels.

According to the minority report, no “business case” for implementing the recommendation has been presented. FPRAC heard testimony from local Federal managers, local union representatives, and employees from across the country who made a strong case over the course of several years for implementation based on perceived disparate treatment impacting business operations at Federal installations. In addition, numerous Members of Congress have expressed their views in support of addressing the different pay treatment between their constituents under the FWS and GS pay systems. A majority of the committee members argued more than a decade ago that the

perceived disparate treatment of employees between the GS and FWS was corrosive to morale and presented a strong business-based reason to address the inequities. OPM has also continued recently to receive bipartisan letters of support for implementing these changes.

According to the minority report, the proposed changes would have major budgetary impacts, and therefore would reduce training funds and lead to the potential loss of approximately 300 civilian employees. OPM acknowledges that this proposed rule has potential budgetary impacts affecting three major Army Depots, in particular, that would need to be managed appropriately and effectively by employing agencies. It is noteworthy, however, that the overall budget impact of revising wage area boundaries under this proposed rule equates to about \$141 million per year—only around 1 percent of the current base payroll for the FWS appropriated fund workforce as a whole.

According to the minority report, the proposed changes to the criteria used to define and maintain wage areas “would create inequitable pay situations and the perception of loss of future earnings for employees placed on pay retention, which could result in recruitment and retention issues.” As mentioned above, 14 percent of the affected employees would be placed on retained pay status but this is not a strong argument against implementation of this proposed rule, intended to equalize geographic pay area treatment across the Federal government’s two main pay systems, since a vast majority—about 85 percent—would receive a pay increase. The pay retention law exists to alleviate potential decreases in wage rates caused by management actions such as changes in wage area boundaries. We note that Federal agencies have considerable discretionary authority to provide pay and leave flexibilities to address significant recruitment and retention problems. Pay and leave flexibilities are always an option to address recruitment or retention challenges at any time. Agency headquarters staff may contact OPM for assistance with understanding and implementing pay and leave flexibilities when appropriate. Information on those flexibilities is available on the OPM website at <http://www.opm.gov/policy-data-oversight/pay-leave/pay-and-leave-flexibilities-for-recruitment-and-retention>.

Considering that a fairly small number of employees is affected, OPM does not anticipate this rule will have a substantial impact on the local economies or a large impact in the local labor markets. However, OPM is

⁸ Attachment 1 is available in the online docket for this rulemaking at [insert link].

requesting comment in this rule regarding the impact. OPM will continue to study the implications of such impacts in this or future rules as needed, as this and future changes in wage area definitions may impact higher volumes of employees in geographical areas and could rise to the level of impacting local labor markets.

3. Baseline

The geographic boundaries of FWS wage areas and of GS locality pay areas are not the same. Around 1.5 million GS employees are in 58 locality pay areas and around 170,000 appropriated fund FWS employees are in 130 wage areas. However, since 2004, appropriations legislation has required that FWS employees receive the same percentage adjustment amount that GS employees receive where they work.⁹ This provision is known as the floor increase provision. Consequently, the floor increase provision requires pay adjustments each FY that result in certain FWS wage areas having more than one wage schedule in effect where there are multiple wage areas within the boundaries of a single non-RUS GS locality pay area. Although a majority of FWS wage areas coincide only with part of the RUS GS locality pay area, many FWS wage areas coincide with parts of more than one GS locality pay area. In each situation where the boundary of a prevailing rate wage area coincides with the boundary of a single GS locality pay area boundary, DOD must establish one wage schedule applicable in the wage area. For example, the New Orleans, LA, FWS wage area coincides with part of the RUS GS locality pay area. In this case, the minimum prevailing rate adjustment for the New Orleans wage area in FY 2024 was the same as the RUS GS locality pay area adjustment, 4.99 percent.

In each situation where a prevailing rate wage area coincides with part of more than one GS locality pay area, DOD must establish more than one prevailing rate wage schedule for that wage area, and therefore, FWS employees within the same wage area may receive substantially different rates of pay. For example, the boundaries of the Philadelphia, PA, FWS wage area coincide with parts of two different GS locality pay areas—New York-Newark, NY-NJ-CT-PA and Philadelphia-Reading-Camden, PA-NJ-DE-MD. In this case, DOD established two separate wage schedules for use during FY 2024

in the Philadelphia FWS wage area. In the part of the Philadelphia wage area that coincides with the New York-Newark, NY-NJ-CT GS locality pay area, the minimum prevailing rate adjustment was 5.53 percent and in the part coinciding with the Philadelphia-Reading-Camden, PA-NJ-DE-MD GS locality pay area, the minimum prevailing rate adjustment was 5.28 percent. OPM's guidance to agencies regarding FY 2024 FWS pay adjustments can be found at <https://www.chcoc.gov/content/fiscal-year-2024-prevailing-rate-pay-adjustments>.

Furthermore, at Tobyhanna Army Depot, the largest employer in Monroe County, PA, more than 1,000 Federal employees paid under the GS work in close proximity to more than 1,500 Federal employees paid under the FWS. Prior to 2005, Monroe County was part of the RUS GS locality pay area, while the county was (and is) part of the Scranton-Wilkes-Barre FWS wage area. In January 2005, Monroe County was reassigned from RUS to the New York GS locality pay area. As a result, all GS employees at Tobyhanna got an immediate 12 percent pay increase, of which 8 percent was attributable to the reassignment of Monroe County to the New York locality pay area. This led to a deep sense of unfairness on the part of FWS employees at Tobyhanna which continues to this day.

This rulemaking would address most of the differences in pay among FWS employees within the same wage area and between FWS employees and GS employees working at the same location. It would align FWS wage areas and GS locality pay areas and address observable geographic pay disparities between FWS and GS employees that are caused by using different sets of rules to define FWS wage areas and GS locality pay areas.

4. Costs

OPM employs four full-time staff, at grades GS-12 through GS-15, to discharge its responsibilities under the FWS. The cost is annualized at \$753,215 based on an average salary of \$188,304 and includes wages, benefits, and overhead. This estimate is based on the 2024 GS salary pay rate for the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA locality pay area. We do not anticipate an increase in administrative costs for OPM if the proposed changes are implemented.

During FPRAC discussions on methods to address the House Report language, it became apparent that DOD might need to hire additional staff members to conduct surveys in the expanded wage areas. However, there

would also be fewer wage surveys to conduct each year because 12 wage areas would be abolished, and their survey counties moved to neighboring wage areas. Currently, DOD's operating costs for conducting FWS wage surveys and issuing wage schedules are estimated at \$12 million, but it is reasonable to expect that additional specialist wage survey staff members may be needed to complete local wage survey work in the wage areas that would become larger in the time allotted¹⁰ by statute for local wage surveys to be completed. OPM estimates that an average wage specialist at around the GS-9 level with a \$70,000 a year salary in the Washington, DC, area could have a fully burdened cost of \$140,000 to carry out the additional wage survey work with six new employees potentially increasing government costs by around \$840,000 per year. OPM invites comments on this aspect of the costs of wage survey administration.

FWS wage surveys are conducted under the information collection titled "Establishment Information Form," "Wage Data Collection Form," and "Wage Data Collection Continuation Form" OMB Control number 3260-0036. DOD wage specialist data collectors survey about 21,760 businesses annually. Based on past experience with local wage surveys, DOD estimates that each survey collection requires 1.5 hours of respondent burden for collection forms, resulting in a total yearly burden of 32,640 hours. (See the *Paperwork Reduction Act* section below.) The changes in wage area boundaries in this proposed rule are not expected to affect the public reporting burden of the current information collection. This is because the number of counties included in future survey areas would remain very similar to those included in current survey areas. OPM invites public comment on this matter.

This proposed rule would affect the FWS employees of up to 30 Federal agencies—ranging from cabinet-level departments to small independent agencies—affecting around 17,000 FWS

¹⁰ Local wage surveys are scheduled in advance, with surveys scheduled by regulation to begin in a certain month in each wage area. The beginning month of appropriated fund wage surveys and the fiscal year during which full-scale surveys are conducted are set out as Appendix A to subpart B of part 532. Under 5 U.S.C. 5344(a), any increase in rates of basic pay is effective not later than the first day of the first pay period on or after the 45th day, excluding Saturdays and Sundays, after a survey was ordered to begin in a wage area. For example, the January wage schedule is ordered in January and becomes effective in March of each year.

⁹ For FY 2024, the floor increase and pay cap provisions may be found in Section 737 of Division B of the Further Consolidated Appropriations Act, 2024 (the FY 2024 Act), Pub. L. 118-47.

employees. The estimated first-year base payroll cost of this proposal, including 36.70 percent fringe benefits,¹¹ would be annualized at around \$141 million and its cumulative 10-year cost would be around \$1.5 billion for geographic areas being moved from one wage area to another as a result of amending the criteria used to define FWS wage area boundaries. The total first year base payroll cost represents around 1 percent of the \$10 billion overall annual base FWS payroll. About half the overall cost would be incurred by the Department of the Army, primarily at Tobyhanna, Letterkenny, and Anniston Army Depots because a substantial number of the FWS employees who would be affected by the proposed changes is concentrated at these large federal installations.

Attachment 1 provides OPM's estimate of the payroll costs for the first 10 years of implementation of this rule. This document was developed by OPM staff who provide technical support to FPRAC. The cost estimate lists the wage areas that will have counties added as a result of the proposed rule and identifies the counties being added.

To calculate the estimated first year cost of around \$141 million, we used Wage Grade, Wage Leader, and Wage Supervisor employment numbers in each impacted county and compared the difference in pay between the grade's step-2 rate under the county's current wage schedule, the prevailing wage grade level, and the wage schedule the county would be defined under by this proposed rule. The overall costs were further adjusted based on the average step rate for FWS employees being above step 2.¹² The ten cells to the right of each county provide the costs for the first ten years of implementation. The "Totals" column provides the estimated total cost for the increased payroll for the first 10 years after implementation. The "Emps" column provides the sum of Wage Grade, Wage Leader, and Wage Supervisor employees in the county. The bottom row of each wage area section of Attachment 1 provides the total payroll costs associated with the proposed rule for all counties being moved to the wage area listed.

¹¹ DOD provides annual costs for civilian personnel fringe benefits at https://comptroller.defense.gov/Portals/45/documents/rates/fy2024/2024_d.pdf.

¹² The step 2 rate is the prevailing wage level, or 100 percent of market, that DOD bases all the other step rates on. The average step for employees changes over time and is different from area to area and grade to grade within a wage area. Currently, the average rate is just above step 3, which is 4 percent above step 2. FPRAC has used this methodology for calculating costs for many years and has found it to be a fairly accurate predictor of cost.

Estimated costs for the second through tenth years were calculated using a 2 percent adjustment factor, in line with the President's budget plan for FY 2025 and an estimated 36.7 percent fringe benefit factor. As these are only estimates, actual future costs will vary.

Future wage schedules would be based on local wage surveys that would include survey counties that were previously survey counties in wage areas with different prevailing wage levels. As such, the measurable prevailing wage levels within a wage area are likely to be different than those measured in the most recent local wage surveys. For instance, starting with new full-scale wage surveys beginning in October 2027, the proposed San Jose-San Francisco-Oakland wage area will include Monterey and San Joaquin Counties, CA, in its wage surveys. It is possible that inclusion of these counties in an enlarged San Jose-San Francisco-Oakland survey area might result in prevailing wage levels being measured at a lower level than if they were not included. However, as a result of statistical sampling methods and natural changes in wage growth across the mix of private industrial establishments that would be surveyed, it is not certain what, if any, impact would occur on wage survey results until a full-scale wage survey would be completed in the expanded wage area. It is reasonable to anticipate that adding counties with lower prevailing wage levels to a survey area with higher prevailing wage levels would result in somewhat lower wage survey findings overall and lower wage schedules absent the existence of the floor increase provision that has been included in appropriations law each year since FY 2004. As long as a floor increase provision provides for a minimum annual adjustment amount for a wage schedule, the combining of counties with lower prevailing wage levels into a wage area with higher prevailing wage levels will have no impact on the payable wage rates in that wage area should the floor increase amount continue to be higher than the pay cap amount. In this case, the additional payroll costs that agencies would incur in Monterey and San Joaquin counties would be because employees there would be paid wage rates from the San Jose-San Francisco-Oakland wage schedule that are higher than wage rates applicable in their current wage areas.

If this rulemaking is finalized, agency payroll providers would need to properly assign official duty station codes within their systems for impacted employees by reassigning the codes from one FWS wage schedule to

another. Although around 17,000 FWS employees would be affected by the proposed changes in wage area boundaries, there are far fewer official duty station codes that would need to be updated by the four major payroll providers in their payroll systems. OPM estimates this number of impacted official duty station codes to be around 254. This is not anticipated to be a significant additional cost burden or to require additional funding as agency payroll systems are often updated as a routine business matter as pay area boundaries change and as wage schedules are updated every year. For example, the payroll providers implemented changes in GS locality pay area affecting around 34,000 employees in January 2024. However, OPM estimates that implementing payroll changes in terms of the time required for the 254 official duty station codes across the four payroll providers at a cost of around \$7,800. OPM calculated this estimate by allowing for ten minutes to manually update each duty station change in each of the four payroll systems by a mid-range payroll processing staff member with an average salary and benefits cost of around \$96,000 per year, which equates to a cost of around \$7.66 per change per provider. OPM invites public comment on this estimate.

5. Benefits

This proposed rule has important benefits. Employees have expressed understandable equity concerns since the mid-1990s about why there are different geographic boundaries defined for the Federal government's two main pay systems. Over the years, Members of Congress have expressed interest in this issue and written letters in support of aligning FWS wage areas and GS locality pay areas. FPRAC heard testimony from Congressional staff, local union and management representatives, and employees in support of better aligning the geographic boundaries of FWS wage areas and GS locality pay areas, including testimony that a high rate of commuting interchange—which, for example, triggered Monroe County's reassignment from the Rest of U.S. GS locality pay area to the New York-Newark GS locality pay area in 2005—should also be reflected in the FWS wage areas. These proposed changes would address most of the internal equity and fairness concerns found across the country that are unnecessarily damaging to employee morale when an alternative and defensible approach is possible. This can also be accomplished at a relatively low cost of an increase in base payroll

of only around 1 percent. FPRAC acknowledged that, although around 2,000 FWS employees would be placed on lower wage schedules as a result of these actions, around 1,870 of these employees would be entitled to pay retention. Accordingly, FPRAC found that the benefits to FWS employees overall outweighed the concerns regarding the limited number of positions negatively impacted.

Further, FPRAC members, agency and union representatives, and employees expressed concerns that the FWS no longer reflects modern compensation practices for prevailing rate tradespeople and laborers and that updating the wage area definition criteria to be more similar to the GS locality pay area criteria will be a step in the right direction to begin modernizing the prevailing rate system. Despite the projection of continuing application of the floor and pay cap provisions to the FWS wage schedules, implementation of the proposed changes to the criteria used to define and maintain FWS wage areas, in particular adopting the use of employment interchange measures and CSA definitions, would better position the FWS to align with regional prevailing wage practices because they better reflect current commuting, employment, and recruitment patterns.

6. Alternatives

Over the course of 15 working group meetings, at which there was extensive discussion, FPRAC considered various options to address the FWS and GS pay equity concerns expressed in the House Report language. These discussions had been taking place for many years previously without consensus. One alternative to the present proposal was to make no changes to the current FWS wage areas and encourage agencies to use pay flexibilities when challenged with recruitment issues. However, maintaining the status quo would not resolve employee equity concerns or address the interests expressed by Congress.

Another option considered was conducting piecemeal reviews of wage areas using the existing wage area definition criteria (distance, commuting, demographic), only when employees or other stakeholders raise concerns. This has been FPRAC's approach since 2012, but it has not addressed the fundamental inequities resulting from managing the FWS and GS with different sets of rules for defining pay area boundaries. The current regulatory criteria were not designed to allow for changing wage area definitions absent

factors such as military base closures or changes in MSAs.

FPRAC also considered adding CSA definitions alone as a criterion to the existing regulatory criteria in 5 CFR 532.211. OMB published new CSA and MSA definitions on July 21, 2023, in OMB Bulletin 23–01, and FPRAC has a practice of using new MSA definitions when they become available. The new OMB definitions and an analysis of the current FWS regulatory criteria to define wage areas did not appear to result in automatically moving some of the most contentious counties under FPRAC discussion to match the definitions of GS locality pay areas. For example, the 2023 OMB definitions moved Monroe County, PA, from the New York-Newark, NY-NJ-CT-PA CSA to the Allentown-Bethlehem-East Stroudsburg, PA-NJ CSA. OMB Bulletin No. 20–01 (which FPRAC previously used) included the East Stroudsburg, PA MSA, comprised only of Monroe County, PA, in the New York CSA. OMB Bulletin No. 23–01 supersedes the previous ones and lists Monroe County as the sole county of the East Stroudsburg, PA micropolitan statistical area, and part of the Allentown-Bethlehem-East Stroudsburg, PA-NJ CSA. Both Monroe County and the Allentown CSA are part of the New York locality pay area for GS employees. Based on the updated OMB Bulletin and applying the proposed criteria, Monroe County is to be defined to a wage area consistent with the rest of the Allentown-Bethlehem-East Stroudsburg, PA-NJ CSA. Applying employment interchange analysis to better recognize regional commuting patterns helps to clarify where best to define the Allentown-Bethlehem-East Stroudsburg, PA-NJ CSA and results in the Allentown-Bethlehem-East Stroudsburg, PA-NJ CSA, including Monroe County, being defined as part of the New York, Newark wage area.

The committee also considered and decided against merely adopting and applying GS locality pay area definitions to FWS wage areas. For GS locality pay purposes, pay disparities with the non-Federal sector for GS employees stationed in a locality pay area are based on data for the entire locality pay area. The FWS continues the concept of using survey areas and areas of application because FWS employees tend to be employed in greater numbers at military installations and VA Medical Centers and not throughout an entire wage area. GS employees have different employment distributions as the FWS workforce is primarily found at DOD and VA while the GS workforce is found widely

distributed geographically at all agencies.

FPRAC's members had disparate views on how future wage schedules based on these geographic changes in wage area definitions could best reflect prevailing wage levels. One view held that combining the survey areas of two wage areas together should result in an entirely new wage schedule being applied to FWS employees in the expanded wage area. This method would not be appropriate given that the floor increase provision in appropriations law each year requires that wage schedules be adjusted upwards by the same percentage adjustment amount received by GS employees in the area. It would also be contrary to longstanding precedent to ignore statutory pay cap and floor increase provisions when wage survey areas change. Consequently, in this proposed rule OPM first adds counties moving between wage areas to the area of application of the gaining wage area and subsequently adds counties to survey areas for the next full-scale wage survey in the wage area.

The proposed regulations would not immediately expand survey areas for continuing but enlarged wage areas. Instead, abolished wage areas would first be merged into the areas of application of continuing wage areas and subsequently added to the survey areas for the next full wage surveys beginning in FY 2026, FY 2027, and FY 2028. This would provide DOD time to allocate and train appropriate additional staff, if needed. OPM invites comment on any additional alternative approaches that could be considered that are in accordance with the permanent and appropriations laws governing the development of FWS wage schedules.

Request for Comments

OPM requests public comments from local businesses on the implementation and impacts of moving the small number of FWS employees affected by this proposed rule to different wage schedules and whether these changes would be likely to affect them. Such information will be useful for better understanding the effect of FWS pay-setting on private businesses in local wage areas.

Regulatory Review

OPM has examined the impact of this rule as required by Executive Orders 12866, 13563, and 14094, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize

net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). OMB has designated this rule a “significant regulatory action” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

Regulatory Flexibility Act

The Director of OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule will apply only to Federal agencies and employees.

Federalism

OPM has examined this rule in accordance with Executive Order 13132, Federalism, and has determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB Control Number.

This proposed rule involves, but does not make any changes to, an OMB approved collection of information subject to the PRA for the FWS Program, OMB No. 3206–0036, Establishment Information Form, Wage Data Collection Form, and Wage Data Collection Continuation Form. The public reporting burden for this collection is estimated to average 1.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The total burden hour estimate for this collection is 32,640 hours. Additional information regarding this collection—including all current background materials—can be found at Information Collection Review ([reginfo.gov](https://www.reginfo.gov)) by using the search function to enter either the title of the collection or the OMB Control Number.

List of Subjects in 5 CFR Part 532
Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Kayyonne Marston,

Federal Register Liaison.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. Revise § 532.211 to read as follows:

§ 532.211 Criteria for appropriated fund wage areas.

(a) Each wage area shall consist of one or more survey areas along with nonsurvey areas, if any.

(1) *Survey area:* A survey area is composed of the counties, parishes, cities, townships, or similar geographic entities in which survey data are collected. Survey areas are established and maintained where there are a minimum of 100 or more wage employees subject to a regular wage schedule and those employees are located close to concentrations of private sector employment such as found in a Combined Statistical Area or Metropolitan Statistical Area.

(2) *Nonsurvey area:* Nonsurvey counties, parishes, cities, townships, or similar geographic entities may be combined with the survey area(s) to form the wage area through consideration of criteria including local commuting patterns such as employment interchange measures, distance, transportation facilities, geographic features; similarities in overall population, employment, and the kinds and sizes of private industrial establishments; and other factors relevant to the process of determining and establishing rates of pay for wage employees at prevailing wage levels.

(b) Wage areas shall include wherever possible a recognized economic community such as a Combined Statistical Area, a Metropolitan Statistical Area, or a political unit such

as a county. Two or more economic communities or political units, or both, may be combined to constitute a single wage area; however, except in unusual circumstances and as an exception to the criteria, an individually defined Combined Statistical Area, Metropolitan Statistical Area, county or similar geographic entity shall not be subdivided for the purpose of defining a wage area.

(c) Except as provided in paragraph (a) of this section, wage areas shall be established and maintained when:

(1) There is a minimum of 100 wage employees subject to the regular schedule and the lead agency indicates that a local installation has the capacity to do the survey; and

(2) There is, within a reasonable commuting distance of the concentration of Federal employment,

(i) A minimum of either 20 establishments within survey specifications having at least 50 employees each; or 10 establishments having at least 50 employees each, with a combined total of 1,500 employees; and

(ii) The total private enterprise employment in the industries surveyed in the survey area is at least twice the Federal wage employment in the survey area.

(d)(1) Adjacent economic communities or political units meeting the separate wage area criteria in paragraphs (b) and (c) of this section may be combined through consideration of local commuting patterns such as employment interchange measures, distance, transportation facilities, geographic features; similarities in overall population, employment, and the kinds and sizes of private industrial establishments; and other factors relevant to the process of determining and establishing rates of pay for wage employees at prevailing wage levels.

(2) When two wage areas are combined, the survey area of either or both may be used, depending on the concentrations of Federal and private employment and locations of establishments, the proximity of the survey areas to each other, and the extent of economic similarities or differences as indicated by relative levels of wage rates in each of the potential survey areas.

(e) Appropriated fund wage and survey area definitions are set out as appendix C to this subpart and are incorporated in and made part of this section.

(f) A single contiguous military installation defined as a Joint Base that would otherwise overlap two separate wage areas shall be included in only a

single wage area. The wage area of such a Joint Base shall be defined to be the wage area with the most favorable payline based on an analysis of the simple average of the 15 nonsupervisory second step rates on each one of the regular wage schedules applicable in the otherwise overlapped wage areas.

■ 3. Revise and republish Appendix A to subpart B as follows:

**Appendix A to Subpart B of Part 532—
Nationwide Schedule of Appropriated
Fund Regular Wage Surveys**

This appendix shows the annual schedule of wage surveys. It lists all States alphabetically, each State being followed by

an alphabetical listing of all wage areas in the State. Information given for each wage area includes—

- (1) The lead agency responsible for conducting the survey;
- (2) The month in which the survey will begin; and
- (3) Whether full-scale surveys will be done in odd or even numbered fiscal years.

State	Wage area	Lead agency	Beginning month of survey	Fiscal year of full-scale survey odd or even
Alabama	Birmingham-Cullman-Talladega	DoD	January	Even.
	Dothan	DoD	July	Odd.
	Huntsville	DoD	April	Even.
	Montgomery-Selma	DoD	August	Odd.
Alaska	Alaska	DoD	July	Even.
Arizona	Northeastern Arizona	DoD	March	Odd.
	Phoenix	DoD	March	Odd.
	Tucson	DoD	March	Odd.
Arkansas	Little Rock	DoD	July	Even.
California	Fresno	DoD	February	Odd.
	Los Angeles	DoD	November	Odd.
	Sacramento-Roseville	DoD	February	Odd.
	San Diego	DoD	September	Odd.
	San Jose-San Francisco-Oakland	DoD	October	Even.
Colorado	Denver	DoD	January	Odd.
	Southern Colorado	DoD	January	Even.
District of Columbia	Washington-Baltimore-Arlington	DoD	July	Odd.
Florida	Cocoa Beach	DoD	October	Even.
	Jacksonville	DoD	January	Odd.
	Miami-Port St. Lucie-Fort Lauderdale	DoD	May	Odd.
	Panama City	DoD	September	Even.
	Pensacola	DoD	September	Odd.
	Tampa-St. Petersburg	DoD	April	Even.
Georgia	Albany	DoD	August	Odd.
	Atlanta	DoD	May	Odd.
	Augusta	DoD	June	Odd.
	Macon	DoD	June	Odd.
	Savannah	DoD	May	Odd.
Hawaii	Hawaii	DoD	June	Even.
Idaho	Boise	DoD	July	Odd.
Illinois	Bloomington-Pontiac	DoD	September	Odd.
	Chicago-Naperville, IL	DoD	September	Even.
Indiana	Evansville-Henderson	DoD	October	Odd.
	Fort Wayne-Marion	DoD	October	Odd.
	Indianapolis-Carmel-Muncie	DoD	October	Odd.
Iowa	Cedar Rapids-Iowa City	DoD	July	Even.
	Davenport-Moline	DoD	October	Even.
	Des Moines	DoD	September	Odd.
Kansas	Manhattan	DoD	November	Even.
	Wichita	DoD	November	Even.
Kentucky	Lexington	DoD	February	Even.
	Louisville	DoD	February	Odd.
Louisiana	Lake Charles-Alexandria	DoD	April	Even.
	New Orleans	DoD	June	Even.
	Shreveport	DoD	May	Even.
Maine	Augusta	DoD	May	Even.
	Central and Northern Maine	DoD	June	Even.
Massachusetts	Boston-Worcester-Providence	DoD	August	Even.
Michigan	Detroit-Warren-Ann Arbor	DoD	January	Odd.
	Northwestern Michigan	DoD	August	Odd.
	Southwestern Michigan	DoD	October	Even.
Minnesota	Duluth	DoD	June	Odd.
	Minneapolis-St. Paul	DoD	April	Odd.
Mississippi	Biloxi	DoD	November	Even.
	Jackson	DoD	February	Odd.
	Meridian	DoD	February	Odd.
	Northern Mississippi	DoD	February	Even.
Missouri	Kansas City	DoD	October	Odd.
	St. Louis	DoD	October	Odd.

State	Wage area	Lead agency	Beginning month of survey	Fiscal year of full-scale survey odd or even
Montana	Southern Missouri	DoD	October	Odd.
Montana	Montana	DoD	July	Even.
Nebraska	Omaha	DoD	October	Odd.
Nevada	Las Vegas	DoD	September	Even.
	Reno	DoD	March	Even.
New Hampshire	Portsmouth	DoD	September	Even.
New Mexico	Albuquerque-Santa Fe-Los Alamos	DoD	April	Odd.
New York	Albany-Schenectady	DoD	March	Odd.
	Buffalo	DoD	September	Odd.
	New York-Newark	DoD	January	Even.
	Northern New York	DoD	March	Odd.
	Rochester	DoD	April	Even.
	Syracuse-Utica-Rome	DoD	March	Even.
North Carolina	Asheville	DoD	June	Even.
	Central North Carolina	DoD	May	Even.
	Charlotte-Concord	DoD	August	Odd.
	Southeastern North Carolina	DoD	January	Odd.
North Dakota	North Dakota	DoD	March	Even.
Ohio	Cincinnati	DoD	January	Odd.
	Cleveland-Akron-Canton	DoD	April	Odd.
	Columbus-Marion-Zanesville	DoD	January	Odd.
	Dayton	DoD	January	Even.
Oklahoma	Oklahoma City	DoD	August	Odd.
	Tulsa	DoD	August	Odd.
Oregon	Portland-Vancouver-Salem	DoD	July	Even.
	Southwestern Oregon	DoD	June	Even.
Pennsylvania	Harrisburg-York-Lebanon	DoD	May	Even.
	Philadelphia-Reading-Camden	DoD	October	Even.
	Pittsburgh	DoD	July	Odd.
	Scranton-Wilkes-Barre	DoD	August	Odd.
Puerto Rico	Puerto Rico	DoD	July	Odd.
South Carolina	Charleston	DoD	July	Even.
	Columbia	DoD	May	Even.
South Dakota	Eastern South Dakota	DoD	October	Even.
Tennessee	Eastern Tennessee	DoD	February	Odd.
	Memphis	DoD	February	Even.
	Nashville	DoD	February	Even.
Texas	Austin	DoD	June	Even.
	Corpus Christi-Kingsville-Alice	DoD	June	Even.
	Dallas-Fort Worth	DoD	October	Odd.
	El Paso	DoD	April	Even.
	Houston-Galveston-Texas City	DoD	March	Even.
	San Antonio	DoD	June	Odd.
	Texarkana	DoD	April	Odd.
	Waco	DoD	May	Odd.
	Western Texas	DoD	May	Odd.
	Wichita Falls, Texas-Southwestern Oklahoma	DoD	July	Even.
Utah	Utah	DoD	July	Odd.
Virginia	Richmond	DoD	November	Odd.
	Roanoke	DoD	November	Even.
	Virginia Beach-Chesapeake	DoD	May	Even.
Washington	Seattle-Everett	DoD	September	Even.
	Southeastern Washington-Eastern Oregon	DoD	June	Odd.
	Spokane	DoD	July	Odd.
West Virginia	West Virginia	DoD	March	Odd.
Wisconsin	Madison	DoD	July	Even.
	Milwaukee-Racine-Waukesha	DoD	June	Odd.
	Southwestern Wisconsin	DoD	June	Even.
Wyoming	Wyoming	DoD	January	Even.

■ 4. Revise and republish Appendix C to subpart B of Part 532 to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

This appendix lists the wage area definitions for appropriated fund employees. With a few exceptions, each area is defined

in terms of county units, independent cities, or a similar geographic entity. Each wage area definition consists of:

(1) Wage area title. Wage areas usually carry the title of the principal city in the area. Sometimes, however, the area title reflects a broader geographic area, such as Combined

Statistical Area or Metropolitan Statistical Area.

(2) Survey area definition. Lists each county, independent city, or a similar geographic entity in the survey area.

(3) Area of application definition. Lists each county, independent city, or a similar geographic entity which, in addition to the survey area, is in the area of application.

Definitions of Wage Areas and Wage Area Survey Areas

ALABAMA

Birmingham-Cullman-Talladega

Survey Area

Alabama:

Calhoun (effective for wage surveys beginning in January 2028)

Etowah (effective for wage surveys beginning in January 2028)

Jefferson

St. Clair

Shelby

Talladega (effective for wage surveys beginning in January 2028)

Tuscaloosa

Walker

Area of Application. Survey area plus:

Alabama:

Bibb

Blount

Calhoun (effective until January 2028)

Chilton

Clay

Coosa

Cullman

Etowah (effective until January 2028)

Fayette

Greene

Hale

Lamar

Marengo

Perry

Pickens

Talladega (effective January 2028)

Winston

Dothan

Survey Area

Alabama:

Dale

Houston

Georgia:

Early

Area of Application. Survey area plus:

Alabama:

Barbour

Coffee

Geneva

Henry

Georgia:

Clay

Miller

Seminole

Huntsville

Survey Area

Alabama:

Limestone

Madison

Marshall

Morgan

Area of Application. Survey area plus:

Alabama:

Colbert

DeKalb

Franklin

Lauderdale

Lawrence

Marion

Tennessee:

Giles

Lincoln

Wayne

Montgomery-Selma

Survey Area

Alabama:

Autauga

Elmore

Montgomery

Area of Application. Survey area plus:

Alabama:

Bullock

Butler

Crenshaw

Dallas

Lowndes

Pike

Wilcox

ALASKA

Anchorage

Survey Area

Alaska: (boroughs and the areas within a 24-kilometer (15-mile) radius of their corporate city limits)

Anchorage

Fairbanks

Juneau

Area of Application. Survey area plus:

Alaska:

State of Alaska (except special area schedules)

ARIZONA

Northeastern Arizona

Survey Area

Arizona:

Apache

Coconino

Navajo

New Mexico:

San Juan

Area of Application. Survey area plus:

Colorado:

Dolores

Gunnison (Only includes the Curecanti National Recreation Area portion)

La Plata

Montezuma

Montrose

Ouray

San Juan

San Miguel

Utah:

Garfield (Only includes the Bryce Canyon, Capitol Reef, and Canyonlands National Parks portions)

Grand (Only includes the Arches and Canyonlands National Parks portions)

Iron (Only includes the Cedar Breaks National Monument and Zion National Park portions)

Kane

San Juan

Washington

Wayne (Only includes the Capitol Reef and Canyonlands National Parks portions)

Phoenix

Survey Area

Arizona:

Gila

Maricopa

Area of Application. Survey area plus:

Arizona:

Pinal

Yavapai

Tucson

Survey Area

Arizona:

Pima

Area of Application. Survey area plus:

Arizona:

Cochise

Graham

Greenlee

Santa Cruz

ARKANSAS

Little Rock

Survey Area

Arkansas:

Jefferson

Pulaski

Saline

Area of Application. Survey area plus:

Arkansas:

Arkansas

Ashley

Baxter

Boone

Bradley

Calhoun

Chicot

Clark

Clay

Cleburne

Cleveland

Conway

Dallas

Desha

Drew

Faulkner

Franklin (Does not include the Fort Chaffee portion)

Fulton

Garland

Grant

Greene

Hot Spring

Independence

Izard

Jackson

Johnson

Lawrence

Lincoln

Logan

Lonoke

Marion

Monroe

Montgomery

Newton	<i>Area of Application. Survey area plus:</i>	Jefferson
Ouachita	California:	<i>Area of Application. Survey area plus:</i>
Perry	Amador	Colorado:
Phillips	Butte	Clear Creek
Pike	Colusa	Eagle
Polk	El Dorado	Elbert
Pope	Glenn	Garfield
Prairie	Humboldt	Grand
Randolph	Lake	Jackson
Scott	Modoc	Lake
Searcy	Nevada	Larimer
Sharp	Plumas	Lincoln
Stone	Shasta	Logan
Union	Sierra	Morgan
Van Buren	Siskiyou	Park
White	Tehama	Phillips
Woodruff	Trinity	Pitkin
Yell		Rio Blanco
CALIFORNIA	San Diego	Routt
Fresno	<i>Survey Area</i>	Sedgwick
<i>Survey Area</i>	California:	Summit
California:	San Diego	Washington
Fresno	Arizona:	Weld
Kings	Yuma (effective for wage surveys beginning in September 2027)	Yuma
Tulare	<i>Area of Application. Survey area plus:</i>	Southern Colorado
<i>Area of Application. Survey area plus:</i>	Arizona:	<i>Survey Area</i>
California:	La Paz	Colorado:
Madera	Yuma (effective until September 2027)	El Paso
Mariposa	California:	Pueblo
Tuolumne (Only includes the Yosemite National Park portion)	Imperial	Teller
Los Angeles	San Jose-San Francisco-Oakland	<i>Area of Application. Survey area plus:</i>
<i>Survey Area</i>	<i>Survey Area</i>	Colorado:
California:	California:	Alamosa
Kern (effective for wage surveys beginning in November 2026)	Alameda	Archuleta
Los Angeles	Contra Costa	Baca
Orange (effective for wage surveys beginning in November 2026)	Marin	Bent
Riverside (effective for wage surveys beginning in November 2026)	Monterey (effective for wage surveys beginning in October 2027)	Chaffee
San Bernardino (effective for wage surveys beginning in November 2026)	Napa	Cheyenne
Santa Barbara (effective for wage surveys beginning in November 2026)	San Joaquin (effective for wage surveys beginning in October 2027)	Conejos
Ventura (effective for wage surveys beginning in November 2026)	San Francisco	Costilla
<i>Area of Application. Survey area plus:</i>	San Mateo	Crowley
California:	Santa Clara	Custer
Inyo (Only includes the China Lake Naval Weapons Center portion)	Solano	Delta
Kern (effective until November 2026)	<i>Area of Application. Survey area plus:</i>	Fremont
Orange (effective until November 2026)	California:	Gunnison (does not includes the Curecanti National Recreation Area portion)
Riverside (effective until November 2026)	Calaveras	Hinsdale
San Bernardino (effective until November 2026)	Mendocino	Huerfano
Santa Barbara (effective until November 2026)	Merced	Kiowa
Santa Luis Obispo	Monterey (effective until October 2027)	Kit Carson
Ventura (effective until November 2026)	San Benito	Las Animas
Sacramento-Roseville	San Joaquin (effective until October 2027)	Mineral
<i>Survey Area</i>	Santa Cruz	Otero
California:	Sonoma	Prowers
Placer	Stanislaus	Rio Grande
Sacramento	Tuolumne (Does not include the Yosemite National Park portion)	Saguache
Sutter	COLORADO	CONNECTICUT
Yolo	Denver	New Haven-Hartford
Yuba	<i>Survey Area</i>	<i>Survey Area</i>
	Colorado:	Connecticut:
	Adams	Hartford
	Arapahoe	New Haven
	Boulder	New London (effective for wage surveys beginning in April 2027)
	Broomfield	Massachusetts:
	Denver	Hampden (effective for wage surveys beginning in April 2027)
	Douglas	Hampshire (effective for wage surveys beginning in April 2027)
	Gilpin	<i>Area of Application. Survey area plus:</i>
		Connecticut:

Litchfield
Middlesex
New London (effective until April 2027)
Tolland
Windham
Massachusetts:
Franklin
Hampden (effective until April 2027)
Hampshire (effective until April 2027)

DISTRICT OF COLUMBIA

Washington-Baltimore-Arlington

Survey Area

District of Columbia:
Washington, DC
Maryland (city):
Baltimore (effective for wage surveys beginning in July 2027)
Maryland (counties):
Anne Arundel (effective for wage surveys beginning in July 2027)
Baltimore (effective for wage surveys beginning in July 2027)
Carroll (effective for wage surveys beginning in July 2027)
Charles
Frederick
Harford (effective for wage surveys beginning in July 2027)
Howard (effective for wage surveys beginning in July 2027)
Montgomery
Prince George's
Washington (effective for wage surveys beginning in July 2027)
Pennsylvania:
Franklin (effective for wage surveys beginning in July 2027)
Virginia (cities):
Alexandria
Fairfax
Falls Church
Manassas
Manassas Park
Virginia (counties):
Arlington
Fairfax
King George (effective for wage surveys beginning in July 2027)
Loudoun
Prince William
West Virginia:
Berkley (effective for wage surveys beginning in July 2027)

Area of Application. Survey area plus:

Maryland (city):
Baltimore (effective until July 2027)
Maryland (counties):
Allegany
Anne Arundel (effective until July 2027)
Baltimore (effective until July 2027)
Calvert
Caroline
Carroll (effective until July 2027)
Dorchester
Garrett
Harford (effective until July 2027)
Howard (effective until July 2027)
Kent
Queen Anne's
St. Mary's
Talbot
Washington (effective until July 2027)
Pennsylvania:

Franklin (effective until July 2027)
Fulton
Virginia (cities):
Fredericksburg
Harrisonburg
Staunton
Waynesboro
Winchester
Virginia (counties):
Albemarle (Only includes the Shenandoah National Park portion)
Augusta
Caroline
Clarke
Culpeper
Fauquier
Frederick
Greene (Only includes the Shenandoah National Park portion)
King George (effective until July 2027)
Madison
Orange
Page
Rappahannock
Rockingham
Shenandoah
Spotsylvania
Stafford
Warren
Westmoreland
West Virginia:
Berkeley (effective until July 2027)
Hampshire
Hardy
Jefferson
Mineral
Morgan

FLORIDA

Cocoa-Beach

Survey Area

Florida:
Brevard

Area of Application. Survey area.

Jacksonville

Survey Area

Florida:
Alachua
Baker
Clay
Columbia (effective for wage surveys beginning in January 2027)
Duval
Nassau
Orange (effective for wage surveys beginning in January 2027)
St. Johns
Sumter (effective for wage surveys beginning in January 2027)
Georgia:

Camden

Area of Application. Survey area plus:

Florida:
Bradford
Citrus
Columbia (effective until January 2027)
Dixie
Flagler
Gilchrist
Hamilton
Lafayette
Lake

Levy
Madison
Marion
Orange (effective until January 2027)
Osceola
Polk
Putnam
Seminole
Sumter (effective until January 2027)
Suwannee
Taylor
Union
Volusia
Georgia:
Charlton

Miami-Port St. Lucie-Fort Lauderdale

Survey Area

Florida:
Miami-Dade
Palm Beach (effective for wage surveys beginning in May 2027)

Area of Application. Survey area plus:

Florida:
Broward
Collier
Glades
Hendry
Highlands
Indian River
Lee
Martin
Monroe
Okeechobee
Palm Beach (effective until January 2027)
St. Lucie

Area of Application. Survey area.

Panama City

Survey Area

Florida:
Bay
Gulf

Area of Application. Survey area plus:

Florida:
Calhoun
Franklin
Gadsden
Holmes
Jackson
Jefferson
Leon
Liberty
Wakulla
Washington

Georgia:
Decatur

Pensacola

Survey Area

Florida:
Escambia
Santa Rosa

Area of Application. Survey area plus:

Alabama:
Baldwin
Clarke
Conecuh
Covington
Escambia
Mobile
Monroe

Washington
Florida:
Okaloosa
Walton

Tampa-St. Petersburg

Survey Area

Florida:
Hillsborough
Pasco
Pinellas

Area of Application. Survey area plus:

Florida:
Charlotte
De Soto
Hardee
Hernando
Manatee
Sarasota

GEORGIA

Albany

Survey Area

Georgia:
Colquitt
Dougherty
Lee
Mitchell
Worth

Area of Application. Survey area plus:

Georgia:
Atkinson
Baker
Ben Hill
Berrien
Brooks
Calhoun
Clinch
Coffee
Cook
Echols
Grady
Irwin
Lanier
Lowndes
Quitman
Randolph
Schley
Sumter
Terrell
Thomas
Tift
Turner
Ware
Webster

Atlanta

Survey Area

Alabama:
Lee (effective for wage surveys beginning in May 2027)
Macon (effective for wage surveys beginning in May 2027)
Russell (effective for wage surveys beginning in May 2027)
Georgia:
Butts
Chattahoochee (effective for wage surveys beginning in May 2027)
Cherokee
Clayton
Cobb
De Kalb

Douglas
Fayette
Forsyth
Fulton
Gwinnett
Henry
Muscogee (effective for wage surveys beginning in May 2027)
Newton
Paulding
Rockdale
Walton

Area of Application. Survey area plus:

Alabama:
Chambers
Cherokee
Cleburne
Lee (effective until May 2027)
Macon (effective until May 2027)
Randolph
Russell (effective until May 2027)
Tallapoosa
Georgia:
Banks
Barrow
Bartow
Carroll
Chattahoochee (effective until May 2027)
Clarke
Coweta
Dawson
Elbert
Fannin
Floyd
Franklin
Gilmer
Gordon
Greene
Habersham
Hall
Haralson
Harris
Hart
Heard
Jackson
Jasper
Lamar
Lumpkin
Madison
Marion
Meriwether
Morgan
Muscogee (effective until May 2027)
Oconee
Oglethorpe
Pickens
Pike
Polk
Putnam
Rabun
Spalding
Stephens
Stewart
Talbot
Taliaferro
Towns
Troup
Union
Upson
White

Augusta

Survey Area

Georgia:
Columbia

McDuffie
Richmond
South Carolina:
Aiken

Area of Application. Survey area plus:

Georgia:
Burke
Emanuel
Glascok
Jefferson
Jenkins
Lincoln
Warren
Wilkes
South Carolina:
Allendale
Bamberg
Barnwell
Edgefield
McCormick

Macon

Survey Area

Georgia:
Bibb
Houston
Jones
Laurens
Twiggs
Wilkinson

Area of Application. Survey area plus:

Georgia:
Baldwin
Bleckley
Crawford
Crisp
Dodge
Dooly
Hancock
Johnson
Macon
Monroe
Montgomery
Peach
Pulaski
Taylor
Telfair
Treutlen
Washington
Wheeler
Wilcox

Savannah

Survey Area

Georgia:
Bryan
Chatham
Effingham
Liberty
South Carolina:
Beaufort (effective for wage surveys beginning in May 2027)

Area of Application. Survey area plus:

Georgia:
Appling
Bacon
Brantley
Bulloch
Candler
Evans
Glynn
Jeff Davis

Long
McIntosh
Pierce
Screven
Tattnall
Toombs
Wayne
South Carolina:
Beaufort (effective until May 2027)
Hampton
Jasper

HAWAII**Hawaii***Survey Area*

Hawaii:
Honolulu

Area of Application. Survey area plus:

Hawaii:
Hawaii
Kauai (includes the islands of Kauai and Niihau)
Maui (includes the islands of Maui, Molokai, Lanai, and Kahoolawe)

IDAHO**Boise***Survey Area*

Idaho:
Ada
Boise
Canyon
Elmore
Gem

Area of Application. Survey area plus:

Idaho:
Adams
Bannock
Bear Lake
Bingham
Blaine
Bonneville
Butte
Camas
Caribou
Cassia
Clark
Custer
Fremont
Gooding
Jefferson
Jerome
Lemhi
Lincoln
Madison
Minidoka
Oneida
Owyhee
Payette
Power
Teton
Twin Falls
Valley
Washington

ILLINOIS**Bloomington-Pontiac***Survey Area*

Illinois:
Champaign
Menard

Sangamon
Vermilion

Area of Application. Survey area plus:

Illinois:
Christian
Clark
Coles
Crawford
Cumberland
De Witt
Douglas
Edgar
Ford
Jasper
Livingston
Logan
McLean
Macon
Morgan
Moultrie
Piatt
Scott
Shelby

Chicago-Naperville, IL*Survey Area*

Illinois:
Cook
Du Page
Kane
Lake
McHenry
Will

Area of Application. Survey area plus:

Illinois:
Boone
Bureau
De Kalb
Grundy
Iroquois
Kankakee
Kendall
La Salle
Ogle
Putnam
Stephenson
Winnebago

Indiana:

Jasper
Lake
La Porte
Newton
Porter
Pulaski
Starke

Wisconsin:
Kenosha

INDIANA**Evansville-Henderson***Survey Area*

Indiana:
Daviess
Greene
Knox
Martin
Orange

Area of Application. Survey area plus:

Illinois:
Edwards
Gallatin
Hardin

Lawrence
Richland
Wabash
White
Indiana:
Crawford
Dubois
Gibson
Perry
Pike
Posey
Spencer
Vanderburgh
Warrick

Kentucky:
Crittenden
Daviess
Hancock
Henderson
McLean
Ohio
Union
Webster

Fort Wayne-Marion*Survey Area*

Indiana:
Adams
Allen
DeKalb
Huntington
Wells

Area of Application. Survey area plus:

Indiana:
Cass
Elkhart
Fulton
Jay
Kosciusko
LaGrange
Marshall
Noble
St. Joseph
Steuben
Wabash
Whitley
Ohio:
Defiance
Henry
Paulding
Putnam
Williams

Indianapolis-Carmel-Muncie*Survey Area*

Indiana:
Boone
Grant (effective for wage surveys beginning in October 2026)
Hamilton
Hancock
Hendricks
Johnson
Lawrence (effective for wage surveys beginning in October 2026)
Marion
Miami (effective for wage surveys beginning in October 2026)
Monroe (effective for wage surveys beginning in October 2026)
Morgan
Shelby
Vigo (effective for wage surveys beginning in October 2026)

Area of Application. Survey area plus:

Indiana:

Bartholomew
 Benton
 Blackford
 Brown
 Carroll
 Clay
 Clinton
 Decatur
 Delaware
 Fayette
 Fountain
 Grant (effective until October 2026)
 Henry
 Howard
 Jackson
 Jennings
 Lawrence (effective until October 2026)
 Madison
 Miami (effective until October 2026)
 Monroe (effective until October 2026)
 Montgomery
 Owen
 Parke
 Putnam
 Randolph
 Rush
 Sullivan
 Tippecanoe
 Tipton
 Vermillion
 Vigo (effective until October 2026)
 Warren
 Wayne
 White

IOWA**Cedar Rapids-Iowa City***Survey Area*

Iowa:

Benton
 Black Hawk
 Johnson
 Linn

Area of Application. Survey area plus:

Iowa:

Allamakee
 Bremer
 Buchanan
 Butler
 Cedar
 Chickasaw
 Clayton
 Davis
 Delaware
 Fayette
 Floyd
 Grundy
 Henry
 Howard
 Iowa
 Jefferson
 Jones
 Keokuk
 Mitchell
 Tama
 Van Buren
 Wapello
 Washington
 Winneshiek

Davenport-Moline*Survey Area*

Illinois:

Henry
 Rock Island

Iowa:

Scott

Area of Application. Survey area plus:

Illinois:

Brown
 Carroll
 Cass
 Fulton
 Hancock
 Henderson
 Jo Daviess
 Knox
 Lee
 McDonough
 Marshall
 Mason
 Mercer
 Peoria
 Schuyler
 Stark
 Tazewell
 Warren
 Whiteside
 Woodford

Iowa:

Clinton
 Des Moines
 Dubuque
 Jackson
 Lee
 Louisa
 Muscatine

Des Moines*Survey Area*

Iowa:

Polk
 Story
 Warren

Area of Application. Survey area plus:

Iowa:

Adair
 Appanoose
 Boone
 Calhoun
 Carroll
 Cerro Gordo
 Clarke
 Dallas
 Decatur
 Franklin
 Greene
 Guthrie
 Hamilton
 Hancock
 Hardin
 Humboldt
 Jasper
 Kossuth
 Lucas
 Madison
 Mahaska
 Marion
 Marshall
 Monroe
 Poweshiek
 Ringgold
 Union

Wayne

Webster

Winnebago

Worth

Wright

KANSAS**Manhattan***Survey Area*

Kansas:

Geary
 Riley (effective for wage surveys beginning in November 2027)

Area of Application. Survey area plus:

Kansas:

Brown
 Clay
 Cloud
 Coffey
 Dickinson
 Lyon
 Marshall
 Morris
 Nemaha
 Ottawa
 Pottawatomie
 Republic
 Riley (effective until November 2027)
 Saline
 Washington

Wichita*Survey Area*

Kansas:

Butler
 Sedgwick

Area of Application. Survey area plus:

Kansas:

Barber
 Barton
 Chase
 Chautauqua
 Cheyenne
 Clark
 Comanche
 Cowley
 Decatur
 Edwards
 Elk
 Ellis
 Ellsworth
 Finney
 Ford
 Gove
 Graham
 Grant
 Gray
 Greeley
 Greenwood
 Hamilton
 Harper
 Harvey
 Haskell
 Hodgeman
 Jewell
 Kearny
 Kingman
 Kiowa
 Labette
 Lane
 Lincoln
 Logan
 McPherson

Marion	Owsley	New Orleans
Meade	Perry	<i>Survey Area</i>
Mitchell	Powell	Louisiana:
Montgomery	Pulaski	Jefferson
Morton	Rockcastle	Orleans
Neosho	Rowan	Plaquemines
Ness	Taylor	St. Bernard
Norton	Washington	St. Charles
Osborne	Wayne	St. John the Baptist
Pawnee	Whitley	St. Tammany
Phillips	Wolfe	<i>Area of Application. Survey area plus:</i>
Pratt	Louisville	Louisiana:
Rawlins	<i>Survey Area</i>	Ascension
Reno	Indiana:	Assumption
Rice	Clark	East Baton Rouge
Rooks	Floyd	East Feliciana
Rush	Jefferson	Iberville
Russell	Kentucky:	Lafourche
Scott	Bullitt	Livingston
Seward	Hardin	Pointe Coupee
Sheridan	Jefferson	St. Helena
Sherman	Oldham	St. James
Smith	<i>Area of Application. Survey area plus:</i>	St. Mary
Stafford	Indiana:	Tangipahoa
Stanton	Harrison	Terrebonne
Stevens	Scott	Washington
Sumner	Washington	West Baton Rouge
Thomas	Kentucky:	West Feliciana
Trego	Breckinridge	Shreveport
Wallace	Grayson	<i>Survey Area</i>
Wichita	Hart	Louisiana:
Wilson	Henry	Bossier
Woodson	Larue	Caddo
KENTUCKY	Meade	Webster
Lexington	Nelson	<i>Area of Application. Survey area plus:</i>
<i>Survey Area</i>	Shelby	Louisiana:
Kentucky:	Spencer	Bienville
Bourbon	Trimble	Claiborne
Clark	LOUISIANA	De Soto
Fayette	Lake Charles-Alexandria	East Carroll
Jessamine	<i>Survey Area</i>	Jackson
Madison	Louisiana:	Lincoln
Scott	Allen	Morehouse
Woodford	Beauregard	Ouachita
<i>Area of Application. Survey area plus:</i>	Calcasieu	Red River
Kentucky:	Grant	Richland
Anderson	Rapides	Union
Bath	Sabine	West Carroll
Bell	Vernon	Texas:
Boyle	<i>Area of Application. Survey area plus:</i>	Gregg
Breathitt	Louisiana:	Harrison
Casey	Acadia	Panola
Clay	Avoyelles	Rusk
Estill	Caldwell	Upshur
Fleming	Cameron	MAINE
Franklin	Catahoula	Augusta
Garrard	Concordia	<i>Survey Area</i>
Green	Evangeline	Maine:
Harrison	Franklin	Kennebec
Jackson	Iberia	Knox
Knott	Jefferson Davis	Lincoln
Knox	Lafayette	<i>Area of Application. Survey area.</i>
Laurel	La Salle	Central And Northern Maine
Lee	Madison	<i>Survey Area</i>
Leslie	Natchitoches	Maine:
Lincoln	St. Landry	Aroostook
McCreary	St. Martin	Penobscot
Marion	Tensas	
Menifee	Vermilion	
Mercer	Winn	
Montgomery		
Morgan		
Nicholas		

Area of Application. Survey area plus:

Maine:

Hancock
Piscataquis
Somerset
Waldo
Washington

MASSACHUSETTS**Boston-Worcester-Providence***Survey Area*

Maine:

Androscoggin (effective for wage surveys
beginning in August 2026)
Cumberland (effective for wage surveys
beginning in August 2026)
Sagadahoc (effective for wage surveys
beginning in August 2026)
York (effective for wage surveys beginning
in August 2026)

Massachusetts:

Barnstable
Bristol (effective for wage surveys
beginning in August 2026)
Essex
Middlesex
Norfolk
Plymouth
Suffolk
Worcester (effective for wage surveys
beginning in August 2026)

New Hampshire:

Rockingham (effective for wage surveys
beginning in August 2026)
Strafford (effective for wage surveys
beginning in August 2026)

Rhode Island:

Bristol (effective for wage surveys
beginning in August 2026)
Kent (effective for wage surveys beginning
in August 2026)
Newport (effective for wage surveys
beginning in August 2026)
Providence (effective for wage surveys
beginning in August 2026)
Washington (effective for wage surveys
beginning in August 2026)

Area of Application. Survey area plus:

Maine:

Androscoggin (effective until August 2026)
Cumberland (effective until August 2026)
Franklin
Oxford
Sagadahoc (effective until August 2026)
York (effective until August 2026)

Massachusetts:

Bristol (effective until August 2026)
Dukes
Nantucket
Worcester (effective until August 2026)

New Hampshire:

Belknap
Carroll
Cheshire
Coos
Grafton
Hillsborough
Merrimack
Rockingham (effective until August 2026)
Strafford (effective until August 2026)
Sullivan

Rhode Island:

Bristol (effective until August 2026)
Kent (effective until August 2026)

Newport (effective until August 2026)
Providence (effective until August 2026)
Washington (effective until August 2026)
Vermont:
Orange
Windham
Windsor

MICHIGAN**Detroit-Warren-Ann Arbor***Survey Area*

Michigan:

Lapeer
Livingston
Macomb
Oakland
St. Clair
Washtenaw (effective for wage surveys
beginning in January 2027)
Wayne

Ohio:

Lucas (effective for wage surveys beginning
in January 2027)

Area of Application. Survey area plus:

Michigan:

Arenac
Bay
Clare
Clinton
Eaton
Genesee
Gladwin
Gratiot
Huron
Ingham
Isabella
Jackson
Lenawee
Midland
Monroe
Saginaw
Sanilac
Shiawassee
Tuscola
Washtenaw (effective until January 2027)

Ohio:

Fulton
Lucas (effective until January 2027)
Wood

Northwestern Michigan*Survey Area*

Michigan:

Delta
Dickinson
Marquette

Area of Application. Survey area plus:

Michigan:

Alcona
Alger
Alpena
Antrim
Baraga
Benzie
Charlevoix
Cheboygan
Chippewa
Crawford
Emmet
Gogebic
Grand Traverse
Houghton
Iosco

Iron
Kalkaska
Keweenaw
Leelanau
Luce
Mackinac
Manistee
Menominee
Missaukee
Montmorency
Ogemaw
Ontonagon
Oscoda
Otsego
Presque Isle
Roscommon
Schoolcraft
Wexford
Wisconsin:
Florence
Marinette

Southwestern Michigan*Survey Area*

Michigan:

Barry
Calhoun
Kalamazoo
Van Buren

Area of Application. Survey area plus:

Michigan:

Allegan
Berrien
Branch
Cass
Hillsdale
Ionia
Kent
Lake
Mason
Mecosta
Montcalm
Muskegon
Newaygo
Oceana
Osceola
Ottawa
St. Joseph

MINNESOTA**Duluth***Survey Area*

Minnesota:

Carlton
St. Louis
Wisconsin:
Douglas

Area of Application. Survey area plus:

Minnesota:

Aitkin
Becker (only includes the White Earth
Indian Reservation portion)
Beltrami
Cass
Clearwater
Cook
Crow Wing
Hubbard
Itasca
Koochiching
Lake
Lake of the Woods
Mahnommen

Wisconsin:	Polk	Northern Mississippi
Ashland	MISSISSIPPI	<i>Survey Area</i>
Bayfield		Mississippi:
Burnett	Biloxi	Clay
Iron	<i>Survey Area</i>	Grenada
Sawyer	Mississippi:	Lee
Washburn	Hancock	Leflore
Minneapolis-St. Paul	Harrison	Lowndes
<i>Survey Area</i>	Jackson	Monroe
Minnesota:	<i>Area of Application. Survey area plus:</i>	Oktibbeha
Anoka	Mississippi:	<i>Area of Application. Survey area plus:</i>
Carver	George	Mississippi:
Chisago	Pearl River	Alcorn
Dakota	Stone	Bolivar
Hennepin	Jackson	Calhoun
Morrison (effective for wage surveys beginning in April 2027)	<i>Survey Area</i>	Carroll
Ramsey	Mississippi:	Chickasaw
Scott	Hinds	Choctaw
Stearns (effective for wage surveys beginning in April 2027)	Rankin	Coahoma
Washington	Warren	Itawamba
Wright	<i>Area of Application. Survey area plus:</i>	Lafayette (Does not include the Holly Springs National Forest portion)
Wisconsin:	Mississippi:	Montgomery
St. Croix	Adams	Noxubee
<i>Area of Application. Survey area plus:</i>	Amite	Pontotoc (Does not include the Holly Springs National Forest portion)
Minnesota:	Attala	Prentiss
Benton	Claiborne	Quitman
Big Stone	Copiah	Sunflower
Blue Earth	Franklin	Tallahatchie
Brown	Holmes	Tishomingo
Chippewa	Humphreys	Union (Does not include the Holly Springs National Forest portion)
Cottonwood	Issaquena	Washington
Dodge	Jefferson	Webster
Douglas	Jefferson Davis	Winston
Faribault	Lawrence	Yalobusha
Fillmore	Lincoln	MISSOURI
Freeborn	Madison	Kansas City
Goodhue	Marion	<i>Survey Area</i>
Grant	Pike	Kansas:
Isanti	Scott	Jefferson (effective for wage surveys beginning in October 2026)
Kanabec	Sharkey	Johnson
Kandiyohi	Simpson	Leavenworth
Lac Qui Parle	Smith	Osage (effective for wage surveys beginning in October 2026)
Le Sueur	Walthall	Shawnee (effective for wage surveys beginning in October 2026)
McLeod	Wilkinson	Wyandotte
Martin	Yazoo	Missouri:
Meeker	Meridian	Cass
Mille Lacs	<i>Survey Area</i>	Clay
Morrison (effective until April 2027)	Alabama:	Jackson
Mower	Choctaw	Johnson (effective for wage surveys beginning in October 2026)
Nicollet	Mississippi:	Platte
Olmsted	Forrest	Ray
Pine	Lamar	<i>Area of Application. Survey area plus:</i>
Pope	Lauderdale	Kansas:
Redwood	<i>Area of Application. Survey area plus:</i>	Allen
Renville	Alabama:	Anderson
Rice	Sumter	Atchison
Sherburne	Mississippi:	Bourbon
Sibley	Clarke	Doniphan
Stearns (effective until April 2027)	Covington	Douglas
Steele	Greene	Franklin
Stevens	Jasper	Jackson
Swift	Jones	Jefferson (effective until October 2026)
Todd	Kemper	Linn
Traverse	Leake	Miami
Wabasha	Neshoba	Osage (effective until October 2026)
Wadena	Newton	
Waseca	Perry	
Watonwan	Wayne	
Winona		
Yellow Medicine		
Wisconsin:		
Pierce		

Shawnee (effective until October 2026)
 Wabaunsee
 Missouri:
 Adair
 Andrew
 Atchison
 Bates
 Buchanan
 Caldwell
 Carroll
 Chariton
 Clinton
 Daviess
 DeKalb
 Gentry
 Grundy
 Harrison
 Henry
 Holt
 Johnson (effective until October 2026)
 Lafayette
 Linn
 Livingston
 Macon
 Mercer
 Nodaway
 Pettis
 Putnam
 Saline
 Schuyler
 Sullivan
 Worth

St. Louis

Survey Area

Illinois:

Clinton
 Madison
 Monroe
 St. Clair
 Williamson (effective for wage surveys
 beginning in October 2026)
 Missouri (city):
 St. Louis
 Missouri (counties):
 Boone (effective for wage surveys
 beginning in October 2026)
 Franklin
 Jefferson
 St. Charles
 St. Louis

Area of Application. Survey area plus:

Illinois:

Adams
 Alexander
 Bond
 Calhoun
 Clay
 Effingham
 Fayette
 Franklin
 Greene
 Hamilton
 Jackson
 Jefferson
 Jersey
 Johnson
 Macoupin
 Marion
 Montgomery
 Perry
 Pike
 Pope
 Pulaski
 Randolph

Saline
 Union
 Washington
 Wayne
 Williamson (effective until October 2026)
 Missouri:
 Audrain
 Bollinger
 Boone (effective until October 2026)
 Callaway
 Cape Girardeau
 Clark
 Cole
 Cooper
 Crawford
 Gasconade
 Howard
 Iron
 Knox
 Lewis
 Lincoln
 Madison
 Marion
 Mississippi
 Moniteau
 Monroe
 Montgomery
 Osage
 Perry
 Pike
 Ralls
 Randolph
 St. Francois
 Ste. Genevieve
 Scotland
 Scott
 Shelby
 Warren
 Washington

Southern Missouri

Survey Area

Missouri:
 Christian
 Greene
 Laclede
 Phelps
 Pulaski
 Webster

Area of Application. Survey area plus:

Kansas:

Cherokee
 Crawford

Missouri:

Barry
 Barton
 Benton
 Butler
 Camden
 Carter
 Cedar
 Dade
 Dallas
 Dent
 Douglas
 Hickory
 Howell
 Jasper
 Lawrence
 Maries
 Miller
 Morgan
 New Madrid
 Newton
 Oregon

Ozark
 Polk
 Reynolds
 Ripley
 St. Clair
 Shannon
 Stoddard
 Stone
 Taney
 Texas
 Vernon
 Wayne
 Wright

MONTANA

Montana

Survey Area

Montana:

Cascade
 Lewis and Clark
 Yellowstone

Area of Application. Survey area plus:

Montana:

Beaverhead
 Big Horn
 Blaine
 Broadwater
 Carbon
 Carter
 Chouteau
 Custer
 Daniels
 Dawson
 Deer Lodge
 Fallon
 Fergus
 Flathead
 Gallatin
 Garfield
 Glacier
 Golden Valley
 Granite
 Hill
 Jefferson
 Judith Basin
 Lake
 Liberty
 Lincoln
 McCone
 Madison
 Meagher
 Mineral
 Missoula
 Musselshell
 Park
 Petroleum
 Phillips
 Pondera
 Powder River
 Powell
 Prairie
 Ravalli
 Richland
 Roosevelt
 Rosebud
 Sanders
 Sheridan
 Silver Bow
 Stillwater
 Sweet Grass
 Teton
 Toole
 Treasure
 Valley

Wheatland
Wibaux
Wyoming:
Big Horn
Park
Teton

NEBRASKA**Omaha***Survey Area*

Iowa:
Pottawattamie
Nebraska:
Douglas
Lancaster
Sarpy

Area of Application. Survey area plus:

Iowa:
Adams
Audubon
Buena Vista
Cass
Cherokee
Clay
Crawford
Fremont
Harrison
Ida
Mills
Monona
Montgomery
O'Brien
Page
Palo Alto
Plymouth
Pocahontas
Sac
Shelby
Sioux
Taylor
Woodbury
Nebraska:
Adams
Antelope
Arthur
Blaine
Boone
Boyd
Brown
Buffalo
Burt
Butler
Cass
Cedar
Chase
Cherry
Clay
Colfax
Cumming
Custer
Dakota
Dawson
Dixon
Dodge
Dundy
Fillmore
Franklin
Frontier
Furnas
Gage
Garfield
Gosper
Grant
Greeley

Hall
Hamilton
Harlan
Hayes
Hitchcock
Holt
Hooker
Howard
Jefferson
Johnson
Kearney
Keith
Keya Paha
Knox
Lincoln
Logan
Loup
McPherson
Madison
Merrick
Nance
Nemaha
Nuckolls
Otoe
Pawnee
Perkins
Phelps
Pierce
Platte
Polk
Red Willow
Richardson
Rock
Saline
Saunders
Seward
Sherman
Stanton
Thayer
Thomas
Thurston
Valley
Washington
Wayne
Webster
Wheeler
York
South Dakota:
Union

NEVADA**Las Vegas***Survey Area*

Nevada:
Clark
Nye

Area of Application. Survey area plus:

Arizona:
Mohave
California:
Inyo (Does not include the China Lake
Naval Weapons Center portion)
Nevada:
Esmeralda
Lincoln

Reno*Survey Area*

California:
Lassen (effective for wage surveys
beginning in March 2026)
Nevada:
Lyon
Mineral

Storey
Washoe

Area of Application. Survey area plus:

California:
Alpine
Lassen (effective until March 2026)
Mono (Does not cover locations where the
Bridgeport, CA, special schedule applies)
Nevada (city):
Carson City
Nevada (county):
Churchill
Douglas
Elko
Eureka
Humboldt
Lander
Pershing
White Pine

NEW MEXICO**Albuquerque-Santa Fe-Los Alamos***Survey Area*

New Mexico:
Bernalillo
McKinley (effective for wage surveys
beginning in April 2027)
Sandoval

Area of Application. Survey area plus:

New Mexico:
Catron
Cibola
Colfax
Curry
De Baca
Guadalupe
Harding
Lincoln (Does not include the White Sands
Missile Range portion)
Los Alamos
McKinley (effective until April 2027)
Mora
Quay
Rio Arriba
Roosevelt
San Miguel
Santa Fe
Socorro (Does not include the White Sands
Missile Range portion)
Taos
Torrance
Union
Valencia

NEW YORK**Albany-Schenectady***Survey Area*

New York:
Albany
Montgomery
Rensselaer
Saratoga
Schenectady

Area of Application. Survey area plus:

Massachusetts:
Berkshire
New York:
Columbia
Delaware
Fulton
Greene
Hamilton

Schoharie
Warren
Washington
Vermont:
Bennington
Rutland

Buffalo

Survey Area

New York:
Erie
Niagara

Area of Application. Survey area plus:

New York:
Allegany
Cattaraugus
Chautauqua
Wyoming

Pennsylvania:

Elk (Only includes the Allegheny National
Forest portion)
Forest (Only includes the Allegheny
National Forest portion)
McKean
Warren

New York-Newark

Survey Area

New Jersey:
Bergen
Burlington (Only includes the Joint Base
McGuire-Dix-Lakehurst portion)

Essex
Hudson
Middlesex
Monmouth (effective for wage surveys
beginning in January 2028)
Morris
Ocean (effective for wage surveys
beginning in January 2028)

Passaic
Somerset
Union

New York:

Bronx
Dutchess (effective for wage surveys
beginning in January 2028)
Kings
Nassau
New York
Orange
Queens
Suffolk
Westchester

Pennsylvania:

Monroe (effective for wage surveys
beginning in January 2028)

Area of Application. Survey area plus:

Connecticut:
Fairfield

New Jersey:
Hunterdon
Mercer

Monmouth (effective until January 2028)
Ocean (effective until January 2028)
Sussex
Warren

New York:

Dutchess (effective until January 2028)
Putnam
Richmond
Rockland
Sullivan
Ulster

Pennsylvania:

Carbon
Lehigh
Monroe (effective until January 2028)
Northampton
Pike
Wayne

Northern New York

Survey Area

New York:
Clinton
Franklin
Jefferson
St. Lawrence
Vermont:
Chittenden
Franklin
Grand Isle

Area of Application. Survey area plus:

New York:

Essex
Lewis
Vermont:
Addison
Caledonia
Essex
Lamoille
Orleans
Washington

Rochester

Survey Area

New York:
Livingston
Monroe
Ontario
Orleans
Steuben
Wayne

Area of Application. Survey area plus:

New York:
Chemung
Genesee
Schuyler
Seneca
Yates

Pennsylvania:
Tioga

Syracuse-Utica-Rome

Survey Area

New York:
Herkimer
Madison
Oneida
Onondaga
Oswego

Area of Application. Survey area plus:

New York:
Broome
Cayuga
Chenango
Cortland
Otsego
Tioga
Tompkins

NORTH CAROLINA

Asheville

Survey Area

North Carolina:

Buncombe
Haywood
Henderson
Madison
Transylvania

Area of Application. Survey area plus:

North Carolina:

Avery
Cherokee
Clay
Graham
Jackson
Macon
Mitchell
Polk
Rutherford
Swain
Yancey

Central North Carolina

Survey Area

North Carolina:
Cumberland
Durham
Harnett
Hoke
Johnston
Orange
Wake
Wayne

Area of Application. Survey area plus:

North Carolina:

Alamance
Bladen
Caswell
Chatham
Davidson
Davie
Edgecombe
Forsyth
Franklin
Granville
Guilford
Halifax
Lee
Montgomery
Moore
Nash
Northampton
Person
Randolph
Richmond
Robeson
Rockingham
Sampson
Scotland
Stokes
Surry
Vance
Warren
Wilson
Yadkin

South Carolina:

Dillon
Marion
Marlboro

Charlotte-Concord

Survey Area

North Carolina:

Cabarrus
Gaston
Mecklenburg
Rowan

Union	North Dakota:	Pendleton
<i>Area of Application. Survey area plus:</i>	Adams	Robertson
North Carolina:	Barnes	Ohio:
Alexander	Benson	Adams
Anson	Billings	Brown
Burke	Bottineau	Butler
Caldwell	Bowman	Clinton
Catawba	Burke	Highland
Cleveland	Cavalier	Cleveland-Akron-Canton
Iredell	Dickey	<i>Survey Area</i>
Lincoln	Divide	Ohio:
McDowell	Dunn	Cuyahoga
Stanly	Eddy	Geauga
Wilkes	Emmons	Lake
South Carolina:	Foster	Mahoning (effective for wage surveys beginning in April 2027)
Chester	Golden Valley	Medina
Chesterfield	Grant	<i>Area of Application. Survey area plus:</i>
Lancaster	Griggs	Ohio:
York	Hettinger	Ashland
Southeastern North Carolina	Kidder	Ashtabula
<i>Survey Area</i>	LaMoure	Carroll
North Carolina:	Logan	Columbiana
Brunswick	McHenry	Coshocton
Carteret	McIntosh	Crawford
Columbus	McKenzie	Erie
Craven	Mountrail	Holmes
Jones	Nelson	Huron
Lenoir	Pembina	Lorain
New Hanover	Pierce	Mahoning (effective until April 2027)
Onslow	Ramsey	Ottawa
Pamlico	Ransom	Portage
Pender	Renville	Richland
<i>Area of Application. Survey area plus:</i>	Richland	Sandusky
North Carolina:	Rolette	Stark
Beaufort	Sargent	Summit
Bertie	Sheridan	Trumbull
Duplin	Sioux	Tuscarawas
Greene	Slope	Wayne
Hyde	Stark	Columbus-Marion-Zanesville
Martin	Steele	<i>Survey Area</i>
Pitt	Stutsman	Ohio:
Washington	Towner	Delaware
NORTH DAKOTA	Walsh	Fairfield
North Dakota	Williams	Franklin
<i>Survey Area</i>	OHIO	Licking
Minnesota:	Cincinnati	Madison
Clay	<i>Survey Area</i>	Pickaway
Polk	Indiana:	Ross (effective for wage surveys beginning in January 2027)
North Dakota:	Dearborn	<i>Area of Application. Survey area plus:</i>
Burleigh	Kentucky:	Ohio:
Cass	Boone	Athens
Grand Forks	Campbell	Fayette
McLean	Kenton	Guernsey
Mercer	Ohio:	Hancock
Morton	Clermont	Hardin
Oliver	Hamilton	Hocking
Trall	Warren	Knox
Ward	<i>Area of Application. Survey area plus:</i>	Logan
<i>Area of Application. Survey area plus:</i>	Indiana:	Marion
Minnesota:	Franklin	Morgan
Becker (does not include the White Earth Indian Reservation portion)	Ohio	Morrow
Kittson	Ripley	Muskingum
Marshall	Switzerland	Noble
Norman	Union	Perry
Otter Tail	Kentucky:	Pike
Pennington	Bracken	Ross (effective until January 2027)
Red Lake	Carroll	Seneca
Roseau	Gallatin	Union
Wilkin	Grant	Vinton
	Lewis	Wyandot
	Mason	
	Owen	

Dayton*Survey Area***Ohio:**

Champaign
Clark
Greene
Miami
Montgomery
Preble

*Area of Application. Survey area plus:***Ohio:**

Allen
Auglaize
Darke
Mercer
Shelby
Van Wert

OKLAHOMA**Oklahoma City***Survey Area***Oklahoma:**

Canadian
Cleveland
McClain
Oklahoma
Pottawatomie

*Area of Application. Survey area plus:***Oklahoma:**

Alfalfa
Atoka
Beckham
Blaine
Caddo
Coal
Custer
Dewey
Ellis
Garfield
Garvin
Grady
Grant
Harper
Hughes
Johnston
Kingfisher
Lincoln
Logan
Major
Marshall
Murray
Noble
Payne
Pontotoc
Roger Mills
Seminole
Washita
Woods
Woodward

Tulsa*Survey Area***Oklahoma:**

Creek
Mayes
Muskogee
Osage
Pittsburg
Rogers
Tulsa
Wagoner

*Area of Application. Survey area plus:***Arkansas:**

Benton
Carroll
Crawford
Franklin (Only includes the Fort Chaffee
portion)
Madison
Sebastian
Washington

Missouri:

McDonald

Oklahoma:

Adair
Cherokee
Choctaw
Craig
Delaware
Haskell
Kay
Latimer
Le Flore
McCurtain
McIntosh
Nowata
Okfuskee
Okmulgee
Ottawa
Pawnee
Pushmataha
Sequoyah
Washington

OREGON**Portland-Vancouver-Salem***Survey Area***Oregon:**

Clackamas
Marion
Multnomah
Polk
Washington

Washington:

Clark

*Area of Application. Survey area plus:***Oregon:**

Benton
Clatsop
Columbia
Gilliam
Hood River
Linn
Sherman
Tillamook
Wasco
Yamhill

Washington:

Cowlitz
Klickitat
Skamania
Wahkiakum

Southwestern Oregon*Survey Area***Oregon:**

Douglas
Jackson
Lane

*Area of Application. Survey area plus:***California:**

Del Norte

Oregon:

Coos

Crook

Curry
Deschutes
Jefferson
Josephine
Klamath
Lake
Lincoln

PENNSYLVANIA**Harrisburg-York-Lebanon***Survey Area***Pennsylvania:**

Cumberland
Dauphin
Lebanon
Union (effective for wage surveys
beginning in May 2026)
York

*Area of Application. Survey area plus:***Pennsylvania:**

Adams
Clinton
Juniata
Lancaster
Lycoming
Mifflin
Perry
Union (effective until May 2026)

Philadelphia-Reading-Camden*Survey Area***Delaware:**

Kent (effective for wage surveys beginning
in October 2027)
New Castle (effective for wage surveys
beginning in October 2027)

Maryland:

Cecil (effective for wage surveys beginning
in October 2027)

New Jersey:

Burlington (Excluding the Joint Base
McGuire-Dix-Lakehurst portion)

Camden**Gloucester**

Salem (effective for wage surveys
beginning in October 2027)

Pennsylvania:

Bucks
Chester
Delaware
Montgomery
Philadelphia

*Area of Application. Survey area plus:***Delaware:**

Kent (effective until October 2027)
New Castle (effective until October 2027)
Sussex

Maryland:

Cecil (effective until October 2027)

Somerset**Wicomico**

Worcester (Does not include the
Assateague Island portion)

New Jersey:

Atlantic
Cape May
Cumberland
Salem (effective until October 2027)

Pennsylvania:

Berks
Schuylkill

Pittsburgh*Survey Area*

Pennsylvania:

Allegheny

Beaver

Butler

Cambria (effective for wage surveys
beginning in July 2027)

Washington

Westmoreland

Area of Application. Survey area plus:

Ohio:

Belmont

Harrison

Jefferson

Pennsylvania:

Armstrong

Bedford

Blair

Cambria (effective until July 2027)

Cameron

Centre

Clarion

Clearfield

Crawford

Elk (Does not include the Allegheny
National Forest portion)

Erie

Fayette

Forest (Does not include the Allegheny
National Forest portion)

Greene

Huntingdon

Indiana

Jefferson

Lawrence

Mercer

Potter

Somerset

Venango

West Virginia:

Brooke

Hancock

Marshall

Ohio

Scranton-Wilkes-Barre*Survey Area*

Pennsylvania:

Lackawanna

Luzerne

Area of Application. Survey area plus:

Pennsylvania:

Bradford

Columbia

Montour

Northumberland

Snyder

Sullivan

Susquehanna

Union

Wayne

Wyoming

PUERTO RICO**Puerto Rico***Survey Area*

Puerto Rico (Municipios):

Bayamón

Canóvanas

Carolina

Cataño

Guaynabo

Humacao

Loíza

San Juan

Toa Baja

Trujillo Alto

Area of Application.

Puerto Rico

SOUTH CAROLINA**Charleston***Survey Area*

South Carolina:

Berkeley

Charleston

Dorchester

Area of Application. Survey area plus:

South Carolina:

Colleton

Georgetown

Horry

Williamsburg

Columbia*Survey Area*

South Carolina:

Darlington

Florence

Kershaw

Lee

Lexington

Richland

Sumter

Area of Application. Survey area plus:

South Carolina:

Abbeville

Anderson

Calhoun

Cherokee

Clarendon

Fairfield

Greenville

Greenwood

Laurens

Newberry

Oconee

Orangeburg

Pickens

Saluda

Spartanburg

Union

SOUTH DAKOTA**Eastern South Dakota***Survey Area*

South Dakota:

Minnehaha

Area of Application. Survey area plus:

Iowa:

Dickinson

Emmet

Lyon

Osceola

Minnesota:

Jackson

Lincoln

Lyon

Murray

Nobles

Pipestone

Rock

South Dakota:

Aurora

Beadle

Bennett

Bon Homme

Brookings

Brown

Brule

Buffalo

Campbell

Charles Mix

Clark

Clay

Codington

Corson

Davison

Day

Deuel

Dewey

Douglas

Edmunds

Faulk

Grant

Gregory

Haakon

Hamlin

Hand

Hanson

Hughes

Hutchinson

Hyde

Jerauld

Jones

Kingsbury

Lake

Lincoln

Lyman

McCook

McPherson

Marshall

Mellette

Miner

Moody

Potter

Roberts

Sanborn

Spink

Stanley

Sully

Todd

Tripp

Turner

Walworth

Yankton

Ziebach

TENNESSEE**Eastern Tennessee***Survey Area*

Tennessee:

Carter

Hawkins

Sullivan

Unicoi

Washington

Virginia (city):

Bristol

Virginia (counties):

Scott

Washington

Area of Application. Survey area plus:

Kentucky:

Harlan

Letcher
North Carolina:
Alleghany
Ashe
Watauga
Tennessee:
Cocke
Greene
Hancock
Johnson
Virginia:
Buchanan
Grayson
Lee
Russell
Smyth
Tazewell

Memphis*Survey Area*

Arkansas:
Crittenden
Mississippi
Mississippi:
De Soto
Tennessee:
Shelby
Tipton

Area of Application. Survey area plus:

Arkansas:
Craighead
Cross
Lee
Poinsett
St. Francis
Mississippi:
Benton
Lafayette (Only includes the Holly Springs
National Forest portion)
Marshall
Panola
Pontotoc (Only includes the Holly Springs
National Forest portion)
Tate
Tippah
Tunica
Union (Only includes the Holly Springs
National Forest portion)

Missouri:
Dunklin
Pemiscot

Tennessee:
Carroll
Chester
Crockett
Dyer
Fayette
Gibson
Hardeman
Hardin
Haywood
Lake
Lauderdale
Madison
McNairy
Obion

Nashville*Survey Area*

Kentucky:
Christian
Tennessee:
Cheatham
Davidson

Dickson
Montgomery
Robertson
Rutherford
Sumner
Williamson
Wilson

Area of Application. Survey area plus:

Alabama:
Jackson
Georgia:
Catossa
Chattooga
Dade
Murray
Walker
Whitfield

Illinois:

Massac

Kentucky:

Adair
Allen
Ballard
Barren
Butler
Caldwell
Calloway
Carlisle
Clinton
Cumberland
Edmonson
Fulton
Graves
Hickman
Hopkins
Livingston
Logan
Lyon
McCracken
Marshall
Metcalfe
Monroe
Muhlenberg
Russell
Simpson
Todd
Trigg
Warren

Tennessee:

Anderson
Bedford
Benton
Bledsoe
Blount
Bradley
Campbell
Cannon
Claiborne
Clay
Coffee
Cumberland
Decatur
DeKalb
Fentress
Franklin
Grainger
Grundy
Hamblen
Hamilton
Henderson
Henry
Hickman
Houston
Humphreys
Jackson

Jefferson
Knox
Lawrence
Lewis
Loudon
McMinn
Macon
Marion
Marshall
Maury
Meigs
Monroe
Moore
Morgan
Overton
Perry
Pickett
Polk
Putnam
Rhea
Roane
Scott
Sequatchie
Sevier
Smith
Stewart
Trousdale
Union
Van Buren
Warren
Weakley
White

TEXAS**Austin***Survey Area*

Texas:
Hays
Milam
Travis
Williamson

Area of Application. Survey area plus:

Texas:
Bastrop
Blanco
Burnet
Caldwell
Fayette
Lee
Llano
Mason
San Saba

Corpus Christi-Kingsville-Alice*Survey Area*

Texas:
Hidalgo (effective for wage surveys
beginning in June 2026)
Nueces
San Patricio

Area of Application. Survey area plus:

Texas:
Aransas
Bee
Brooks
Calhoun
Cameron
Duval
Goliad
Hidalgo (effective until June 2026)
Jim Wells
Kenedy
Kleberg

Live Oak	Brazoria	Texas:
Refugio	Fort Bend	Bowie
Starr	Galveston	<i>Area of Application. Survey area plus:</i>
Victoria	Harris	Arkansas:
Willacy	Liberty	Columbia
Dallas-Fort Worth	Montgomery	Hempstead
<i>Survey Area</i>	Waller	Howard
Texas:	<i>Area of Application. Survey area plus:</i>	Lafayette
Collin	Texas:	Nevada
Dallas	Angelina	Sevier
Denton	Austin	Texas:
Ellis	Chambers	Camp
Grayson	Colorado	Cass
Hood	Grimes	Franklin
Johnson	Hardin	Marion
Kaufman	Houston	Morris
Parker	Jackson	Red River
Rockwall	Jasper	Titus
Tarrant	Jefferson	Waco
Wise	Lavaca	<i>Survey Area</i>
<i>Area of Application. Survey area plus:</i>	Madison	Texas:
Oklahoma:	Matagorda	Bell
Bryan	Nacogdoches	Coryell
Carter	Newton	McLennan
Love	Orange	<i>Area of Application. Survey area plus:</i>
Texas:	Polk	Texas:
Cherokee	Sabine	Anderson
Cooke	San Augustine	Bosque
Delta	San Jacinto	Brazos
Erath	Shelby	Burleson
Fannin	Trinity	Falls
Henderson	Tyler	Freestone
Hill	Walker	Hamilton
Hopkins	Washington	Lampasas
Hunt	Wharton	Leon
Jack	San Antonio	Limestone
Lamar	<i>Survey Area</i>	Mills
Montague	Texas:	Robertson
Navarro	Bexar	Western Texas
Palo Pinto	Comal	<i>Survey Area</i>
Rains	Guadalupe	Texas:
Smith	<i>Area of Application. Survey area plus:</i>	Callahan
Somervell	Texas:	Ector
Van Zandt	Atascosa	Howard
Wood	Bandera	Jones
El Paso	DeWitt	Lubbock
<i>Survey Area</i>	Dimmit	Midland
New Mexico:	Edwards	Nolan
Dona Ana	Frio	Taylor
Otero	Gillespie	Tom Green
Texas:	Gonzales	<i>Area of Application. Survey area plus:</i>
El Paso	Jim Hogg	New Mexico:
<i>Area of Application. Survey area plus:</i>	Karnes	Lea
New Mexico:	Kendall	Oklahoma:
Chaves	Kerr	Beaver
Eddy	Kinney	Cimarron
Grant	La Salle	Texas
Hidalgo	McMullen	Texas:
Lincoln (Only includes the White Sands Missile Range portion)	Maverick	Andrews
Luna	Medina	Armstrong
Sierra	Real	Bailey
Socorro (Only includes the White Sands Missile Range portion)	Uvalde	Borden
Texas:	Val Verde	Brewster
Culberson	Webb	Briscoe
Hudspeth	Wilson	Brown
Houston-Galveston-Texas City	Zapata	Carson
<i>Survey Area</i>	Zavala	Castro
Texas:	Texarkana	Childress
	<i>Survey Area</i>	Cochran
	Arkansas:	Coke
	Little River	Coleman
	Miller	

Collingsworth	Cotton	Hopewell
Comanche	Stephens	Petersburg
Concho	Tillman	Richmond
Cottle	Texas:	Virginia (counties):
Crane	Archer	Charles City
Crockett	Clay	Chesterfield
Crosby	Wichita	Dinwiddie
Dallam	<i>Area of Application. Survey area plus:</i>	Goochland
Dawson	Oklahoma:	Hanover
Deaf Smith	Greer	Henrico
Dickens	Harmon	New Kent
Donley	Jackson	Powhatan
Eastland	Jefferson	Prince George
Fisher	Kiowa	<i>Area of Application. Survey area plus:</i>
Floyd	Texas:	Virginia (cities):
Gaines	Baylor	Charlottesville
Garza	Foard	Emporia
Glasscock	Hardeman	Virginia (counties):
Gray	Knox	Albemarle (Does not include the
Hale	Wilbarger	Shenandoah National Park portion)
Hall	Young	Amelia
Hansford	UTAH	Brunswick
Hartley	Utah	Buckingham
Haskell	<i>Survey Area</i>	Charlotte
Hemphill	Utah:	Cumberland
Hockley	Box Elder	Essex
Hutchinson	Davis	Fluvanna
Irion	Salt Lake	Greene (Does not include the Shenandoah
Jeff Davis	Tooele	National Park portion)
Kent	Utah	Greensville
Kimble	Weber	King and Queen
King	<i>Area of Application. Survey area plus:</i>	King William
Lamb	Colorado:	Lancaster
Lipscomb	Mesa	Louisa
Loving	Moffat	Lunenburg
Lynn	Idaho:	Mecklenburg
McCulloch	Franklin	Nelson
Martin	Utah:	Northumberland
Menard	Beaver	Nottoway
Mitchell	Cache	Prince Edward
Moore	Carbon	Richmond
Motley	Daggett	Sussex
Ochiltree	Duchesne	Roanoke
Oldham	Emery	<i>Survey Area</i>
Parmer	Garfield (Does not include the Bryce	Virginia (cities):
Pecos	Canyon, Capitol Reef, and Canyonlands	Radford
Potter	National Parks portions)	Roanoke
Presidio	Grand (Does not include the Arches and	Salem
Randall	Canyonlands National Parks portions)	Virginia (counties):
Reagan	Iron (Does not include the Cedar Breaks	Botetourt
Reeves	National Monument and Zion National	Craig
Roberts	Park portions)	Montgomery
Runnels	Juab	Roanoke
Schleicher	Millard	<i>Area of Application. Survey area plus:</i>
Scurry	Morgan	Virginia (cities):
Shackelford	Piute	Buena Vista
Sherman	Rich	Covington
Stephens	Sanpete	Danville
Sterling	Sevier	Galax
Stonewall	Summit	Lexington
Sutton	Uintah	Lynchburg
Swisher	Wasatch	Martinsville
Terrell	Wayne (Does not include the Capitol Reef	Staunton
Terry	and Canyonlands National Parks	Waynesboro
Throckmorton	portions)	Virginia (counties):
Upton	VIRGINIA	Alleghany
Ward	Richmond	Amherst
Wheeler	<i>Survey Area</i>	Appomattox
Winkler	Virginia (cities):	Augusta (Does not include the Shenandoah
Yoakum	Colonial Heights	National Park portion)
Wichita Falls, Texas-Southwestern		Bath
Oklahoma		Bedford
<i>Survey Area</i>		Bland
Oklahoma:		
Comanche		

Campbell	Grays Harbor	Greenup
Carroll	Island (effective until September 2026)	Ohio:
Floyd	Jefferson	Lawrence
Franklin	Lewis	West Virginia:
Giles	Mason	Cabell
Halifax	Pacific	Harrison
Henry	San Juan	Kanawha
Highland	Skagit	Marion
Patrick	Thurston	Monongalia
Pittsylvania	Whatcom	Putnam
Pulaski		Wayne
Rockbridge		
Wythe		
Virginia Beach-Chesapeake	Southeastern Washington-Eastern Oregon	
<i>Survey Area</i>	<i>Survey Area</i>	<i>Area of Application. Survey area plus:</i>
North Carolina:	Oregon:	Kentucky:
Currituck	Umatilla	Carter
Pasquotank (effective for wage surveys beginning in May 2026)	Washington:	Elliott
Virginia (cities):	Benton	Floyd
Chesapeake	Franklin	Johnson
Hampton	Walla Walla	Lawrence
Newport News	Yakima	Magoffin
Norfolk		Martin
Poquoson	<i>Area of Application. Survey area plus:</i>	Pike
Portsmouth	Oregon:	Ohio:
Suffolk	Baker	Gallia
Virginia Beach	Grant	Jackson
Williamsburg	Harney	Meigs
Virginia (counties):	Malheur	Monroe
Gloucester	Morrow	Scioto
James City	Union	Washington
York	Wallowa	Virginia (city):
	Wheeler	Norton
	Washington:	Virginia (counties):
	Columbia	Dickenson
	Kittitas (Only includes the Yakima Firing Range portion)	Wise
<i>Area of Application. Survey area plus:</i>	Spokane	West Virginia:
Maryland:	<i>Survey Area</i>	Barbour
Worcester (Only includes the Assateague Island portion)	Washington:	Boone
North Carolina:	Spokane	Braxton
Camden		Calhoun
Chowan	<i>Area of Application. Survey area plus:</i>	Clay
Dare	Idaho:	Doddridge
Gates	Benewah	Fayette
Hertford	Bonner	Gilmer
Pasquotank (effective until May 2026)	Boundary	Grant
Perquimans	Clearwater	Greenbrier
Tyrrell	Idaho	Jackson
Virginia (city):	Kootenai	Lewis
Franklin	Latah	Lincoln
Virginia (counties):	Lewis	Logan
Accomack	Nez Perce	McDowell
Isle of Wight	Shoshone	Mason
Mathews	Washington:	Mercer
Middlesex	Adams	Mingo
Northampton	Asotin	Monroe
Southampton	Chelan (Does not include the North Cascades National Park portion)	Nicholas
Surry	Douglas	Pendleton
WASHINGTON	Ferry	Pleasants
Seattle-Tacoma	Garfield	Pocahontas
<i>Survey Area</i>	Grant	Preston
Washington:	Kittitas (Does not include the Yakima Firing Range portion)	Raleigh
Island (effective for wage surveys beginning in September 2026)	Lincoln	Randolph
King	Okanogan	Ritchie
Kitsap	Pend Oreille	Roane
Pierce	Stevens	Summers
Snohomish	Whitman	Taylor
<i>Area of Application. Survey area plus:</i>	WEST VIRGINIA	Tucker
Washington:	West Virginia	Tyler
Chelan (Only includes the North Cascades National Park section)	<i>Survey Area</i>	Upshur
Clallam	Kentucky:	Webster
	Boyd	Wetzel
		Wirt
		Wood
		Wyoming

WISCONSIN

Madison

Survey Area

Wisconsin:
Dane

Area of Application. Survey area plus:

Wisconsin:
Adams
Columbia
Grant
Green
Green Lake
Iowa
Lafayette
Marquette
Rock
Sauk
Waushara

Milwaukee-Racine-Waukesha

Survey Area

Wisconsin:
Milwaukee
Ozaukee
Washington
Waukesha

Area of Application. Survey area plus:

Wisconsin:
Brown
Calumet
Dodge
Door
Fond du Lac
Jefferson
Kewaunee
Manitowoc
Menominee
Oconto
Outagamie
Racine
Shawano
Sheboygan
Walworth

Winnebago

Southwestern Wisconsin

Survey Area

Wisconsin:
Chippewa
Eau Claire
La Crosse
Monroe
Trempealeau

Area of Application. Survey area plus:

Minnesota:
Houston
Wisconsin:
Barron
Buffalo
Clark
Crawford
Dunn
Forest
Jackson
Juneau
Langlade
Lincoln
Marathon
Oneida
Pepin
Portage
Price
Richland
Rusk
Taylor
Vernon
Vilas
Waupaca
Wood

WYOMING

Wyoming

Survey Area

South Dakota:
Pennington
Wyoming:
Albany
Laramie

Natrona

Area of Application. Survey area plus:

Nebraska:
Banner
Box Butte
Cheyenne
Dawes
Deuel
Garden
Kimball
Morrill
Scotts Bluff
Sheridan
Sioux
South Dakota:
Butte
Custer
Fall River
Harding
Jackson
Lawrence
Meade
Oglala Lakota
Perkins
Wyoming:
Campbell
Carbon
Converse
Crook
Fremont
Goshen
Hot Springs
Johnson
Lincoln
Niobrara
Platte
Sheridan
Sublette
Sweetwater
Uinta
Washakie
Weston

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FEDERAL REGISTER

Vol. 89

Friday,

No. 198

October 11, 2024

Part IV

The President

Proclamation 10834—Leif Erikson Day, 2024

Presidential Documents

Title 3—

Proclamation 10834 of October 8, 2024

The President

Leif Erikson Day, 2024

By the President of the United States of America

A Proclamation

On Leif Erikson Day, we celebrate the history and heritage of Nordic communities in the United States, whose contributions and cultures have helped shape our Nation.

Many believe that roughly a millennium ago, Leif Erikson—a Norse explorer—and his crew were the first Europeans to reach the shores of North America. His spirit of adventure, curiosity, and resilience would inspire generations of Danes, Finns, Icelanders, Norwegians, and Swedes to sail across an ocean and begin new lives in America. These immigrants built bustling homes and enriched their communities, supporting and realizing the American Dream. They fought for our freedoms in the military; built new churches, businesses, and schools; and spearheaded social movements. Today, Nordic communities continue to enrich the fabric of the Nation.

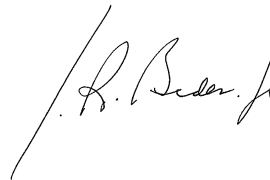
Nordic-American communities in the United States are foundational to our partnership and friendship with our Nordic Allies and their people. These nations share our vision for a world based on freedom, security, and opportunities for all. Together, we are working in lockstep to tackle the climate crisis and pioneer the next generation of technology that will power everyone's economies. We are also standing with the brave people of Ukraine as they defend themselves against Russia's brutal assault. I am proud that the United States supported the ratification process for Finland to join NATO, which was the fastest ratification in history. And I was honored to welcome Sweden as NATO's 32nd Ally earlier this year. Together, I know that we will continue to stand for freedom and democracy for generations to come.

Today, may we celebrate the important contributions and vibrant cultures of Nordic Americans to our Nation. And may we continue the work that so many Nordic communities in this country began: ensuring every American has an opportunity to reach the American Dream.

To honor Leif Erikson, son of Iceland and grandson of Norway, and to celebrate Nordic-American heritage, the Congress, by joint resolution (Public Law 88–566) approved on September 2, 1964, has authorized the President of the United States to proclaim October 9 of each year as “Leif Erikson Day.”

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim October 9, 2024, as Leif Erikson Day. I call upon all Americans to celebrate the contributions of Nordic Americans to our Nation with appropriate ceremonies, activities, and programs.

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

A handwritten signature in black ink, appearing to read "Joe Biden", is written over a diagonal line that serves as a signature line.

[FR Doc. 2024-23812

Filed 10-10-24; 11:15 am]

Billing code 3395-F4-P



FEDERAL REGISTER

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October 11, 2024

Part V

The President

Notice of October 10, 2024—Continuation of the National Emergency With Respect to the Situation in and in Relation to Syria

Presidential Documents

Title 3—

Notice of October 10, 2024

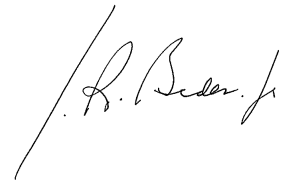
The President

Continuation of the National Emergency With Respect to the Situation in and in Relation to Syria

On October 14, 2019, by Executive Order 13894, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to Syria.

The situation in and in relation to Syria undermines the campaign to defeat the Islamic State of Iraq and Syria, or ISIS, endangers civilians, and further threatens to undermine the peace, security, and stability in the region, and continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13894 of October 14, 2019, must continue in effect beyond October 14, 2024. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13894 with respect to the situation in and in relation to Syria.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
October 10, 2024.

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